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Introduction

1.1 Introduction

I joined the South African Police Service (SAPS) in 2001 – as a researcher. At that time nothing seemed easier. Together with my South African co-researcher, I simply sent a fax to the then acting Provincial Commissioner of Police in Gauteng¹ stating our wish to carry out research on – as we put it – “the implementation of human rights into policing.” The permission was promptly granted in the form of another fax stating that we would be most welcome to do so, but that it would be appreciated if we could provide the police in advance with anything we were planning to publish.

Malcolm Young, a British police officer turned ethnographer, notes in *An Inside Job* that “it is really one of the foundations of any executive power group that it maintains secrecy about its activities and avoids the possibility for its antagonists to subsume that power”. Quoting Hanna Arendt, he continues, “The more public a group, the less power it is likely to have. Real power...begins where secrecy exists” (Young 1991:1). Reading our experience in this light, the South African police since the end of apartheid seemed to have done away with secrecy and to have surrendered their power to the public.

It was a different story one and a half years later. Our research permission was suddenly revoked and the new Commissioner of Police for more than four months refused to talk to us to discuss the reasons why. It seemed that the police were

¹ Gauteng is one of South Africa's nine provinces. Johannesburg is its main city.

reassuming a position of power in the sense of asserting their privilege to exclusion and secrecy.

For some years after 1994 there was an incredible openness in the South African government towards everything which had to do with human rights, and a concomitant willingness – whether it was genuine or forced – on the part of the South African Police Service management to embrace the transformation of the organisation in the name of human rights and liberal democracy. However, the change of attitude, which we experienced in 2002, indicated that this was not a permanent state of affairs and that such openness was being renegotiated. By then, however, a whole range of institutional changes drawn from a human rights agenda had been carried through. These included the establishment of an Independent Complaints Directorate (ICD), a human rights curriculum and training programme, strict legislation with regard to the use of force and – initially constitutionally prescribed – community policing. With these changes in place, it meant that there was no way back.

It is from this situation that this thesis asks questions of how human rights have framed police practice in post-apartheid South Africa. How have human rights transformed the police institution? How have human rights and its mechanisms made their imprint on the everyday practice of policing?

Let me introduce these questions through one policeman's narrative. Inspector Kekana joined the South African Police (SAP) in 1988. He even remembers the exact date: March 3. He was trained in Durban, came to Johannesburg in 1990, and was promoted to the detective branch in 2001. He remembers vividly the violence of the interregnum – the years between the release of Nelson Mandela in 1991 and the first elections in 1994. And he knows what it meant to be seen as a traitor to the people. He talked about the post-apartheid period in a way that made it clear that it was hard to carry out policing without considering issues of human rights.

Now we are much safer. But you see, people think they have more powers these days. I have experienced that, whenever you want to do a search, they will tell you this is my human rights and that is my human rights. But they are badly informed, and they are abusing it. It is very disturbing.

Inspector Kekana has his way of dealing with what he calls abuse of rights:

But when they are like this, I know my rights, that it needs someone to convince them what is right and what is wrong. I must convince them to co-operate...but otherwise I have to use some other means and ways. I have the power to submit and to make him understand. I am trying to make you understand as a human. I also know my rights, but they forget that, then we get a clash of my rights and your rights. You must know your limits; you can't take my right. It is quite disturbing; they don't want to understand, but then I lose my temper and deal with the matter differently. In the end they always co-operate...The constitution has affected our work. It is in the sense that people abuse their human rights. For people who know their rights, it is better.

Inspector Kekana's comments are suffused with ideas about rights, especially human rights. As such, he makes reference to the central role that human rights had come to play in the idea of police transformation towards democracy. But while the notion of rights is pervasive in his explanation, his account also suggests that we are not dealing with a simple one-to-one translation of human rights into policing. In reality, this police officer has interpreted the idea of rights and of being human for himself alone and as a means to legitimise his use of force against someone who does not want to submit to his command. Here the introduction of human rights is not about passive reception but about a complex process of tactical interaction with human rights, in which these rights are undermined and appropriated by the police officer for unexpected means and manoeuvres. The necessary, complementary second set of questions is thus: how do police negotiate human rights? How are human rights taken on and built into policing?

This double bind of both framing and negotiating describes the relationship between human rights and the police, allowing us to see human rights and the police both as actors and as recipients. This perspective circumscribes the complex, asymmetrical and shifting interface between police and human rights. In this introduction, I provide a more conceptual insight into the dynamics of this interface. I show that, on the one hand, human rights have become a pervasive global product, and as such form a dominant, overarching and productive framework for the transformation of the police. On the other hand, the pragmatics of the everyday practice of policing subtly rewrite the story of

human rights and their impact. These two aspects are discussed as two conflicting but complementary dynamics.

I then further concretise the interface between the police and human rights. The issue of policing and human rights has received huge attention with regard to so called 'transitional societies' and the process of post Cold War democratisation, from the Global South to Eastern Europe. From this a consensus by policy experts has emerged which promotes an institutional model of accountability as the panacea through which a greater respect for human rights in policing can be achieved. "Accountability" in this context means a responsiveness and compliance with expectations from (a) the international level of human rights, (b) South African national law and its institutions (mainly the courts), and (c) the populace. It is these three levels which also delimitate and specify three complementary interfaces of policing and human rights. Building upon a critique of the underlying assumptions about the working of the accountability model, I argue for a theoretical approach and a methodology which starts from the observation of the everyday and the particular in order to capture the specific and possibly unexpected articulation of human rights in policing as they emerge on these three levels of accountability.

I then introduce the more practical realisation of the research, the research sites and their specificity, and explain the rationale which led me to concentrate on detectives. Finally, before introducing the order of chapters, I deal with the limits and possibilities of studying the police.

1.2 Human rights in everyday practice

1.2.1 Human rights as international global discourse

Wilson (1997:1) states that there is an "inexorable rise of the application of international human rights law as well as the extension of a wider public discourse on human rights, to the point where human rights could be seen as one of the most globalised political values of our time." However, great divergence exists when it comes

to appraising this proliferation of human rights; in fact, each sketching of the expansion of human rights already implies a certain interpretation.

Ignatieff (2003) proclaims a sense of revolution and victory of human rights. He can be seen as the clear representative of an approach, which, in a modernistic stance, conflates the proliferation of human rights discourse and the consolidation of the institutional landscape with moral progress. He claims that human rights have gained universality as a singular unifying moral language. He suggests that where human rights have not become such an overarching reality, it is merely a question of implementation and practicalities, and that such problems do not call into question the universal validity and appeal of human rights.² Jack Donnelly (1989), in a similar way, attaches great significance to the prominence of human rights in the post-Cold War global political arena. He reads this as a sign of advancement of the protection of human rights and what they stand for. While he argues against some versions of human rights which make claims to a substantive theory of human nature, or those which evoke metaphysical grounds for their claim to universality, he considers there to be a near universal de facto consensus regarding the indispensability of human rights to human dignity. He especially stresses that the post-Cold War period finally erased the historical fragmentation of human rights. With “the so called socialist conception of human rights...[lying] in shambles” and since in “many Third World countries, the old arguments that equate human rights with the struggle for self-determination and development have been rejected” the normative consensus over the interdependence and indivisibility of human rights has become universally accepted (Donnelly 1992:259). Amartya Sen (1999) goes

² It has to be mentioned that Ignatieff in his appraisal of the expansion of human rights as global moral language promotes a version of human rights which criticises the use of rights as a trumps, meaning human rights as fundamentally different from politics (2003:21). Instead, so he argues, the politics-*enabling* nature of human rights has to be recognized (2003: 95). He suggests what could be called a Habermasian model of politics through human rights, that human rights provide the basic conditions for everybody to be heard and a “shared vocabulary” that serves as the basis for expression of conflict but that also funnels them into arguments, persuasion, and deliberation. This is to say that human rights have the power to create a sphere for communicative action (Habermas 1997) in which everybody can have an equal voice and within which conflicts can be expressed while at the same time contained (Ignatieff 2003:84, 94). Thus, while he criticises the more legalistic stance on human rights, he maintains that human rights can in principle transcend social and cultural difference by providing a kind of a minimum meta-language of commonality. Because he holds on to this modernistic stance which forecloses a more radical critique of the kind of power with which human rights are suffused I did not consider his approach as particularly useful for my analysis, which tries to highlight the particularity of human rights and their productive and restructuring effect (see section 1.2.3 below).

even further. He argues that the acceptance of the interdependence and indivisibility of human rights is an absolute precondition for realising substantive freedom.

Other similar claims towards a paradigmatic shift are cast in legal language; they praise the achievement of international human rights law and the way it has challenged national sovereignty, allowing for much more forceful interventions (Woodiwiss 2002). Still others stress the extension and consolidation of regional and transnational intergovernmental and non-governmental human rights networks and the way in which they disrupt the vertical governance of states and create a system of global accountability (De Sousa Santos 1995; Sikkink 2002; Slaughter 2002). What these approaches have in common is that they present the proliferation of human rights as an advance for the powerless, dominated and vulnerable – a claim which places human rights beyond reproach and above issues of power and interest. Any affinity or overlap with other developments in the world, such as the promotion of the rule of law in the name of a neo-liberal market economy, are vehemently denied (Dezalay and Garth 2002a). In fact, these approaches define themselves by their opposition to such trends, at least in so far as these trends create “injustice”. Here, the conceptual proclamation of a paradigmatic shift and the sketching of the proliferation of the concept of human rights serves as proof of the legitimacy of human rights, and contributes in a self-fulfilling way to making the paradigmatic shift seem inevitable (Dezalay and Garth 2002a).

A more sceptical position is to disassociate moral progress from institutional and discursive expansion. Asad (2000:2), for example, points out that “human rights are now universal in the sense that virtually all states have formally endorsed them and citizens in many countries as well as organisations such as Human Rights Watch invoke them.” By consciously altering the use of “universal” from a description of normative validity to a description of widespread sociological presence, he emphasises that human rights cannot be seen outside of their historical contingency and social embeddedness. In this approach, human rights are seen as a hegemonic project in which claims to universality and supposedly self-evident legitimacy are considered as the means to mask the politics of the project (Rabinow 2003). Therefore, normativity and the claim to “do good”, themselves become the object of the analysis. This opens up the possibility of highlighting the semantic silences that the human rights project produces, as well as making the condition

of its production visible. For example, Dezalay and Garth (2002a) analyse how human rights – as part of a technocratic consensus promoting “good governance” and “the rule of law” – have become a global commodity, and how the concept permits certain societal groups to reinvent themselves. Instead of reifying ideological differences between, for example, an expansive capitalist project and human rights activism, this approach points to the affinities in its support for the rule of law and the means through which these goals can be realised (Dezalay and Garth 2002a). While maintaining a critical distance from the expansion of human rights, this approach nevertheless keeps the project of human rights central to the analytical endeavour.

A third approach, which similarly identifies the hegemonic claim of human rights, – instead of deconstructing the claim from within – highlights the limits of the apparent pervasion of a human rights culture. These limits are shown by pointing towards contemporaneous and competing discourses and practices. As Rabinow (2003:23) states, “[religion or market culture] remain potent contenders for the privilege of defining who speaks morally, how to speak morally, and what moral speaking is about.” He then shows how inconsequential the proliferation of human rights is, compared to these other and often much older, pervasive, deep-rooted and ingrained political practices and cultures. Rabinow (2003:24) refers to human rights as a “life style enclave” – a “not entirely positive term for a trend of self-conscious and delocalised practices stitched together in a form of life...[that can be characterised] as thin”. This approach is thus more concerned with what is “complementary, co-present or cordoned off” from human rights; here, human rights are the mere reference point for what lies outside.

None of these approaches can be entirely dismissed. However, to subscribe only to one would mean – especially in the South African case, and more so in the case of South African police transformation – to grossly underestimate the entanglement of the world of human rights with the “world outside of human rights.” To describe the manifestation of human rights in South Africa simply as thin would come close to denialism. The concept of human rights has made its presence felt in a way which simply cannot be dismissed; this is evident from many aspects of South Africa: the Constitution and the various commissions arising from it – the Human Rights Commission, the Gender Commission and the Culture Commission; personalities such as

Nelson Mandela and Archbishop Desmond Tutu; inclusive participation in the form of free and fair elections; the country's iconic application of social rights, equality and freedom in jurisprudence; and its Truth and Reconciliation Commission (TRC). Human rights talk is in everybody's mouth and everybody's ear – much as in Inspector Kekana's (see quote above) comment, where human rights come up with steady frequency, where the community is seen to have power, and his work perceived as having been influenced by the Constitution. It would also be inappropriate to dismiss the sense of victory and achievement which is associated with the transition from one of the most racist and unjust regimes to one of the most democratic in the African continent, and, with regard to its Constitution, in the world. That would mean dismissing the power of the attraction that human rights have as an aspirational concept, with the possibility of justice and participation, how they are able to give credibility to imagining the moral self as virtuous, and how they are able to bestow respect on those who struggle in their name.

On the other hand, human rights have received serious blows and can hardly be seen as omnipresent or exclusive. With regard to fighting crime, the concept of human rights has been popularly disqualified as useless and counterproductive (Shubane 2001); in fact, it has been blamed for contributing to the increase of crime. It has also been rejected by religious and neo-traditional leaders as oppressive and non-African (Comaroff and Comaroff 2004a). While this contestation might indicate that human rights are a force to reckon with, it also shows that there are strong contending discourses that seem to have a much greater following and seem to be more appealing than the struggle for human rights. It should also be mentioned that despite the progressive jurisprudence derived from the South African Constitution, citizens who win constitutional cases are not always better off in practice. This can be seen in the widely publicised Grootboom case, where social rights were applied in an unprecedented way.³ Geoff Budlender (2002:7) points out that “the City of Cape Town, which was directly involved in the Grootboom case, has still not carried out its obligations under the judgement.” Finally, in Inspector Kekana's comments, quoted above, an erroneous and crudely twisted, even mocking, use of the concept of human rights seems to get the upper hand. He uses “his”

³ In its judgement on *Government of the Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC), the Constitutional Court sought to give effect to housing rights as provided for in Section 26 of the Constitution.

human rights to excuse, even legitimise, the abuse of force (to “make them understand”, as he euphemistically puts it); one wonders what kind of rights he is talking about. If we see his comment not just as self-justifying and give it some credibility, then it suggests that people can use human rights in an “improper” way rather than advancing the cause of justice. This seems to convey that contemporary practices carried out in the name of human rights in fact can easily sideline or misrepresent human rights. Thus what we find in the contemporary world is a paradoxical sense of a simultaneous presence and absence of human rights – a radical occurrence and evaporation, mixed with a proliferation of obscure uses of human rights. How can we account for the forgery of human rights, the absence of the accurate and correct, and the emergence of the false? How can omnipresence, absence and ruse be brought into one picture?

1.2.2 Human rights as vernacular

In a more general discussion on how to think about globalisation, questions are raised with regard to its homogenising effect (Inda and Rosaldo 2002). This discussion can be applied to review the claims made with regard to the universalising power of human rights on the one hand, and to the idea of the co-presence of human rights with other, more indigenous, life worlds, on the other.

The proclamation that human rights are gaining global and therefore universal status mirrors in a way – although with reversed moral stress – the familiar statement that globalisation is a form of cultural imperialism and leads to a homogenisation of culture.⁴ However, Inda and Rosaldo (2002) argue that the equation of Western cultural imperialism and globalisation is a simplistic reading; they quote from Tomlinson (in Inda and Rosaldo 2002:17) that the “[cultural imperialism argument makes] ‘unwarranted leaps of inference from the simple presence of cultural goods to the attribution of deeper cultural or ideological effects’. In other words, it simply assumes that the sheer presence of western form has a self-evident cultural effect on Third World subjects”.

⁴ The difference here obviously lies in the valorisation of such an expansion. While human rights as a global force is considered by many as moral progress, the expansion of capitalism through consumerism is generally described as problematic.

They argue further that one has to distinguish between the ubiquity of cultural goods and the consumption of these goods, and the degree to which it can be established that the consumers of foreign cultural products are also “internalizing the values which are allegedly contained in them...” (Inda and Rosaldo 2002:18). Instead, in the process of globalisation a multiplicity of heterogenising forces are at play, which can be understood as processes “of interpretation and translation and customisation” (Inda and Rosaldo 2002:17).⁵

Michel de Certeau (1988) developed a theory which has such heterogenising processes at its heart. As the title of his famous book *The Practice of Everyday Life* makes clear, these processes are rooted in everyday practice. They can best be captured in an activity such as reading. Each reader, while apparently passively absorbing the content of a book, in fact takes from it what is of personal significance, insinuates his or her own meaning and ignores what is of less or of no importance to him or her. Instead of submitting to an authoritative version of a text, each instance of reading represents an appropriation of the text and a re-creation of it in an interpreted form. This subtle process largely remains unnoticed since it does not manifest itself, at least not immediately, in a form that is equally authoritative and competitive to the original text. However, because it is the predominant form of everyday practice, it contributes to pluralising, heterogenising and undermining the “original” meaning.

A related dynamic is at work in the process of speaking and the use of languages (Gardiner 2000:175). The study of the emergence of vernaculars (i.e. local in contrast to national or global languages, languages that are spoken not written, dialects, etc.) and Creole languages provides a particular insight into the long-term process of everyday practices, especially in the context of contact between groups that do not share a common language (Holm 2000). It is understood that vernaculars and Creoles acquire most of their lexicon (vocabulary) from the superstratum, which is the language with the hegemonic qualities. Meanwhile, certain specific phonological and syntactical features and semantic shifts can be clearly attributed to the influence of the substratum.⁶ As such, a new

⁵ This argument has been formulated in its full extent by Appadurai (1995) in *Modernity at Large: Cultural Dimensions of Globalisation*.

⁶ What exactly emerges out of the contact – in the sense of the scope of borrowing, interference and reinterpreting – depends on the nature of the contact between the languages (i.e. violent, benevolent, equal)

language emerges out of the practice of encounter, which, while bearing the traces of both originals in an asymmetrical relationship, belongs to its own "new" genre and claims originality in its own right (Holm 2000).

De Certeau's main purpose is to show how the processes of reading and speaking can be seen as corresponding with what happens in social practice (Gardiner 2000:176). He calls this the grammar of everyday life. This grammar of everyday life can be explained through the difference between tactics and strategies. "Strategies seek to colonize a visible, specific space that will serve as a 'home base' of the exercise of power and domination, in order to delimit one's own place in a world..." (De Certeau in Gardiner 2000:172). In contrast, tactics are much more "ephemeral and improvised in response to the concrete demands of a situation at hand" (De Certeau in Gardiner 2000:172). They are only tempering, never overthrowing what has been established by a strategy.

A tactic is a calculus which cannot count on a 'proper' (a spatial or institutional) localisation, nor thus on a borderline distinguishing the other as a visible totality. The place of tactic belongs to the other. A tactic insinuates itself into the other's place, fragmentarily, without taking it over in its entirety, without being able to keep it at a distance. It has as its disposal no base where it [can] capitalize on its advantages, prepare its expansion, and secure independence with respect to circumstances (De Certeau 1988:xix).

Applied to human rights, the ephemeral, circumstantial, subtly subversive but pervasive quality of tactics helps to explain what happens to human rights in everyday practice; it helps us to understand the 'insidious falsehood' and negotiation and evaporation of human rights in the light of its omnipresence. This approach of tactical appropriation stresses the fluidity of the concept of human rights, its *bricolage* kinds of possibilities and its ever-shifting meaning. The assumed "original" meaning can be tactically estranged, subsumed and altered by the vernacular – the substratum – although

(Jordan 2000). For example, is it only the substratum which atrophies, leaving the superstratum untouched, or does the superstratum also get deformed? Is it more a question of new shells with old meanings (Jordan 2000:48), or one of old shells with new meanings?

always in an asymmetrical form compared to the more dominant hegemonic form. This approach stresses a process of improvisation and interpretation through everyday speaking or reading (in both a literal and figurative sense), which allows for the renegotiation of meaning and practice. It refrains from making a judgement about what is the right and what is the wrong meaning or use to which human rights are put. Instead it allows the estranged use of human rights to carry its own originality. Used in research, as I use it here, it directs the focus towards the forces which have created the new use of the human rights concept and its meaning. It seeks to understand why a new meaning had to be created and how this is meaningful in the context of its use. By rehabilitating the claim to originality, this approach opens up the door towards understanding the vernacularised⁷ version of human rights.

1.2.3 Human rights as prescription

1.2.3.1 Human rights as legal language and practice

While it is necessary to stress the process of reinterpretation and the vernacularisation of human rights in order to rebut universalistic claims and the impression of overwhelming homogenisation, the fact remains that there is still a form of human rights which can claim to be the “correct” version. The discussion above has focused on the analytical difference between superstrata and substrata, between strategy and tactic, and between the double bind of framing and tacit interaction. Similarly, there is no such thing as an equal encounter: there is always one side which operates from an “official” level when defining, for instance, the official version of a language or a

⁷ The vernacular here points towards a spatial as well as a modal/qualitative dimension. It firstly refers to the fact that human rights are being applied to and appropriated in a specific and local context and secondly to the fact that such appropriation and application happens through forms of everyday practice. It highlights the reality that the use of human rights is ultimately enveloped “in the mode of the ordinary” and the particular (De Certeau 1988:10).

Igantieff (2003:68) also makes use of the term “vernacular” to highlight the versatility of human rights. However he does not further face the implication of such a vernacularisation in that something qualitatively different from the dominant human rights discourse emerges. As such, one could say he overlooks the importance of the tactical engagement with human rights. For him the vernacular can always be subsumed under, and brought back into, the dominant discourse. This is not how the concept of the vernacular is used here.

practice. It sets the standards, and exerts influence and power from that position. This side can, therefore, be called hegemonic, at least in intention. In the case of human rights, it is human rights as legal language and practice which assumes such an "official" position.

As human rights have expanded and spread their claim to universality, they have been recast successively over the last 55 years into legal terms and legal procedures (Woodiwiss 2002). Stammer (1999:991) argues that the "transnational human rights industry" has been producing and promoting the establishment of human rights as international public law, and dedicates its entire energy to furthering the concept of human rights as legal rights; or as Woodiwiss (2002:149) puts it, "legal casuistics...are now virtually the only possible way of working within the conceptual field of human rights." It is in this legal form that human rights pose a global presence, demand and gain state recognition, and even become part of a state's machinery. The legal form of human rights can discredit or overshadow all other less established forms.

In addition, the expansion of human rights (as legal language and practice) has meant that an increasing range of spheres of life have become the object of human rights' concern. The expansion of human rights is not just a matter of multiplication of institutions, contracts, supervisory mechanisms, and states that promote and recognise human rights; it also includes the recasting of societal concerns such as health, gender, environment and development in terms of such rights. Genugten (1999:93), for example, states that "the dramatic changes...in 1989 [such as the end of the Cold War] had drastic consequences for the approach of several governments towards the relationship between democracy, human rights and sustained development. An increasing conviction emerged [in the world of development cooperation] that development had to centre on the human individual as the main protagonist and beneficiary of development." Similarly, issues of health and environment were considered to be best advanced as rights-based matters. The recasting of gender and women's issues as rights issues also carried the promise of forcing states into action and compliance.

Furthermore, human rights are no longer seen as only concerned with the relationship between the government and citizens. With repeated experiences of intra-ethnic conflict, which seemed to dominate the international political arena post-1998 and

pre-9/11, the relationship *between* citizens was increasingly considered to be an issue of human rights. This, in human rights jargon, is referred to as the “horizontal effect” of human rights (Genugten 1999:15). This effect places a duty on the state to protect the individual from harm inflicted upon her/him by other individuals and can be derived, for example, from the right to life and liberty, and the right to be free from discrimination. The issue of domestic violence is a prime example.⁸ Increasingly, it has become the responsibility of the state to protect women from abuse by men, even if this means intervention through law enforcement in the private sphere, which was previously considered to be protected from state intervention.

1.2.3.2 The modern individual

What are the consequences of such an expansive hegemonic language promoting a legal practice? Are human rights not meant to protect and empower the weak against the strong? How can we think of domination, hegemony and power with regard to a concept which proclaims the necessity of creating freedom from oppression and coercion? It is in Foucault’s (1980, 1991, 2004a, 2004b) work on (neo-)liberalism that we are offered a way to think about power and domination with regard to an emancipatory concept such as human rights. He shows that so-called empowerment and liberation are not purely liberating forces but also prescriptive ones. This becomes apparent, for example, when not everybody who is oppressed qualifies for protection under human rights. Violent revolutionary struggles are condemned, but somebody who would rather stay in an abusive situation than accept freedom from physical violation can be judged as misled or sick. In order to be heard and to make a successful legal claim in the field of human rights through the medium of international organs or national courts, one must speak the “correct” language and express one’s needs and sufferings in a specific way. In other words, those considered within a human rights dispensation are constructed as

⁸ For example, Genugten (1999:91) mentions that as “to the issue of violence against women, the Commission [UNCHR] in its 1998 session, inter alia, decided to call upon governments ‘to enact and, where necessary, reinforce or amend penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls subjected to any form of violence, whether in the home, the workplace, the community or society, in custody or in situation of armed conflict, and to ensure that they conform with relevant international human rights instruments and humanitarian law’.”

subjects of human rights intervention and protection. As such they are subjected to the particular form of power that is inherent: in this case, in human rights as a legal concept.

Foucault elaborates extensively on how the power of liberal freedom works, and how liberalism depends on constituting a specific subject. For him, power is different from force, coercion and submission. In fact, he describes coercion as an inefficient and, more important, uneconomic form of trying to regulate behaviour and society. Real power for Foucault masks itself by locating itself in the realm of liberal freedom and truth, which is conventionally considered to be outside of and in opposition to power (that is, power in the sense of coercion). This masked power takes the form of technologies of discipline, which produce the modern individual as a docile and productive body which is constitutive to a (neo-)liberal and capitalist society. These technologies enable processes of objectification which – through identifying, classifying and making human beings aware of this classification by turning the gaze of knowledge (i.e. social science) upon each of them – create separate and autonomous entities: individuals. At the same time, there are the disciplinary technologies of subjectification or “technologies of the self” which bestow each of these entities with an individual consciousness. Through various processes – for example, “self-realisation”, confession (knowledge about oneself), or, with regard to the law, claiming one’s right as an individual – the individual creates himself or herself as an autonomous human being. In other words, the individual takes upon him/herself the desire and responsibility of who he or she is, or is becoming. He or she seems to be making a free choice, but in reality it is a choice which is already determined. Thus, for the individual to come into existence presupposes a certain awareness of being the object and subject of freedom, and of pursuing the kind of freedom offered by human rights and other liberal doctrines.

The technologies of discipline appear in the form of a discourse, which can appear as a combination of institutions, architectural arrangements, regulations, laws, administrative measures, scientific statements, philosophy, morality, philanthropy and policy (Dryfus and Rabinow 1982:121), bringing together power and knowledge in a specific grid. This grid constitutes and organises people as subjects. Foucault calls this grid “dispositif”.

The liberal dispositif under which human rights falls – especially human rights as public law or as legal political language – thus allows us to see individuals as seemingly free and as actors assuming and choosing their freedom and independence. At the same time, the reality of these individuals is deeply structured by forces which are in fact counter-intuitive and somehow removed from the grasp of the individual.

In a more concrete application of Foucault's theory, it is assumed that the dispositif as a mechanism of power and knowledge becomes indirectly visible at its boundaries, where people do not fit or are excluded from it, fail to live up to it or are seen as undermining the liberal paradigm (Meyer 2001). Those who are "undisciplined" are often considered as inadequate or misled, while those who are "disciplined" are seen as normal and correct. However, by turning the gaze and changing the signs we can make that which has been naturalised and normalised the object of research. If we take the aberration as the starting point, suddenly that which claims to be normal and standard can look out of place and reveal its particularity.

1.2.3.3 Juridical capital

Admittedly, as Foucault's subject emerges out of its tightly conceived relationship with the discursive order, it is a rather "abstract creature", especially because the conditions of its making are so far removed from the individual's own terms of experience (Du Gay, Evans and Redman 2000:3). Thus, as much as the concept of Foucault's subject serves to understand the nature of liberal power and to deconstruct what masks itself as normal and beyond reproach, it does not account very well for variations, conflicts and ambivalences under the neo-liberal and human rights regime as they appear in various micro studies. Therefore, to deal with the more immediate and uneven effects of human rights, especially as legal language and practice, I would like to introduce an additional concept – one that is more "hands-on". This is the concept of "juridical capital", which was formulated by Pierre Bourdieu (1987).⁹ As with Foucault,

⁹ Bourdieu occupies a theoretical position which is very different from Foucault's. Bourdieu assumes a position where the objective structures of society find their expression in the subjective actions of actors, and which thus brings those two position (structure and agency) together in his analytical concept of the "habitus" (Bourdieu 1993). Foucault moves away from the meaning that is available to the actor and

this approach offers a critical analysis which does not take the claim of human rights to being an emancipatory and purely liberating force at face value, but considers it as a structuring force, imbued with power that produces practice. However, Bourdieu's human beings are much more contextualised and particular to specific societal positions and historical circumstances. Bourdieu's theory allows one to focus more on "social relations, techniques and forms of training...through which human beings have acquired definite capacities and attributes for social existence as particular sorts of person" (Du Gay, Evans and Redman 2000:4). As such this approach serves to speak about identity in a way that is still partly inaccessible to the direct consciousness of the human being but which is not as counter-intuitive as the structures that produces Foucault's modern individual.¹⁰

Bourdieu would call the expansion of human rights as legal practice and language a "'juridicisation' of a new dimension of practice", meaning an integration of new or additional spheres of society into the juridical field, or even a colonisation by the juridical field of new or additional spheres of society (Bourdieu 1987:836). To understand the consequences of such a juridicisation, we have to take a step back and follow Bourdieu's (1987) argument about "the force of the law" as he developed it in his canonical article "The Force of Law: Towards a Sociology of the Juridical Field." His main argument here is that the law exerts a force which guarantees the social status of those who work with the law and who are experts of it. The force of the law is based on the claim which is most clearly pronounced in the formalist position, namely that the law is "a body of doctrine and rules totally independent of social constraints and pressures...which finds its foundations entirely within itself" (Bourdieu 1987:814). According to this position, the

fundamentally separates what structures and produces society from what the individual makes of it (Dreyfus and Rabinow 1982:121). The two also diverge greatly on issues of power. For Foucault, power is not held in the hands of any particular group; the less power is tangible and the more it is dispersed in disciplining mechanisms and mechanisms of the self, the more it is actually prevalent and productive (Dreyfus and Rabinow 1982:184-204). For Bourdieu, power remains tangible on the level of class politics, although sublimated (though not in an instrumentalist way) into the politics of various societal fields, which then each create their own form of access to control over the field and its societal position (through, for example, social, symbolic or cultural capital) (Terdiman 1987).

¹⁰ Bourdieu (1987) uses the term "miscognition" to describe the "process by which power relations come to be perceived not for what they objectively are, but in a form which renders them legitimate in the eyes of those subjected to the powers" (Terdiman 1987:813). Here the difference with Foucault becomes very clear. Power, although structuring instead of coercive, lies in the hand of a particular group which holds "the capacity to control the actions of those dominated, but also the language through which those subjected comprehend their domination" (Terdiman 1987:813).

formalist character of law creates a purity and autonomy which guarantees the disinterested and ultimately just application of the law, which allows it to obtain and sustain societal consent. This is what allows for the law to be believed in, and thus guarantees the stability of the juridical field (Bourdieu 1987).

Based on this principle, the hierarchy within the legal field is formed by proximity to a form which seems most autonomous and formalised. Those in the field who are, in their legal practice (theoretically and practically), most closely associated with the pure form, the doctrinal form of the law, occupy the upper echelons of this hierarchy. They are seen as the ones who best embody the impersonal and transcendental nature of the law. This pits the theorist against the practitioner in a "permanent symbolic struggle" (Bourdieu 1987:821).

The separation between the juridical field and the non-juridical field takes place around the conversion of "direct conflict between directly concerned parties into juridically regulated debate between professionals acting by proxy" (Bourdieu 1987:831). The process of detachment, which is necessary to carry out such conversion, involves a certain set of skills, and Bourdieu lists a whole range of skills and practices which are required. This includes a certain linguistic stance, which allows practitioners to speak an apparently common language but where words denote a different reality. It requires "professional competence" such as that which is acquired through higher education and training, and the "technical mastery of a sophisticated body of knowledge." Bourdieu (1987:830) further elaborates that the neutralisation and distancing from the intense reality of a conflict takes place through reading it "through ancient texts and time tried precedents." As he puts it, "Ascetic and simultaneous aristocratic attitudes, which are the internalized manifestations of the requirement of disengagement" are being applied (Bourdieu 1987:830).

The sum of these qualities, abilities and skills are what forms juridical capital. As such, juridical capital firstly determines the membership of those in the juridical game and, secondly, it determines the position of the player in the hierarchy within the field. By describing the qualities as aristocratic and related to the ancient texts, and by referring to the mastery of a sophisticated body of knowledge, it becomes clear that these are not just skills which can be picked up on the street, but that they are contingent on a certain

societal position; classically, the most obvious co-ordinates of such a position are higher education and a certain middle-classness.

The expansion of human rights as legal language and legal practice means that a legal rationale is introduced into societal spheres which were not touched by it before, or that at least a legal rationale is strengthened in areas in which it used to play a limited role. In this way, juridical capital becomes the central marker in structuring the access to and the eventual position in official hierarchies. In other words, it introduces a new currency which determines influence – for instance, respect and the power to decide and control. Through its dependency on certain abilities, skills and qualities, juridical capital introduces middle-classness and education as the markers of being able to handle human rights issues with proficiency and mastery. In other texts the contingency on an increased educational standard is reflected by what is being mentioned as the increased dependency on experts or a professionalisation of the field of human rights. (i.e. Woodiwiss 2002, Dezalay and Garth 2002b). Identification with, or at least proximity and aspiration towards, middle class values becomes necessary if one is to work comfortably with human rights.

Coming back to the specific focus of this research, human rights in their dominant form go beyond simply restricting the police from doing certain things, or allowing people entitlement and access to something; human rights are also rigidly prescriptive and structuring. They prescribe to police and people in general that they must do certain things in a certain way which is rooted in a specific societal status and identity. At the same time, people and police, as they interact with the law, are supposed to fulfil certain expectations in order to qualify for being protected or being acknowledged as deserving of human rights. This prescription takes shape on the level of the construction of a particular subject by human rights and its regulatory mechanism as a disciplining discourse (Foucault); it also happens on the level of shifting class structures and identity formation based on the increasing importance of juridical capital (Bourdieu). Together, these are the forces and effects which I will highlight and use as theoretical approaches when talking about the global presence of human rights and their claims to universality, empowerment and emancipatory abilities (that is, enabling freedom and justice). They

present the restructuring effects of human rights as expansionist and conspicuous, manifesting legitimacy and claiming legal language and practice.

This approach (Foucault's and Bourdieu's) is the counterpart to what I have called the vernacularisation, or appropriation through everyday practice. The two approaches are asymmetrically related to each other, with the prescriptive one being a powerful, strategic hegemonic project, and the vernacularising one being a tactical, more subversive and circumstantial movement. Together they provide an analytical double bind which can explain the overwhelming presence and the conspicuous transmogrification or even sudden absence of human rights which seems to characterise the South African situation in general and policing in particular.

1.3 "Policing by consensus"

1.3.1 A policy consensus

Until now I have been speaking about human rights in quite general terms. I have considered the impact of human rights on society in general rather than concentrating particularly on its application to policing. In this section I deal with the way in which human rights appear to the police, as particular to police practice.

The often-applied and simplest approach to conceptualising human rights in police practice is to look at the legislation or regulations of the Police Act or the Criminal Procedure Act, which have been added to or amended in the light of the Constitution. These regulations fall under categories such as the right to a fair trial, bail applications procedures, admissibility of confessions, issues of trial within a trial and the use of force. Alternatively, one could look at the impact of certain new mechanisms, such as the Independent Complaints Directorate (ICD), which are constitutionally prescribed. However, as discussed above, human rights are more pervasive and their presence is far less systematic and intelligible than the legal notion of institutionalised human rights purports to be. Actions by police cannot be reduced to obvious, legal changes. Merely to look at the laws, as contained in the new Police Act and as amended in the Criminal Procedure Act, would be to subscribe to the reified form of human rights as a legal concept.

More importantly, such an approach ignores the reality that police reform itself is a contingent event. In fact, it is subject to a similar development as the proliferation of human rights. The historical moment has compelled the criminal justice system and policing to move to the centre stage of governance. It is the idea of police reform which itself deserves elaboration, and from this point I will conceptualise how human rights frame policing practice.

Within the global trend towards constitutionalism and liberal democracy (Klug 2000), police reform has emerged as a new field for development intervention and international co-operation. Previously, from a human rights point of view (particularly that of international human rights organisations) non-Western police had often been viewed as classical perpetrators acting in the name of military, totalitarian or other autocratic regimes, carrying out atrocities and suppressing the population. Such police forces only deserved attention when accused of human rights abuses. Viewing the police as a field of intervention to promote modernisation, democratisation and increased effectiveness was primarily reserved for Western states.¹¹ Assistance for police reform to states of the South was, especially in the case of South America, usually related to counter-insurgency and the war on drugs. Most of the means given to strengthen South American police forces led to their militarisation at the hands of dictatorial regimes (Huggins 1998).

However, with the end of the Cold War, and with the proclaimed shift towards the rule of law in “transforming” countries – whether in Indonesia, Poland, Russia, Brazil or Mozambique – the attitude towards the police suddenly changed. Police forces were discovered as protectors of rights. They were identified as an important cornerstone of enabling the rule of law and protecting and enforcing the human rights of their citizenry. In particular, this concerned violence among citizens, such as ethnic strife or domestic violence (that is, horizontal human rights abuse), rather than any fighting between the state and its citizenry. Police forces were expected to stand up against crime and corruption, which seemed to be growing hand in hand with the democratisation of those countries, threatening to undermine newly gained democratic progress and the possibility

¹¹ This, according to Bailey (1995), started in the United States with the publication in 1967 of the report of the President's Commission on Law Enforcement and the Administration of Justice on “The Challenge of Crime in a Free Society”.

of safe financial investment. With this scenario, the police became part of development.¹² Thus, the new paradigm was not only about transforming the police, but additionally about transforming society *through* the police.

This shift towards the increased importance of police reform warranted an increasing flow of money as well as technical assistance towards so-called transforming societies (Marenin 1996:5). State development agencies such as the Gesellschaft für Technische Zusammenarbeit (GTZ) in Germany, the Department for International Development (DFID) in the United Kingdom (UK), the Swedish International Development Co-operation Agency (SIDA), and the Danish International Development Agency (DANIDA) embarked on sponsoring and promoting police reform in non-western countries (Raleigh *et al.* 1998; Cameron 2003; Debiel and Terlinden 2004). This often included sending out their own national police officers as trainers and advisers. With the prospect of joining the European Union (EU), Eastern Europe has probably seen the biggest boom in police reform efforts, with the help of a vast range of organisations – from Amnesty International (AI) and the European Union, to the Organisation for Security Co-operation in Europe (OSCE). Even countries such as Costa Rica, Brazil and Indonesia, which have seen changes of government somewhat less sweeping than in South Africa and the former communist countries, have allowed and invited international assistance for police reform as part of their commitment to good governance and the rule of law (Frühling 1998, Mesquita Neto 2003)

On the other end of the spectrum, countries which have undergone regime changes not through self-governed revolutions but through direct international military (humanitarian) intervention have seen the total replacement and creation of new police forces by international agencies.¹³ So-called humanitarian interventions, while originally purely military in nature, have more and more assumed a civilian component, with the

¹² That the issue of police reform evolved as a developmental one – meaning beyond the direct concern of political and civil rights – is most evident in that international financial institutions such as the World Bank and the International Monetary Fund (IMF) took up police reform as an explicit point of their programmes (Call 2002).

¹³ Such international operations were first limited to the employment of unarmed United Nations (UN) police officers (for example in Congo). Since then UN police are part and parcel of a mission, and UN mission staff is tasked with reforming (e.g. in Kosovo) or designing new police services (e.g. in Timor Leste and Afghanistan). In addition, political precedence has been set for employment of regional (European Union and OSCE) and national (Australia in Timor Leste) assistance for police reform.

aim of not only stopping violent conflicts but also reconstructing governance and law and order in places of conflict. This is reflected in the continued broadening of the United Nations (UN) Security mandates which lead such operations.¹⁴

The upsurge of concern with police transformation has created an increasing need for expertise, tools and practitioners to carry out the actual assistance. This in turn has produced an outpouring of literature on the subject of police reform in non-Western countries, which has become a whole new genre.

At the beginning of my research this overflow of literature on the topic raised my hopes about the possibility of substantive comparative insights, especially since it covers a vast variety of parts of the world from Kosovo to Uganda, and from Malaysia to Colombia. However, these hopes were disappointed. The literature reflects little of the social and political, not to speak of historical particularities of police transformation in the different countries. Instead there is a striking conformity among the different texts which have police reform as their subject. The format is always the same, or at best a variation on the theme. It starts off with elaborating and testing some features of democratic policing, and then draws the conclusion that local police transformation is still incomplete. Very little is said when it comes to *why and how* people – police officers and citizens alike – engage in social practice which is at variance with some apparent logic of the desirability of democratisation, and which cannot be directly reduced to “old behaviour.” These texts discuss the tools but neglect the context. Their content is

¹⁴ A certain differentiation of perspectives prevails among the different kinds of organisations contributing to police reform. UN Peacekeeping agencies like CIVPOL tend to privilege short-term order over long-term justice reform. International financial institutions tend to be mainly concerned with removing the impediments to foreign investment and reducing the cost of crime and violence. Human rights NGOs as well as most of the donor and development agencies focus on the importance of the rule of law – the restriction of police activities by human rights legislation or documentation, as well as upholding the police as enablers of the rule of law and protection of human rights (Call 2002). These differences in emphasis are, however, very productive ones. They allow for a concerted reproduction of the concern with police transformation without admitting to being complicit in it. For example, NGOs like Amnesty International tend to criticise the UN and World Bank for their programmes, accusing them of not having enough emphasis on human rights, while at the same time they work hand in hand with these international governmental organisations to promote the idea of police reform. Such differentiation within such a new field of practice speaks foremost about how it has become normalised, in the sense that internal differences are seen as most prominent, and thus able to erase interest in the historical shift and historical differences.

dedicated and subordinated to the aim of contributing to the refinement of the means and methods of implementation and policy.¹⁵

The literature nevertheless is indicative of how a policy consensus about the requirements of modern policing is being created and what the policy consensus is. It provides detailed elaboration on what policing is expected to look like in the age of the rule of law, and in a transformed and transforming state institution. In the following section I shall describe the basic outline of this policy consensus and how it is reified and inscribed with the “magical” ability to conjure up democracy.

1.3.2 The “lack of legitimacy”

Mitchell states in his analysis of international economic expertise in Egypt that “fields of analysis often develop a convention for introducing their object. Such tropes come to seem too obvious and straightforward to be questioned. Yet...[such tropes] can establish the entire relationship between the textual analysis and its object” (Mitchell 2002:210). Mitchell (2002:209-43) is referring here to his observation that all economic expertise reports on Egypt start with a picture of the Nile valley as representing both lack of land and overpopulation. This is how international and national agencies typically represent the Egyptian economic predicament. The description consequently serves to legitimise and naturalise a particular type of economic intervention, which in turn reifies capitalism as a system that must inevitably unfold. Similar tropes are found in policy recommendations for police transformation in different countries. Many of the texts that discuss the transformation of the police start off referring to the “lack of legitimacy” or even the “vacuum of legitimacy” that has been created by the misuse of police powers under various authoritarian regimes (Kertész and Szikinger 2000; Perez 2000; Stone and Ward 2000; Frühling 2003; Lindholt 2003a; Sangroula 2003.). This belief in a vacuum of legitimacy results in a diagnosis of the situation as predominantly one of mistrust and

¹⁵ Most of this literature is directly commissioned, authorised or paid for by development and donor agencies which are directly involved in police reform. Sometimes it is the authors who are processing their experience as consultants, trainers, advisors or designers of police reform, just to go back afterwards and continue their practical involvement. These authors rarely make their own role and their profession the subject of discussion, nor do they look at police reform efforts as such, as specific historical events. Their concern is often one of effectiveness of implementation, which accounts for the rather technocratic and ultimately policy-oriented nature of the genre.

non-cooperation between police and citizens. From this perspective it is then deduced that the main task is to remedy and reverse this mistrust. This can be done, so the argument goes, by refraining from using police powers against the population, and instead using the police powers in ways with which the population agrees and sees as beneficial. This is called "policing by consensus" (Bowling, Phillips, Campbell et.al. 2004:3) Within this perspective, "consensus" is assumed to be concerned with a social order that the police force is supposed to defend, although very little is explicitly said about what constitutes this social order. The situation is often presented as if a social order to which everybody agrees already exists in the society; and as if the fact that such a social order is not manifest is simply because it has been suppressed by a non-democratic regime (Nsereko 1993; Koci 1996; Mawby 1999; Kertész and Szikinger 2000). Implicitly, in a great leap of faith (and logic) and driven by a hidden normativity, the idea of consensus is merged with the idea of the universality of human rights. The assumption goes as follows: since the acceptance of the concept of human rights is universal, everybody wants a social order which is based on human rights. Or, to historicise the assumption: the only consensus about a social order which carries currency in the contemporary world order and which predominates in official imaginings, is one based on human rights.

Consequently – so the argument proceeds – if the right channels are provided, society will automatically impress its interest in a social order based on human rights onto the police. These channels are the channels of accountability. In this vein, Bowling, Phillips, Campbell et al. (2004:17) proclaim that "systems of accountability are...among the key mechanisms proposed for...developing a greater respect for fundamental human rights and freedoms in policing."

According to Brodeur (1999), "accountability" means to be answerable and liable for one's actions, and also that one is allowed the possibility of redress. The difference between responsibility and accountability, Brodeur stresses, is that while "both words imply the necessity of making good for wrongs done...to account is always to answer to someone else beside one's conscience, and the obligation to do so is imposed from the outside" (Brodeur 1999:131). As such, "accountability" means foremost a responsiveness to the outside; applied to the police, it means making them accessible to society, so that

they have to listen to what the society as whole wants and cannot act without being exposed to the consequences of what they do to members of society (Stone and Ward 2000, Lindholt 2003b). Ultimately accountability functions as a form of mediation through which the views from outside come to shape the state institution, in this case the police. Thus, the argument goes, by institutionally enabling society to shape its police force, policing according to human rights will ultimately emerge from the process.

1.3.3 Accountability

A particular institutional model of accountability emerges from the policy-oriented literature on police transformation. This model is said to contain the potential to mediate the inclusive consensus regarding policing through which human rights will be implemented in the police force. Such a model has been theorised for example by De Sousa Santos (1995) and can be described as decentralising control over the state, and in this case over the police, to three societal levels; it gears the responsiveness of the police towards (a) the international community and international human rights standards, (b) to the national law and its institutional formations, and (c) to the populace – or the “local community” as it is mostly called.¹⁶ Accountability towards the international community comes to the fore in the literature with regard to the early stages of police transformation. It is often at such a stage that issues which are the prerogative of international governmental or non-governmental organisations occupy a prominent role on the agenda of police transformation – issues such as vetting, change of police conduct, human rights training, and revamping police doctrines. However, it is “international civil society” (Pheng Cheah 1997) and “issue-focused international advocacy networks” (Sikkink 2002) invoking international human rights standards, which in the long term are expected to hold police organisations accountable to international standards (Fernando 2003: 44-47). Of great importance here are the various (treaty and charter based) UN mechanisms which supervise the implementation of human rights, such as for example Special

¹⁶ There are some texts which highlight a different accountability model, for example where the line is drawn between internal and external accountability (Chevigny 1999, Newham 2005), but these are often issues based on the use of force, or less concerned with so-called newly democratising countries. However, it is in the texts which are particularly concerned with police transformation in the context of development, the rule of law, good governance and human rights, that the threefold division becomes visible.

Rapporteurs (thematic and country focus). Through activities such as publicising the existence of international legal standards, monitoring compliance, publicising rule breaking (Sikkink 2002:39), and helping in policy formulation and implementation, these issue-based networks and international civil society networks are said to contribute to and actually compel the adoption of international human rights standards. As Sikkink (2002) argues, these networks are crucial in turning laws into norms – that is, turning legal standards into behaviour-directing guidelines. In addition, such networks contribute to bringing forward certain concerns, such as violence against women, which are expressed through human rights. This in turn helps in getting such concerns accepted as issues for which the police are responsible in terms of prevention and control.

At the national level, accountability is enabled through a whole range of institutional mechanism and administrative and legal procedures. Accountability may be achieved through what is generally called civilian oversight, in the form of independent complaints directorates or ombudsmen. Governmental and non-governmental organisations may also play a role: for example, a constitutionally prescribed human rights commission could carry out research and publicise its findings on police misconduct or neglect of duty. Then there are internal investigation and disciplinary mechanisms, where special internal units or managers are responsible for investigating and penalising neglect and misconduct. Finally, there are the courts, which carry out civil litigation, prosecute police directly in public trials, or curb misconduct through exclusion of evidence. The courts can also compel accountability through, for example, making prosecutors work in certain ways on issues such as child abuse or rape. What all these mechanisms and institutional arrangements have in common is that they mobilise the national law in order to direct the police in what they do and what they do not do.¹⁷ Partly, they are legally (constitutionally) prescribed, and their functions are regulated through the national law.¹⁸ In a constitutional democracy – which the accountability model fits best – the national law is bound by the constitution, which should have been

¹⁷ In this vein, Goldsmith (1999) argues that that idea of civilian oversight and respect for the rule of law are inextricably connected.

¹⁸ The idea that these mechanisms might lead to decentralisation of the power of the state might be slightly misleading in the sense that some of them are actually state functions. What is generally evoked however is on the one hand the independence of the judiciary and on the other its controlling function which can be exerted over the legislative and executive side of the state through a constitution. It might be more accurate in this case to speak of the devolution of state power.

formulated in harmony with international human rights standards (Bowling, Phillips, Campbell et.al. 2004:18). It is through these interlocking stages of confrontation with the national law that police conduct is geared towards a human-rights-based approach to policing.

When it comes to accountability towards the populace, community policing stands out as the number one reform attempt (Sangroula 2003).¹⁹ This “prima-facie panacea” (Brodgen 2004: 635-49) is exported with an assumption of its democratising and remedial effect in situations where there is a perceived lack of legitimacy and where crime is prevalent. It is deeply inscribed with the ability to create a co-operative relationship between police and society. To quote Stone and Ward (2000:27), this means that “one important technique is for the police to open themselves up to community-nominated problems” and to meet “the needs and desires of the community.” Brodgen and Nijhar (2005:53), in a critical review of community policing, state that community policing is said: “to be rooted in a theory of community rights and responsibilities under which communities have a right to influence police practice”. The notion of community policing almost by definition assumes the possibility of concordance between “community” and police.

The different levels of accountability are seen – each in their own way and through its own procedures and mechanism – as bringing the police into contact with human rights. As such the three levels of accountability provide three different interfaces between police and human rights, through which policing is seen to be moulded towards respecting human rights. It is through these three societal levels that I approach this research.

1.3.4 Assumption of congruence

In its ideal form, the model of accountability is based on the idea that there exists congruence between the local community, the will of the people mediated through

¹⁹ It is interesting to note that, as Reiner (1997) mentions, the general explanation of the emergence of policing through an evolutionary model holds that policing by consensus has been the case in “simple societies.” It is now community policing which is particularly inscribed with the power to create this state of policing by consensus. One can infer that similar assumptions are being made about the homogeneity of simple societies and communities.

national, legal institutional forms of accountability, and the international community. Together they push police towards the same liberal values, the only difference being that this comes from different directions and through different institutional arrangements. While the occasional caution is offered suggesting that the interests channelled through these various mechanisms might not always be congruent with each other, it is said that in the multiplicity of interests will correct and balance each other out and ultimately generate a liberal democratic consensus with regard to policing (Stone and Ward 2000). Or a footnote is sometimes inserted at this point to the effect that if people in a society are not aware that they want policing according to human rights – and lack of awareness is often automatically interpreted to mean “not well enough informed” – (see for example Ignatieff 2003:72), then it is up to the police or complementary accountability mechanisms to impress on them that the universal social order is governed by human rights.

These ideas are based on the assumption that no serious conflict exists between the idea of democracy and popular sovereignty, and the idea of liberalism. This becomes clear in the following typical remark about accountability mechanisms: “Strengthen these mechanisms, and you have strengthened democratic policing. Coordinate these mechanisms, and you have helped police deliver safety with respect for the rights of all” (Stone and Ward 2000:15). Such conflation combined with the language of management and efficiency (which in its own way depoliticises), erases the idea of society having conflictual or juxtaposed interests. Instead, the unwillingness to co-operate on the terms prescribed or to enter the consensus is being discredited in this model as undemocratic or even criminal, indirectly creating the category of the “dysfunctional citizen” (Chipkin 2003). In fact, the police can only be held accountable in so far as accountability mediates the desired behaviour which is captured in the idea of *civil* society.²⁰ Hence, while the model disaggregates control over the police towards the local, the national and the international institutional legal realm in the name of inclusivity; the functioning of the model and its idea of consensus are ultimately dependent on exclusivity.

²⁰ For a critique of the concept of civil society in the African context and the assumptions and prepositions it carries with it, see Comaroff and Comaroff 1999.

By consistently reiterating the argument about the lack of legitimacy and the need to create legitimacy, and linking it with a similar reiteration of a vast list of concrete institutional forms through which accountability can be attained and accessibility created, the empty and at best imperfect institutional forms are made to correspond and become semantically congruent with the abstract ideal of policing by consensus. In other words, through this argument, the institutional forms are being inscribed intrinsically with the power of actually creating such consensus. The institutional forms become the ultimate tokens for the realisation and manifestation of human-rights-based, legitimate, democratic policing.

The institutional measures become real through the constant reiteration of the accountability measures, sidelining and overpowering any discussion about the unique, real-time situation of police practice. They become tangible despite their elusiveness, material despite their immateriality. They create their own world in which they appear to carry relevance and meaning beyond their instrumental instructiveness.

1.3.5 Accountability deferred

Fortunately, there is a body of literature which could be described as police organisational studies or sociology of policing (Manning 2005), which is much more rooted in the real-life situation of policing. It differs substantially from the more developmental police reform literature in that it represents a much older field of study.²¹ While the developmental police reform literature is produced under the paradigm of post-Cold War democratisation of non-Western countries, the sociology of policing literature originates mainly from the study of police forces in northern societies. It takes as its starting point actual police practice, behaviour of police officers, and an inside view of the police organisation. Only recently have studies been undertaken which apply police

²¹ Manning (2005), focusing on the interaction of scholars, places the beginning of the scholarship in the 1970s. Reiner (1997), looking at individual studies, places it in the mid 1960s.

sociology to the Global South.²² One such study in the South African context is *Transforming the Robocops* by Marks (2005). She conducted an ethnographic study of the transformation of the South African Public Order Police (POP). In this she recognises the points made by prominent scholars in the field of police sociology (such as Reiner 1992, Brewer 1991, Manning 1977, Skolnick 1966) and the role that so-called “police occupational culture” plays in preventing a straightforward implementation of (legal or organisational) change, or direct translation of rules into practice. Police occupational culture emerges from the specific nature of the task of policing as well as the nature of the organisation. It may include the static, conservative nature of state bureaucracies (Marks 2005: 15); the police discretion which is necessary as a result of the general formulation (permissiveness) of the law (Skolnick 1966); a sense of isolation and antagonism towards the outside world, breeding a strong sense of solidarity (wall of silence) within (Reiner 1992); and the sense of being under threat and therefore having to develop cognitive maps of the social world which lead to stereotyping (Reiner 1992). In addition, Marks – building on Chan (1996, 1999) who in her turn builds on Bourdieu (1977) – makes the point that despite the sense of widespread applicability of police occupational culture as an explanatory factor of police behaviour and deferral of change, it should not be understood as a static, reified factor, but as intimately connected and contingent on the broader field of police organisation as well as society. Police occupational culture is made up of a set of assumptions, beliefs, values and knowledge, many of which are embedded in “deep level structures.” Only through a penetration of the transformation efforts of these deep-level structures can “real change” be achieved (Marks 2005: 24-30). As such, police occupational culture complicates but also helps to explain the dynamics of change.

This highlighting of police occupational culture, in the sense that police organisation and policing are complex social practices, is an important contribution, and a reminder that there is a reality beyond the model of accountability. It helps to push back some of the hyper-reality which the accountability model assumes, and to bring to the fore the practice of everyday policing. As Reiner (1997:1024) describes it, “policy in

²² I am using the term Global South here as a replacement for terms such as ‘developing countries’ or ‘Third World’. It allows me to avoid the developmental jargon while stressing that these countries are very much part of global developments.

practice of a police force is the sum of a myriad of discretionary decisions by officers in individual incidents, which are problematically related to formal policy. On the other hand, all policy decisions have some effect on the structuring of individual discretion.”

This brings me back to the point made earlier in this introduction regarding the social dynamics which interact tacitly through interpretation, negotiation and appropriation with the global influence of human rights. These dynamics can be seen as partly driven by what has been coined “police occupational culture” manifesting itself in the myriad moments of everyday policing. Only through looking at the everyday practice of policing will we be able to understand the societal and particular actualisation of human rights at those interfaces produced by accountability.

What has been lacking in discussions of how police culture influences change is that interventions – in the form of transformation efforts and implementation of human rights through accountability – are contingent and cultural events. Marks (2005) does not discuss the reform efforts as such; or their cultural and social contexts and conditions of emergence; or their imbrications with power and specific interests. Like the developmental texts, she assumes the desirability of the transformation efforts and of human rights in the sense of their apparently inherent democratic values, and inscribes them with asocial and ahistorical validity. In the end, her aim is to increase the understanding of the dynamic of change in order to propose a refined set of measures to transform the police. With this she creates an analytical and explanatory bias towards police occupational culture in which the discussion of transformation measures such as the accountability model remain dominant static reference points. This too easily turns the analysis of everyday police practice into one that is structured by the dichotomy of old and new, or even right and wrong behaviour (see for example in Lindholt 2003b:12) making it complicit with the normative project of the reform process and creating blind spots with regard to the politics of this process. In contrast, if the contingency of the transformation measures were to be recognised and if they were seen as any other societal force, the analysis of everyday practice could throw off the normative straitjacket and open itself up for a description of current policing in mutual conversation with human rights, acknowledging that both sides are imbued with power and politics and altered in the encounter.

This brings me back to the other half of the theoretical double bind which I raised earlier with regard to human rights as a hegemonic project, namely the need to understand human rights – and the institutional arrangements responsible for the introduction of human rights – as imbued with power, as a restructuring force which goes beyond the proclaimed intentions. Both aspects – police culture and the culture of human rights – should be brought into line, without granting one aspect analytical priority over the other. The only difference would be a methodological one, due to their different projections into the world: the one morally hegemonic and globally represented, and the other informal, unlawful and at best dismissed as parochial.

The alignment of police culture and the culture of human rights allows me to apply my previously developed theoretical framework with regard to human rights in general, which draws on Foucault, Bourdieu and De Certeau. As I have explained, each level of accountability provides for different but complementary interfaces where police are being confronted with human rights issues. Consequently, each of these levels can be conceptualised as a defined arena where the dynamics of hegemonic productiveness and restructuring (in the form of human rights enforcing accountability mechanisms) and tacit interaction and negotiations (through everyday practices of policing) play themselves out. In the process new forms of power and identity, and vernacular versions of human rights and policing, are produced at each of the three levels.

1.4 Methodology

1.4.1 Matching the theoretical double bind

1.4.1.1 Participant observation

As I have argued above, if we want to move away from the ahistorical reproduction of a policy model of accountability to understand human rights in their localised formation, we have to look for accountability and human rights in the pragmatics of the everyday. This of course has methodological consequences, since the starting point can no longer be the categories which have been produced by strategies and

normative reifications, which have taken the form of “political, economic or scientific rationality” (De Certeau 1988:xix). With everyday life as the epistemic starting point, a method is needed which enables the recording of the momentary, the improvised, of that which lacks the language of the established and prefabricated. It needs a method which can record that which becomes visible by being practiced rather than that which is reflected upon by those who practice it. Such a method would need to capture operations that are tactical in nature and that produce the vernaculars and pragmatic interpretation of the grand categories.

Issues of human rights and processes of accountability play themselves out in social spaces which are particularly difficult to read from outside. Human rights, in the form of domestic violence legislation for example, push the police to intervene in the private sphere. In fact, human rights contribute to a shifting of the line between what is private and what is public. This advancement into the private sphere, which by definition is a space built of intimate interaction, demands a sensitivity to an insider language and meaning that is somehow obscured from outside.

Then there is the social space and practice produced by an opening up towards the community, as prescribed by community policing. As I will show, such opening up towards the community can easily take a form that appears as corrupt. For example, a police officer might receive repeated helpful information from a local person some of which may be about people who owe this particular person money. Is this person cooperating with the police in the fight against crime, or is he using the police to his own advantage through the medium of community policing? A sensitivity and access to the emic (independently functioning) side of the relationship is needed in order to understand these bonds and to be able to recognise the rationale of the police and civilian actors who might not see their practice as particularly corrupt.

Also, as has been discussed before by many authors who have written about policing (i.e. Manning 1977, Holdaway 1983), police officers are well accustomed to representing and speaking about their work in an official and “correct” way (which I call after Goffman (1959) the “front stage act”), often concealing the important reality that their work is built upon more occupational, informal or personal working rationales (which I will call the “backstage”). For example, a police officer might justify the rough

handling of a suspect by stating that the suspect resisted arrest, whereas it may have actually been an act of revenge for the way that the suspect had insulted the police officer. To record and understand the backstage, a methodology is needed which can move beyond the secrecy and official self-representation of police officers.

It is with regard to these aspects in particular, and with an understanding of the need for tactical engagement with the grand and hegemonic categories in general, that ethnographic research based on participant observation offers a great advantage. Participant observation means the observation of the phenomenon of police investigation within everyday life situations and settings. It allows the researcher to pay attention to inside views, which are partly obscured and hidden from the public view (Jorgensen 1989). It encourages communication which is not primarily aimed at controlled self-representation but which is more private, peer-oriented, and indicative of circumstantial reactions and reflections. It allows for a recording of lived experience, taken-for-granted social routines, informal rather than reified social knowledge and embodied practices (Gupta and Ferguson 1997). For all these reasons, participant observation is the main methodological approach applied in this research.

1.4.1.2 Discourse analysis

In order to analyse and record the hegemonic working of human rights in their legalistic, global manifestation and the hyper-reality of the accountability model, a specific research technique is needed. The main challenge is that human rights in their global manifestation and the accountability model derived from it do not have a hidden presence but produce a normalising hyper-reality. Their presence is self-evident and forces itself onto the viewer. Thus, the issue is not so much to record the actual existence and form of their presence but to interrogate what appears to be beyond reproach and which masks itself as normality. The researcher must not be fooled by the desirability of what is presented but rather pierce through the normality and the sense of high standards and get to the particularity and the specificity being masked.

A congenial technique which allows for this is discourse analysis (Meyer 2001). Discourse analysis can be subdivided into different processes which are normally

interlinked. One is an intratextual analysis, and the other is an analysis of the context or the group of actors who produce a certain discourse.

For the intratextual analysis a “corpus” or “salient places or scenes” which are regarded as being typical of and central to a certain discourse (Meyer 2001:24-5) have to be identified and selected. This corpus can consist of written as well as spoken material and practice (Jäger 2001). The material is then scrutinised according to a range of criteria and questions regarding certain linguistic and rhetorical aspects, as well as aspects of content. Regarding content, the main aim is to carve out the kind of knowledge (meaning) that is being used and to determine what function it has for the constitution of the subject. Linguistically and rhetorically, the material can be scrutinised according to “certain argumentation strategies”, “the intrinsic logic and composition of texts”, “implications and insinuations”, “coherence”, “speech acts” and “topic choices”, as well as omissions (Meyer 2001).

For the context analysis we look at a group or category of actors that can be identified with the production of the discourse. Various questions can be asked, such as who are they; what is their positionality – that is, what is their background, gender, class and education – in which networks do they operate; who are they connected with; what are the entry requirements for participating in the group or context; what are their values; what do they aspire to; what is the interest they invest in the texts they produce; what are the means of influence; and what is the culture of their sociality: which language do they speak, what sports do they play, what history do they share, what faith do they follow.

This means that the idea of locality can be applied even if on first view (a) a sense prevails that a discourse – in this case international human rights – appears to not belong to a particular group because of its claims to universality and impartiality, (b) the discourse produced by the group, for example international actors promoting international human rights, appears not to occupy a particular positionality because of its seemingly cosmopolitan or dispassionate nature, or c) there is no clearly delimited spatial realm into which the discourse and the people can be traced because of their global presence and transnational dispersion. “Locality” here does not mean so much a spatial boundedness as the observability of hegemonic actors (Asad 1993)

1.4.2 Interpretative process and fieldnotes

The main form for compiling data in discourse analysis, besides collecting secondary material (see next paragraph), is the taking of fieldnotes. Fieldnotes are also the main data-collecting form in participant observation. The taking of fieldnotes – the description of events, people, conversations, interactions, and context – is the first stage of the interpretative undertaking on which qualitative research is built. Questions about how and what to describe, while being open ended and allowing for new and unexpected themes, is already informed by the theoretical angle and questions of the research (Emerson, Fretz and Shaw 1995:167). The data also gets interpolated by the positionality of the researcher. The way he or she is perceived and related to by the people being interacted with, the situation which the researcher becomes witness to or is allowed access to, the way he or she reads and understands each situation according to his or her gender, race, nationality, age and profession – all make an imprint on the data (see also section 1.8 below). As such the data is never pure, but already partly theoretically suffused and subjectively bent. The process of interpretation continues with the writing process of the research. The selection from the primary body of data of the pieces that ultimately form the building blocks of the written work, and the linking of these pieces of description to produce a narrative and an argument, form crucial moments of interpretation (Emerson, Fretz and Shaw 1995:212).

In order to gain a level of reliability for the conclusions, this process of interpretation has to be made as visible and intelligible as possible. One way to do this, which I have pursued in this thesis, is to present relatively large and detailed chunks of the descriptive material. This firstly allows the scenes to speak for themselves and secondly allows the reader to follow the course of the interpretative procedure. The final measure is however to gauge how convincing the interpretation is.

Another way to make the process of interpretation and interpolation of data more transparent is to write oneself, as the researcher, into the process. While I did not pursue this to the extent of making myself central to the events, I have consciously written from

a first person perspective, recalling moments of my direct interaction with police officers and other people to place myself visibly into the account.

1.5 Practical realisation

The participant research was carried out at two police stations: Sophiatown Police Station and Johannesburg Central Police Station. These two police stations were chosen because each of them was serving one or more neighbourhoods which could be described as marginalised. Marginality in this case was defined by a socio-economic profile of deprivation and struggle to survive, and also by the fact that these neighbourhoods had been negatively affected by apartheid policing and high crime rates. The idea was that, at least in principle, the introduction of human rights into policing would have a considerable and noticeable effect, giving the inhabitants more rights [vis-à-vis](#) the police, while simultaneously the police would be compelled to protect the inhabitants. (I will discuss the issue of marginality further below.)

Within the two police stations, I decided to concentrate on the detectives and their units as the focus of the research, since they offered a very intense engagement with the law and a particular engagement with the people (see also below). This particular engagement permitted aspects of accountability towards the people and accountability towards the law in everyday practice to be explored during the research.

For the first part of the research period, I worked with a colleague from a South African research institution who was also carrying out participant observation at Sophiatown and Johannesburg Central police stations. While some of our conversations might have informed my own insights about what was going on, I have not used any of her material here. I realised that I needed to make and record all observations myself in order to put the material to the kind of use that I do in this thesis.

The participant observation at Sophiatown Police Station was carried out from November 2000 to April 2001. I started by working with the Crime Prevention Unit and going with the unit members on patrol, which provided me quite quickly with a good overview of the area. I then moved on to work with the Detective Unit. There I worked

with three different teams. Each team consisted of two or three police officers who regularly worked together and who shared a car. The first Detective Unit team I joined consisted of a white Afrikaner woman and a white Afrikaner man, the second consisted of three African men, and the third consisted of two white Afrikaner men.

The decisions about which teams I would work with had been circumstantial and pragmatic. Initially when I joined a detective unit, I left it to the head of the unit to place me with someone in his unit. At both stations I was put with a white Afrikaans woman, which the head of the units obviously considered as most appropriate and congenial for me. However once within a unit, I made my own decisions. This was mainly guided by my sense of which of the other detectives I could most easily start up a conversation with, and which ones did not seem to feel averse to my presence. I tried, however, to strike a balance between men and women, and between different racial groups.

My research routine on an average day was to meet my team at the morning parade, where all the detectives assembled. The head of the unit would address the group and the files with new cases (dockets) would be handed out. Then I would either go with them to their offices or go out with them wherever they went – usually in their cars. This included activities and destinations such as investigations, issuing subpoenas, the mortuary, private businesses, courts, arrests, or prisons. The workday and my time with them would normally end with the afternoon parade where, in principle, all the detectives assembled again before they went off duty. Over the course of the day I would also sit in other offices, or make conversation and chat with other police officers of the unit and the station, or I would take the opportunity to speak to complainants, witnesses and suspects.

In addition to this daytime routine, I often accompanied detectives when they went out at night (normally as an entire unit) to make arrests. This would happen on average every two to four weeks, and would normally last until the early hours of the morning. Equipped with a list of suspects, they would drive from address to address to see if they could apprehend some of them. I recorded the events, observations, dialogues and encounters of the day or the night at the end of each day (or night) in an electronic research diary.

I also collected other kinds of material at the Sophiatown Police Station. Together with the research colleague, we carried out a questionnaire with a range of open-ended

questions and some multiple-choice questions. The responses provided some comparative insight regarding the opinions of police officers about the area and its people, and about the use of force. Since this was done towards the end of the research period, the answers were relatively open, since by then we had gained some sort of familiarity with the officers being interviewed.

The participant observation research period at Johannesburg Central ran from December 2001 to February 2002 and from September 2002 to December 2002. The interruption was due to differences of opinion between the institute to which my research colleague belonged and the Area Commissioner, who felt that we had breached the research agreement. Only after lengthy lobbying efforts were we allowed to continue.

At Johannesburg Central, a much bigger police station, I divided my time between different detective sub-units. I first worked with a unit that dealt with crimes such as domestic violence, assault, assault with grievous bodily harm (GBH), and intimidation. There I worked with a team of two white Afrikaner women, then with a single white Afrikaner man and another white Afrikaner woman; the latter two mainly worked on their own and with some people from other (sub-)units. I then switched to the Serious Crimes Unit, which deals with murder and robbery cases. There I followed a team of two African men, which changed into a team consisting of one of these men and a Coloured woman (this happened after the other African police officer had been arrested for murder). I also worked with an Indian man, who mainly worked on his own but sometimes linked up with another Indian man and his African male teammate from a different detective sub-unit. The research routine was the same as at Sophiatown, with morning and afternoon parades and occasional night raids.

I also carried out a range of semi-structured interviews with the detectives of the Serious Crimes Unit, which included similar questions as in the Sophiatown questionnaire but mainly dealt with issues that had come up during the previous month at the station. Because of their open-ended nature, both questionnaires lent themselves more to qualitative than quantitative analysis and the responses were subsumed under fieldnotes. Especially with Johannesburg Central, I used interviews merely as a different form of communication, trying to trigger a different kind of response from the usual data gathering.

Another research site was the Human Rights and Policing Training Programme, because it presented an iconic product of the global human rights and policing industry. I selected it to provide material for the more discourse-analysis-oriented part of the research. For this I interviewed a variety of key people involved in the programme such as the programme head, his deputy, the provincial co-ordinator of the human rights training, one of the international funders who was also in charge of the evaluation of the programme, and representatives of legal services at SAPS headquarters.

I also sat in, or tried to sit in, on the human rights three-day training classes. This turned out to be very difficult, since during most of the research period the Gauteng province's human rights training programme was suspended because of personnel problems. When the training resumed at the very end of my research period, I was only informed on the second day of one of the few training workshops, which meant I could only be present for the last day. The next time that training took place, I knew about it in time but it was cancelled after only an hour because of the racial composition of the participants. I eventually resorted to interviewing a group of five trainers in a group interview of four hours.

I was able to use the training manual, the video which accompanied it, other teaching material on human rights, and the programme evaluation, in combination with the interviews, to provide the textual material for the discourse analysis. I also used my own experience of former human rights work on an international level.

Further interviews were carried out with local councillors, with members of the Community Policing Forums of the two areas, and with the Community Policing Forum area representatives. I went on city tours with city administrators and architects working for the city. At the courts I interviewed six prosecutors about their relationship with detectives. I visited famous memorial sites of policing, such as the National Police Memorial, the revamped policing museum in Pretoria, and the Sharpeville Massacre Memorial.

Finally, a range of materials was collected during the various research periods, such as crime statistics (as far as they were available, since there was a moratorium on crime statistics until 2003), secondary and grey-paper literature, policy documents, archival material such as policing journals and police reports and year plans, emails from

the public to the South African Broadcasting Corporation after the screening of a *Special Assignment* programme which revealed violent misconduct against foreigners by a police dog unit, newspaper articles on police misconduct and international documents on police assistance. These served partly to add to the discourse-analysis material, and to corroborate and contextualise the descriptions derived from the participant observation.

1.6 Detectives

Detectives were the main subjects of the participant observation portion of the study. They provided a specific interface with the law and with the people. Their everyday practice regularly shed light on the basic principles of the model of accountability in human rights.

Most empirical studies of the police deal with the “street cop” (Sheptycki 2002:14). They (i.e. Punch 1979; Brown 1982; Bittner 1990; Coll 1995; Herbert 1998; Barker 1999) have at their centre the idea of the uniformed police officer driving (or walking) around, looking for suspicious activities and people while waiting for a dispatch call to intervene in a scene of crime or public disorder. Many issues discussed in these studies are related to labelling, stigmatisation and reproduction of social divisions, such as who gets stopped and searched, who is arrested and how much force is used to intervene; the studies also deal with aspects of police culture such as suspiciousness, notions of moral and social order, or the need to maintain social distance to uphold authority and police discretion (Reiner 1992).

The emergence of interest in these aspects can be attributed to the particular nature of the interface between street cops and society – although this is not exclusive to police officers on the street. This interface can be characterised by the police officers’ marked visibility in a public space, their detailed but specific knowledge of a social space, and by their often rather brief or once-off interactions that become a shaping force through repetition and recurrence. Moreover, in many instances police officers intervene as “peacekeepers”, using their authority to reprimand people or to smooth over a situation without actually charging people (Bittner 1993).

In contrast, detectives, as I have experienced them during my fieldwork, operate across a very different interface with society, an interface more exclusive but ultimately more intense in nature. They have less of an investment in the detailed knowledge of public space. They are also far less instrumental in shaping public order since they simply let certain transgressions pass their attention. While they are often identifiable by social markers as a “race out of place” or the wearing of a gun or because they are known in an area, their appearance – they do not wear uniforms and their cars are not marked – is not meant to mark them as representative of the state outside of a particular encounter related to a particular case. Their involvement with people such as suspects, complainants and witnesses around specific cases often carries on over long periods, at least if a case is being investigated or tried. This means that the interaction is more particular, engaged and interactive and has the ability to shift and evolve over time. Various visits to the homes of witnesses, complainants or suspects, or having these people in the office with them for statements and interrogations, allows for interactions that are mainly shielded from the public eye. However, it also allows, to a much greater extent, for an individual to appear from behind the prejudiced or assumed identity of both the civilian and the detective. Detectives are also dependent on people in the sense that they need a certain level of collaboration from the witness or complainant if their interaction is to be successful. In addition, detectives are often identified and associated with a case and its outcome in the eyes of victims, witnesses or suspects.

The interface between detectives and witnesses, suspects or complainants (victims) only takes place with regard to a specific case, which means that some form of legal proceedings have been initiated. At a minimum, this means that a case is opened and a possible charge in criminal law is formulated; if a case is investigated or goes to court, then issues of producing evidence that needs to hold up in court become important (including confessions and objects which are the product of search and seizure) as does interaction with the courts and their personnel. This does not mean that there is any less space for discretion, which is often stressed as *the* issue in the practice of street cops

(Reiner 1997); however, this discretion takes place in a necessarily closer proximity to the law, its practice, its institutions and its personnel.²³

These two aspects – the detective/civilian interface and the proximity to the law – are important factors which frame this research. The proximity to and engagedness with the law and its institutions allowed me to observe variations in interactions with the law and levels of accountability towards the law. The intense interface between detectives and their “clients” allowed me to follow the permeability, shift and development of these relationships within the basic principle of the “accountability towards the community”.

Furthermore, due to the specific legacy of the detective service in the history of the SAPS, detectives display in an intensified manner the issues of transformation and introduction of human rights. Reiner (1997:1019), writing about police in the UK, describes the uniform and detective branches as being in “perennial rivalry.... Each has a characteristic ideology which emphasises the greater importance of its own role and associated negative image of each other.” In South Africa, historically it was not even about *mutual* disregard; during apartheid, the detective service was simply favoured as an elite unit. This was underlined by reserving the detective service for white police officers. The only exceptions made were admitting black officers because of the need for native speakers of African languages, knowledge of black society and the ability to “blend in.”²⁴ Entry requirements for the detective service were considered to be high, with a probation period (Redpath 2002). (This was however rather relative, and training still took place mainly on the job. Some detectives only went on a training course long after they had entered the detective service.)

Post-apartheid police management and policies which stress crime prevention have elevated the street cop’s duties; more resources, particularly cars and money for manpower and promotion, have gone into the uniform branches. Since the uniform

²³ It is on the level of how to manage their work that detectives in fact have more discretion than street cops. The work of street cops is very much bound to what takes place while they are on duty. While from time to time they have to carry out prescribed special duties such as a roadblock or a raid on a *shebeen* (informal bar), they are mainly led in their work by when a case happens to develop. In contrast, detectives can decide when they work on which case. They are bound by court dates and other constraints, but they have considerably more leeway in organising their working time. This also means, however, that they carry more responsibility to manage their work – the workload simply grows if they do not attend to it, and as such their workday is not simply finished when they go home.

²⁴ This was a recurrent aspect in the history of the SAP, where racist policies were constantly compromised because of their practical untenability (see Chapter Two).

branches already had a much higher proportion of black police officers, they have undergone a much quicker racial transformation. As such they are often in closer and more trusted contact with, for example, new black station commissioners. Meanwhile, new black senior officers often perceive the detective units as “white bastions”. This resulted in that detective units have a sense of downgrading and loss of prestige, which has affected both white and black detectives.

Thus, the detective service has a particular legacy. To sum it up, this includes, first, the relatively diminished importance and expertise given to forensics; forensic evidence was often made redundant through the use of force to gather evidence (for example, in interrogations). Secondly, despite the downplaying of forensics, the detective service had a reputation which was built upon ideas of merit, ability and skill. Thirdly, it had an overly high proportion of white personnel, and as such has been particularly subject to personnel equity policies. This means that a human rights programme which stresses the perennial date of 1994 as a watershed moment, and which is iconically about the replacement of violence with a different set of a non-violent skills, gains particular urgency in the detective service. Methodologically, therefore, a research focus on detectives facilitates the study of human rights in the everyday practice of policing.

1.7 The research location

1.7.1 The stations

Johannesburg Central and Sophiatown Police Station, two police stations situated in Johannesburg, were the main research sites of this study. Sophiatown Police Station is much smaller – its entire detective service is only the size of a single detective sub-unit at Johannesburg Central. In a way the difference between Sophiatown and Johannesburg Central is like the difference between a village and a town. At Sophiatown, although they work in different units, the 120 staff members (including cleaners and telephone operators) know each other by face and name, and are generally aware of each other's doings and reputations. There is thus a certain level of social control, and the sense of being colleagues is connected both to the station and to the unit level. At Johannesburg

Central the detective unit alone comprises 139 people; the entire staff of the station comprises about 860 people (Leggett 2003:19). In addition, the station building also houses the Area Commissioner's offices and a variety of special units such as the Gold and Diamond Unit and some special forensic units. This means that police officers can meet in the corridors without knowing each other; thus a certain level of anonymity exists at the station level. Cohesion and conflict, social control and a level of belonging are located at the unit or even the sub-unit level – for example, at the level of the detective unit and its various sub-units – theft, car theft, serious crime (murder and robbery), general investigation unit, etc.

There are friendships and alliances which cut across the units and connect, for example, between some of the few women, or the few English-speaking whites, or the few Indians, or a group of officers who went through training together. At Johannesburg Central these stand out as the main modus of how social relations *across* the station are organised.

To give an idea of the racial composition of the Sophiatown station in relation to the tasks to be carried out: of the 121 people working there, 25 were detectives, each of which had worked on a variety of different cases. However, this system had only recently been introduced: previously, the murder and robbery cases were usually handled by the white police officers of the unit. Of these 25 detectives, three white Afrikaner men were permanently off duty because of stress. Of the remaining detectives, two were white Afrikaner women, one of whom was the second in command of the detective unit (the first in command was a white Afrikaner man). Then there were another eleven white Afrikaner men and seven African men. By contrast, the Crime Prevention Unit comprised eight African men, one white man and the commander, who was also an African man. The rest of the uniform branch (which included the reactive unit, the client service centre and the cell guards) consisted of 33 African men and four white Afrikaner men. The recently but only temporarily appointed station commissioner was also an African man. There were no Coloured police officers at the police station, and no African women who were assigned any non-office duties.

At Johannesburg Central one of the detective units I worked with, and which dealt with serious crimes such as murder and robbery, consisted of 23 detectives. Eight of these

were white Afrikaner men, most of whom dealt with murder cases. There was one Coloured woman who also worked with murder cases, and one Indian man dealing with robbery cases. Of the twelve African men, only two dealt with murder cases, while the rest dealt with robbery cases. On my arrival the head of the unit was an African man, who was later replaced by a white Afrikaner man.

The other unit I worked with dealt with general investigations. It was also headed by a white Afrikaner man supported by a white Afrikaner woman. There were another two white Afrikaner women in the unit, two white Afrikaner men, and eleven African men. As at Sophiatown, the uniform branch and the Crime Prevention Unit were overwhelmingly staffed with African men.

Both stations clearly displayed the traces of the history of the SAPS, where the detective services had been the prerogative of whites while the uniform branches had been where most of the African male staff were deployed.

1.7.2 The areas – studying the margins

Sophiatown police station services an area of vast economic differences. On the one side there is the posh and lush suburb of Northcliff, with mansions built along the ridge and highly secured housing complexes. Then there is a range of lower-middle-class, formerly white, now more and more racially mixed neighbourhoods, such as Newlands and Triomf. There is also the middle-class, formerly Coloured (and still very much Coloured) neighbourhood of Bosmont. Finally, there are some former working-class white, now also racially mixed neighbourhoods, and the working-class Coloured neighbourhood called Westbury. The police station of Sophiatown in fact borders on Westbury, with some of the characteristic blocks of flats built by the city council standing just across from the main entrance of the station.

In the area covered by Johannesburg Central Police Station there are not the same divergent living conditions. Only in the neighbourhood of Mayfair, where many Indian people live, some houses are being turned into what could be called mansions, sticking out from the otherwise middle-class and lower-middle-class housing. Johannesburg Central's area also includes the Central Business District (CBD), where banks,

companies and the provincial administration and government are housed. This area is characterised by high traffic congestion and a great influx of people during the day, but by empty streets and empty office buildings during the night. To the north-east of the CBD, there is a densely populated area where people live in high-rise apartment buildings, many of which are derelict and badly maintained. These comprise the inner city and Joubert Park.

This study mainly concentrates on the inner city and Joubert Park areas covered by Johannesburg Central Police Station, and on the neighbourhood of Westbury covered by Sophiatown Police Station. It is these neighbourhoods/districts which have the highest crime rates, and they are known as socio-economically marginal areas. In the following paragraphs I briefly describe these areas. In sketching their socio-economic profile I draw from 2001 census material (Statistics South Africa 2003) and crime statistics mainly drawn from the Crime Information System (SAPS 2004). I shall then discuss them in more theoretical terms as places of marginality, also outlining the conceptual consequences this has for the study of policing.

Johannesburg's inner city is known for its rapid transformation from a place which was during apartheid reserved for "whites only" to a place which is now mainly inhabited by black people, many of whom arrive as legal and illegal immigrants and refugees from other African and Asian countries. Ninety-three per cent of the inner city population is now African (in Joubert Park [JP] this is 95%)²⁵, which includes African immigrants. Then there are Coloured people, 0,8% (JP: 1,5%); and white and Indian people, 2% (JP: 0,6%) with this group including immigrants from Asia. The inner city has a total population of about 14 330 (JP: 29 465). Considering the small size of the two districts, this speaks of the density of the area and of how sought after living space in the high-rise buildings of 10 to 20 floors is. The majority of people occupy rented rooms or flats, with running water and flush toilets. Most of the two- and three-room apartments are let out and sub-let so that entire families occupy one room or individuals may just rent a bed in a shared room; which means there are conditions of overcrowding and high conflict in most inner city buildings. Even old abandoned office blocks have been turned

²⁵ Since the data for the inner city and Joubert Park is similar, I will only provide the percentages for Joubert Park in parentheses.

into substandard and illegal living space. The population living in the inner city is a very young one with 60% (JP: 61%) between 20 and 34 years, and only 6% (JP: 9%) older than 44 years. This age profile fits with the area's immigrant and fluctuating character. It is also a population with a male majority, again indicative of the pattern of immigration which feeds it. Within the African population 55% are male, and among the Indian and Asian population 82% are male. Education levels are relatively high: about 40% (JP: 37%) have finished school with Grade 12, although only about 7% (JP: 6, 4%) have any form of further education. This is reflective of the aspect that immigration does not mobilise the very poor, but always mobilises those who still have the aspirations to look for better opportunities (Castles and Miller 2003).

An employment rate of 71% (JP: 73%) in the case of men and 51% (JP: 52%) in the case of women speaks for a certain productivity of the inner city population. Nonetheless 40% (JP: 41%) of the population has no regular income and is therefore probably engaged in informal and erratic forms of trade when they can find work. Thirty-five per cent (JP: 38%) earn less than R1 600 per month, while 17% (JP: 14%) (the biggest single income category) earn between R1 600 and R3 200; hardly lifting them above a survival level. This economic situation imprints itself on the face of the inner city, as can be seen by the area's constantly proliferating informal and small-scale street trading. Many of the abandoned shops on street level have new occupants trading in cheap imported products from Asia. While for many of the former (white) inhabitants the inner city has become a no-go zone and a symbol of decay, for its new inhabitants it has become a place of attraction and new possibilities. The access to water and electricity, the availability of consumer products and even entertainment also makes it an alluring place promising freedom, new futures and modernity for those from much more marginal places.

All these attractions are however hugely tainted by the fact that crime is considered to be not only very high but also very violent in the area covered by Johannesburg Central Police Station. Since it has been shown that people with low (household) incomes are most likely to be victims of violent crime (Schönteich and Louw 2001:6), it can be deduced that the sub-areas such as the inner city and Joubert Park, bear the brunt of the crime and also produce a considerable proportion of the crime. The

average murder rate in 1999 for the whole of Johannesburg was 117 murders recorded per 100 000 people (Schönteich and Louw 2001:8),²⁶ whereas for the Johannesburg Central area there were 603 murders recorded per 100 000 people. However, the murder rate per 100 000 population is actually lower than this since the number of murders is given per 100 000 residents and excludes the thousands of people who pass through the central city every day, and the many illegal immigrants who are not formally registered (Schönteich and Louw 2001:8; Leggett 2003). Still, this does not detract from the fact that the Johannesburg Central area is a very violent space. For the period 2000/2001, 124 murders were registered in the area, which mean one murder every third day of the year.²⁷ Added to this were 101 attempted murders and 188 rapes.²⁸ While already extreme in themselves, these numbers are further exacerbated by the number of “robberies with aggravating circumstances”, which amount to 2 126 per year, which is roughly six robberies a day. This is outdone by the 2 180 common robberies per year, 986 assaults with grievous bodily harm (GBH) and 897 common assaults. It has been noted that when it comes to assault, assault GBH and rape, about 75% of the victims know the perpetrator either by name or sight, which speaks of the high level of social-fabric crime at the core of this kind of crime (Leggett 2003:83). Finally, pure property crimes such as theft occur with a frequency of 25 a day (9 223 cases of theft in one year).

Westbury is a very different area compared to the inner city of Johannesburg. It is often mentioned in connection with its history of gang fighting, which however had gradually subsided by the late nineties. A characteristic of Westbury is its vast array of council houses, which were built under apartheid in an attempt to uplift the Coloured community. These repetitive three- to five-storey apartment blocks often carry the names

²⁶ To put this into national and international perspective: The average murder rate in Johannesburg is double the average murder rate for the whole country, which was, according to the *Seventh United Nations Survey of Crime Trends* (UN 2004:12-15), 56.56 per 100 000 population for 1999. This murder rate is equalled only by Columbia US with an average of 58, 69 in 1999. In comparison Denmark had 0,98 murders per 100 000 inhabitants in 1999, Germany had 1,22 and the US had 4,55; on the southern and eastern side of the world Thailand had 8,39 murders per 100.000 inhabitants, Mexico 15,13, the Russian Federation 19,27 and Jamaica 38, 69 (UN 2004:12-15).

²⁷ This data is drawn from the Crime Information Analysis Centre as published on the SAPS's webpage in 2004. I quote the data from the year 2000/2001, because it is around this time that I conducted the fieldwork, and sources such as the 2001 census are available. Between 2001 and 2004, crime seems to have stabilised. In contrast, between 1994 and 1999, violent crime increased by 22% (Schönteich and Louw 2001:3).

²⁸ These are crimes for which a case has been opened at the police station. It goes without saying that many crimes, particularly rape, are not being reported to the police.

of girls or flowers. They are separated by rows of washing lines, as well as streets lined with small single-occupancy houses. Manifold foot trails criss-cross open areas which are sprinkled with litter, old mattresses and car wrecks. Certain street corners in the vicinity of food and alcohol outlets serve as hangouts for local youth or unemployed male residents.

Compared to the inner city, Westbury has a much more evenly distributed age population, indicating that it is a residential area with less fluctuation and a high degree of social stagnation – people are born there, live there and get old there without much possibility of moving out, or moving up. About 41% of the population is younger than 20 years, 28% are between 20 and 34 years, and 18% are older than 44 years; 58% are women.

Ninety-three per cent of the population is coloured, 4,4% are black African, 1% are Asian and Indian, and 0,6% are white. Education in Westbury has a high early drop-out rate, with only 15% completing school and 48% leaving school between Grade 8 and Grade 11. Only 0,7% have any form of further education or training (which also indicates that those few who have further education immediately move out of the area). Unemployment among males is 55% and that of females slightly lower at 48%. Sixty-two per cent of the population has no income, 18% earn below R1 600 per month and 12% (the single biggest income category) earn between R1 600 and R3 200 per month. In terms of housing, 55% of the population live in rented houses, while 45% live in rented flats. Running water and flush toilets are the norm.

Crime is high in Westbury and in the entire Sophiatown Police Station area; particularly social-fabric and interpersonal crime. Common assault shows the highest number of incidents, with 898 cases in the year 2000/2001. This is followed by 855 burglaries at residential premises and 503 assaults GBH. In the same year there were 36 murders and 87 attempted murders, and 93 cases of rape reported. There were 368 cases of robbery, and 395 incidents of “robbery with aggravating circumstances.” According to the city survey (Schönteich and Louw 2001), Sophiatown police station serves 60 000 people, which is 0,13% of the population of South Africa. However, the area accounts for 0,16% of the murders in the country; 0,26% of attempted murders; 0,36% of common assaults; 0,17% of rapes; 0,19% of assaults GBH and 0,27% of burglaries. All these figures show an above-average crime rate, especially with regard to attempted murder,

common assault and burglaries. This is further exacerbated by the greater proportion of lower-income households, which are more likely to be the victims of violent crime.

Little or no income, a high percentage of people trying to make a living from informal and erratic businesses, the high prevalence of violent crime and the inter-social nature of much of the crime – all these indicators speak of the marginality of the inner city space. Westbury is delineated as a marginal space by its high violent and interpersonal crime rates, high unemployment rate, no or low income, high school drop-out rates and a lack of social mobility. Here marginality describes people living under conditions where they try to secure social and economic survival, and negotiate the unequal power relations that apartheid history and global economic conditions have created for black people.²⁹

Johannesburg is the destination of various trajectories of immigration from Asia and the rest of Africa, and also from the rural and semi-urban areas of South Africa. The inner city's attraction lies in the possibility of living at the heart of a pulsating and metropolitan area with its electric lights and urban amenities, its proximity to possibilities of informal and formal employment, and informal trading opportunities. Schools and health care are often more readily available than they are in the places where the migrants come from. Thus the inner city qualifies as a central space in people's imagination and connects to global flows of labour and money.

Westbury, as a formerly designated Coloured township is less marginal when it comes to state intervention. Especially under apartheid, Westbury was targeted with a range of welfare interventions (Jensen 2004). It is with regard to these aspects – being in the purview of the state, with global contact and aspects of modernity – that Westbury and the inner city fit uncomfortably into the category of marginality. In both cases the state is definitely not far removed, although it might not have the modernistic effect it purports to have. It is more accurate to think of marginality in the inner city and Westbury as describing a qualitative rather than a quantitative relationship, especially to the state and other seemingly modern institutions such as the police. This conceptualisation orients itself along the lines discussed by Veena Das and Deborah Pole

²⁹Ecks and Sax (2005:209) point out that despite a range of criticisms that can be raised against the term "marginality", it should not be discarded since it contains a relational quality which allows the analyst to "preserve a clear sense of the importance of power relations between social groups".

(2004) in *Anthropology in the Margins of the State*. They conceptualise marginality in opposition to “the entrenched image of the state as a rationalised administrative form of political organisation that becomes weakened or less fully articulated along its territorial and social margins” (Das and Pole 2004:3). The qualitative use of marginality is about reversing the spatial and temporal standpoint; it highlights the appearance of the state in a realm in which issues of boundaries – delineating what is part of the state and what is excluded from the practice of state – are not clear-cut; where boundaries between private and public, law and lawlessness, legal and illegal are confounded. The state in many ways becomes illegible, at least in an ordered, predictable form, which does not however mean that it is absent.

Marginality in this sense also means that the need to secure social and economic survival informs people’s practices of appropriating the law and other forms of state regulation (Das and Pole 2004:8). In this sense – though the workings of the law in the past have been instrumental in confining people to these margins – it means that people are insufficiently socialised into and disciplined by the technologies of law (Das and Pole 2004:9). They live at the boundary of citizenship, in close proximity to the threat of arbitrary power and of being stripped down in their existence to *bare life* (Agamben in Das and Poole 2004).

Conceptually, marginality underlies this research in that it frames the social context in which the police-citizen encounter in the shadow of human rights and the accountability model takes place.

1.8 Limits and possibilities of studying the police

Once, sitting with a detective in his office and observing how he was taking down the statement of a witness in a case of assault that he was investigating, it suddenly occurred to me that he and I were in the same business. While he was trying to make sense of and reconstruct motivations, circumstances and chains of events, I was trying to make sense of and piece together what police officers were telling me and what they were doing. It seemed that we both shared the experience of how slippery people’s words were

– of the radical subjectiveness and positionality of any comment, of how every narrative seemed imbued with tactical considerations and offered so little solid ground for definite conclusions. Three different people would always describe the same event as three different events.

Unfortunately for the detective, he had to deliver a product in which pieces had to link up and contradictions had to be erased, or at least validated, if it was to pass as a successful case in court. Thus if he had an intuition or gut feeling, or even if he knew from reliable but undisclosed sources who had actually committed the assault, he had to establish things beyond reasonable doubt on the basis of concrete, admissible evidence.

I was more fortunate in this respect since I had the backup of my training which allowed for viewing with scepticism, and in fact encouraged the turning of positivist social-scientific representations into objects of critique. Ethnographic research is primarily a business of interpretation and communication across cultural systems of meaning, of which approximation and open-endedness are more admissible than inadmissible (Marcus and Fischer 1999). If acknowledged as such, hearsay, rumours, circumstantial evidence, and conflicting accounts and subjective narratives are in fact the sought-after material of ethnography. They often provide the corroborating details and descriptive elaborations necessary to inform the reader about the meaning of something which appears as striking in the culture being described (Geertz 1973 in Marcus and Fischer 1999). In addition, there is ample room for the role of the anthropologist, through her or his interpretative ability, as the mediator of meaning between cultural systems of meaning.

Still, what the detectives and I also shared was the frustration of knowing that somebody had more to say, but that he or she was keeping the better part of the story to himself or herself. While the detective would use (successfully or not) his authority to make people speak, the only means I had to make police officers talk were my sociability, charm and communicative skills. However, in the end my strongest card was having ample time, which allowed me to be patient and persistent and wait for the magic of familiarity and habit to kick in.

To do ethnographic research with the police is a strange mixture of absolute impossibility and a conducive convenience. On the one hand, secrecy is fundamental to

the police officer's profession. It is part of a police officer's job to do one thing and to say another thing. Police officers learn quickly to operate outside the law, but then to provide "*post hoc* accounts of their actions which are glossed in legally acceptable terms" (Reiner 1997:1014). They are aware that their actions are always potentially the object of scrutiny, and so covering themselves and being cautious about what they say are necessary skills for the job.

It is here that the observation of practice and the long term became absolutely crucial if my research was going to transcend (but integrate) the one-dimensional picture of police officers' controlled self-representation. The language they spoke could be amazingly politically correct and reflecting of the ideal. In order to see beyond the police officers' upholding of the ideal, it was necessary, as discussed above, for me to see the everyday. For it was here that their tacit manipulation of imperious structures and the prevalence of other rationales become visible

It is with regard to the everyday that research with the police is actually extremely conducive to information gathering, especially with detectives who work according to a repetitive occupational routine. They would arrive at the station at about half past seven in the morning. They would all assemble at the morning parade, where their attendance was checked, notifications and memoranda were read out, and disciplinary and organisational issues were discussed. After that, the detectives, alone or in groups of two to four, would go their own way for the rest of the day. This routine spared me the effort of making appointments (which might not be kept) and allowed me to link up with them on a steady, daily basis.

More importantly for me, the everyday practice of detectives consisted of much idle time. Sometimes, if they did not have a car at their disposal, they would sit in their offices for a whole day, twiddle a bit with administrative tasks, but mainly wait for the day to pass by. Then there were the rides through town and the hours spent at the court waiting for a case to be heard or to speak to a prosecutor. These occasions offered endless opportunities for conversation. While for them chatting was a way to make the time pass, for me it was a priceless opportunity for getting to know them and to speak with them about their work and private lives. It also meant that I would be alone with one or two police officers. This was an enormous advantage since when they were in bigger groups

they preferred to not be seen as too forthcoming, as they did not want to be seen as breaking with the loyalties of the profession. The most critical moments in my research were when I moved on from working with one detective to another. As if they felt betrayed, a detective who had been quite frank and open with me could withdraw completely within a day. I therefore tried to restrict those moves as much as possible, sticking to one or two police officers for extended periods rather than trying to accompany all the detectives of a unit.

There was an interesting and curious side to the secrecy of police officers. They seemed to have a clear picture of what my research was about, and they guarded their words accordingly. Their idea of research seemed to encompass three possible forms. The first one was related to their notion of what they could be investigated for. This included illegal and criminal behaviour for which they could be tried or brought in front of a disciplinary hearing. Thus they were considerably secretive about the abuse of force, at least when it was phrased in legally recognisable terms.³⁰

Then there was the idea of undercover media research. During my research a story was making the rounds about "that BBC woman" who had seduced a police officer so that he would take her around while she had a hidden camera in her bag. Great credibility and evidential validity was attributed to visual and audio material, which in turn informed their notion of research and research outcomes. In contrast, an oral or written eyewitness account was considered as far less threatening since they could always contest it with their own account (fabricated, if necessary), which would be corroborated by close colleagues. Thus, as long as they knew that I did not have a hidden camera or a hidden microphone on me, the officers felt assured that I could not produce damaging material.

Finally, there was the notion of research related to social work interventions. This preconception seemed to have been formed by actual research, which had been carried out within the police force and about which one could frequently read in newspapers. This type of research dealt with topics such as police officers' stress levels, alcoholism, depressions and burn-outs, which popularly featured as topics of "social work" research. These ideas had suffused the language of police officers when they complained about

³⁰ It was around such categories that a great deal of jargon and euphemisms existed, which allowed them to talk about various issues, also to me, without literally confessing anything.

their work, but also structured their interpretations when I told them that I was looking at “how transformation took shape.” With this they formulated an idea of what would be considered serious and appropriate data for such research. According to this formulation, research definitely needed to be collected by systematic interviews and, even better, questionnaires. And it definitely needed to have a certain seriousness and weightiness about it, which in turn was linked to respect for so-called objectivity. They could not imagine why I wanted to know about the mundane and everyday data, in which I was particularly interested; and even less that idle chat during car rides would be more than simply passing time or curiosity to me. Even if I told them otherwise, which I did at times, their own notion of what research should be about soon supplanted it again. In the end, while police officers concealed a lot from me in the interest of professional secrecy, ironically their mundane interactions provided me with a wealth of information.

My outsider role as a white German female also had its particular advantages. With regard to race, this seemed to allow for white police officers to make certain assumptions about “her being one of us”, while for black police officers, my not being South African seemed to make the issue of relating to a white person less difficult. This of course was because racial identities are still hugely determining when it comes to trust and comfort. My femaleness counted in my favour in that I was less of a threat to those with a strong masculine ego, and also that I was easily able to connect with female officers. On the other hand, while my being female allowed for more open talk, it also meant that I was missing out on accounts motivated by competitive masculinities.

Finally, my outsidership (meaning: non police) and maybe even my middle classness clearly meant that at times I was seen as symbolising the culture of the human rights discourse that I was researching. This triggered various reactions. Sometimes it foreclosed an openness by police officers about how they were navigating the demands on them by human rights; at other times my presence was seen as a test or a challenge of how far police officers could twist an account and try to confuse me, despite what I had witnessed with my own eyes. I tried to make use of this latter situation rather than see it as a hindrance.

1.9 Order of chapters

Each of the six chapters that follow has the interface between police and human rights at its central theme. They show, from different perspectives and through concrete, everyday examples, how the encounter between policing and human rights takes place. Sometimes the emphasis is more on the human rights side, and sometimes more on the side of police practice. Together the chapters sketch the kind of policing that emerges at the interface.

Chapter Two offers a historical perspective on policing in South Africa. It discusses how, through the ritual of remembrance, the police force positions itself and its history in contestation to the human-rights-driven historical narrative of South Africa's democratisation as it has been proclaimed nationally and internationally. From the juxtaposition of this differing version of the history of the police emerges the contingency of the human rights historical narrative and the rupture it contains. It also shows the police force's sense of investment in a narrative of continuity, not least with regard to the rule of law.

Chapter Three to Seven are organised according to aspects of accountability. Briefly, Chapter Three addresses issues of accountability towards the "international community" and international human rights standards. Chapter Four address issues of accountability towards the national law and its institutions, and Chapters Five to Seven engage with what underlies the idea of accountability towards the community.

In Chapter Three, I look at the human rights and police training programme which has been developed and carried out with substantial input from international human rights organisations. I analyse the kind of culture and concepts with which international human rights are imbued, and the kind of policing that is propagated through them. I then show the process of negotiation of these human rights-based categories on the management and training levels and what kind of vernacular formations – institutional and discursive – emerge out of it.

This negotiation of human rights is further developed in Chapter Four. Starting with the example of use of force, I describe how policing is being split into a front stage act of compliance and a backstage (behind the scenes) act of subversion. I highlight the different rationales that underlie police compliance on one hand and subversion on the

other, and develop a dichotomy of possibilities to describe how different police officers straddle the two realms according to specific societal co-ordinates.

Moving away from human rights in their explicit legal form, Chapters Five and Six look at what it means for policing to be open to the population, where the exposure and accountability to the local residents and "the community" is said to lead to human rights policing. For this I develop a conceptualisation of how the population sees and consequently engages with the police, from the viewpoint of marginalisation.

In Chapter Five I show how city dwellers appropriate police officers' intervention in a conflict over living space in the inner city. I also demonstrate that due to an array of frictions internal to the police station as well as layers of informal working rationales adopted by of police officers, the behaviour of the police appears far from coherent and predictable to the outside world, especially in marginal inner city spaces. My argument is that this highlights a local "economy" in which the police as a public police force remains unintelligible, but becomes meaningful through an imaginary applied by people with whom the police interact, and through whom the police are turned into a form of "private" police.

Chapter Six describes how this "privatisation" of police officers by city dwellers takes further shape due to the fact that police officers (in pursuit of their private personal agendas) get deeply entangled in networks of sociality and exchange with the people of the inner city. A similar process is at play in relation to the approach to policing inspired by human rights, responsiveness, and the proactive protection of people's liberty. I show that this can lead to similar entanglements, pulling the police officer away from the modern and impersonal agenda. I show that from the viewpoint of marginality, corruption and human-rights-based policing produce a similar kind of policing.

Chapter Seven again deals with openness and responsiveness towards the community: I bring back issues of accountability towards the national law and international human rights in the form of new horizontal ('intra-community') human rights concerns. The chapter centres on issues of domestic violence and tries to make sense of the widespread phenomenon of the withdrawal of domestic violence cases. I demonstrate how the prescription of the domestic violence legislation is rejected by the local population, how a sense of inadequacy is created among the police officers who

"Don't push this Constitution down my throat!" Human rights in everyday practice. An ethnography of police transformation in Johannesburg, South Africa. (PhD Thesis by Julia Hornberger:2007)

have to enforce the legislation, and how the legislation transforms policing into a tool of informal justice rather than one which enhances the purview of the state in the name of human rights.