

# 8

## Conclusion

### 8.1 Summary

The dominant human rights narrative regarding police transformation is that policing which is characterised by the abuse of human rights has created a lack of legitimacy for the police and the law. From this it follows that policing which is based on human rights will remedy this lack of legitimacy. This new style of human rights policing is to be brought about by establishing channels of accountability which will impress society's wish for a human-rights-based approach to policing upon the police. In effect, it is an institutional arrangement which disaggregates control over policing by placing accountability on a number of different societal tiers: the level of international human rights, the level of national law and the level of "the people"; all of which collectively are expected to imbue policing with a human rights ethos. This, in short, is the policy consensus which is promoted by a range of international development and human rights organisations which are involved in the encouragement of liberal democracy and the rule of law across the world, and especially in the global South. Within this particular policy consensus, policing has become the object of intervention in order to advance

transformation, as well as a medium through which societies are to be transformed towards liberal democracy.

This study has highlighted different themes in relation to policing, most of which sit uncomfortably with the assertion that the human rights policy described above is an ideal way to bring about good policing. The study has depicted the contours of the grey zones that constitute everyday policing practice and the tacit social manoeuvres emerging at each of the three levels of accountability – international human rights, national law and “the people”. These grey zones make it clear that such a liberal model of policing will not automatically come about, even if the institutional arrangements of accountability are put into place. It is not simply an issue of the practicalities of implementation which stand in the way of fulfilling the policy’s prophecy, but rather the unrecognised or unacknowledged social differences within the society and the tenacity of existing social practice. To put it simply, police officers are not always able to adopt a human rights attitude, and the population, especially those sectors of the population on the social margin, are not always expecting or wanting a human rights based response from the police. Ironically it is here at the social margins where human rights based policing is purported by its proponents to be most relevant and urgent.

On the other hand, in situations where human rights attitudes and policing practice may appear to fit comfortably together in the “correctly” articulated form, it is often in a deceptive and self-referential form which serves only to expand an existing network already constituted around the policy consensus. Outside of this self-validating capsule, a human rights based approach to policing often takes shape in the form of a local, vernacular articulation of what human rights means; producing its own practices of

policing and its own ways to make the police (and the state) legible, which open up spaces for new social manoeuvres. As such, these local articulations serve to highlight the particularity of the transnational human rights world and its particular rendition of human rights as legal language and practice.

## **8.2 Incision versus continuity**

Nationally and internationally it is accepted that 1994, the year of the first democratic elections, was a watershed moment in the history of the South African police force. Nationally this assumption forms part of the bigger picture of the country's liberation and the discourse of post-apartheid nation building. Internationally, South Africa's transition served as a showcase for post-Cold-War liberal democratisation processes, which informs many development and advocacy interventions with regard to police transformation. Both narratives have the adoption of a human rights perspective as their core legitimising moral blueprint.

It appears, however, that this discourse is not all-pervasive, but rather that it serves as the public shield behind which a different sense of identity can be formed and enacted. One part of this less-public identity is informed by a long-term sense of the history of policing in South Africa in which the changes introduced due to the adoption of a human rights perspective and democratisation are scaled back to take their places among many other "moments" of change which have led to the gradual evolution and modernisation of the police service. Integral to this version of history is the view that policing in South Africa always had a strong civilian element to it, that there has always

been a rule of law and that therefore police officers have always been held accountable to the law, that the impulse for the transformation of policing came from within the police organisation itself, and that the police force has always cared for *all* its members, black and white. This composite version of what constitutes the police force is one that is held not only by individual police officers; an official manifestation of this narrative can be found, for example, in the national police memorial which epitomises a self-referential and introverted situation, in which “the police is [sic] talking to the police”. It appears that the moments which display “police loyalty” – in the sense of the police leadership’s care for and management of the death of its officers – demand the eclipsing of the legitimising rationales of the human rights narrative and with that the rejection of some of the grounds for accountability towards the national and international level of human rights.

At the management level we find an organisational constellation which, in a similar way, does neither completely reject nor entirely embrace human rights in their explicit legalistic and international rendition. Rather, police management and leadership either try to confine the influence of the human rights perspective to ceremonial and public relations exercises, or dilute and translate it to a more nationally specific language of broad policy issues such as the *Batho Pele* Public Service Delivery programme. As such the concept of human rights is being contained within the police organisation and dislodged from its explicit link with the international realm, which is the main source of its influence. This presents a further facet to the response which the accountability towards the international level produces. The rationale of crime fighting allows police

management to protect its sense of ownership and discretion when it comes to defining the terms of a police culture that is different from a human rights culture.

It is in everyday police practice that I have found most poignantly, though more mundanely, the split between what I have conceptualised as a human rights front stage and a backstage. When operating on the so-called backstage, police officers reject the human rights and policing paradigm and its wider version of history, and employ a mode of authority which is based on the personalised, routine and violent use of force. While individual police officers might have different degrees of investment in this kind of violent use of their position, as I will discuss below, it is important to note that in general this backstage type of authority is not only mobilised by the literal application of violence, it is a form of authority that constitutes the texture of everyday policing practices and meaning. It is precisely with regard to this texture of everyday policing practice into which the violent authority fans out, that we can understand police officers' varied investment in the backstage. Violent authority can enable police officers to perform dramas of efficiency and prowess, and give them a sense of professionalism that is rooted in strength and masculinity. Through these dramatised performances police officers can, at least momentarily, overcome a bleak, less rewarding and less certain policing reality that is caught up in the unpredictability and unintelligible nature of social existence. These backstage performances are most prevalent during police officers' night shifts, as if darkness and night time bring out the backstage's distance and invisibility from the purview of human rights and its formal institutions, allowing for the dramatic effect of the performance and the make-believe to gain full effect. Such performances also help to gloss over the provisional and makeshift character of the practice. On the

backstage violent authority is instrumental in creating the illusion that crime is intelligible. It allows police officers to maintain a sense of mission even in the light of South Africa's staggering crime rates.

On a more mundane but nevertheless important level, the police officers' violence-based personalised sense of authority allows them to keep administrative pressures at bay and to maintain the "docket culture" which permeates the everyday routine of detectives. The recourse to backstage authority, by giving priority to the 'urgency' of action, is decisive in helping them to carry out investigations, increase arrest numbers, and palm off work on the courts.

In addition to keeping the pressure of the docket load at bay, violent and personalised authority can be employed to keep the pressure which comes directly from people's demands for assistance and their often "messy" (and for police officers socially contagious) lives, at a distance. In this way police officers are able to preserve what they consider to be a vital space that is reserved for doing private things, which can entail anything from leisure activities to advancing one's livelihood. It allows them to do the window shopping that satisfies their consumerist fantasies, or bargain for a cheap deal with a garage within their policing district for the repair of their own private cars, or to negotiate a loan to send 'the kids' to school, or to buy the bricks for a house in the rural areas. It also allows space for police officers to look after the needs of their friends and families. This private space is one in which official police resources such as cars, fuel, and use of the telephone, as much as the mandate to use force, or the power to arrest, can be turned into unofficial perks of the job. In this way police officers can indeed to some extent improve on the societal position and quality of life to which their job assigns them.

Taken alone, none of these backstage practices or attitudes seems absolute or beyond the possibility of being changed. However, it becomes clear from the way that they are interlinked, that the violent and personalised authority that the police have appropriated is not something which can simply be switched off without far-reaching consequences for the everyday routine of policing. For instance, take the case of a quick arrest – that is, an arrest without a warrant or authorisation<sup>135</sup> – which is dependent on a personalised sense of authority. The link with a broader field of policing practice becomes obvious. A quick arrest simultaneously enables the police to momentarily live up to the image of what they should be doing, to feel effective, and to enjoy their work. It helps them to reinforce the submission of those whom they police. It further enables them to lower the pressures of the workload and overcome the danger of the “docket culture”. It even increases the space that police officers have for doing private things while at work. As such, an unauthorised arrest is not just a practice enabled through violent authority; it is one of the means through which police officers can derive their sense of self. It is a practice – illusionary or not – which gives them a sense of occupying the work space comfortably, as well as a sense of agency in relation to all these aspects as they structure their work. If these backstage powers are not replaced with something equally enabling for police officers on the front stage then the surrendering of violent authority will result in a loss of power and ability to operate effectively on the backstage. Therefore, change is not simply a question of a shift of attitude by police officers, in the way that the liberal subject is imagined to have the possibility to change his or her behaviour as a choice between equal alternatives. Rather, it is a question of what a human

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<sup>135</sup> Without a warrant here also means not qualifying for the legal exemption from getting a warrant, even though the rule is being evoked.

rights oriented dispensation offers in place of the violent backstage. What does its authority enable, and how can it be applied?

### **8.3 The culture of human rights**

Deconstructing and re-contextualising the human rights concept, specifically human rights with regard to policing, is thus crucial in any attempt to understand the way in which a human rights based policing is rejected or seen as threatening by the police. Again it is not so much human rights per se as what the concept of human rights in policing translates into and is imbued with, which is critical in order to understand different police officers' different engagement with the concept. This also allows for an understanding of the various articulations of human rights vernaculars, which emerge in response to the interfaces created as result of accountability to the international realm, the national law, and the people.

It has been decisive to this analytical endeavour to bring to light the prescriptive qualities of a human rights based perspective, particularly how such a perspective delimits certain exclusive meanings and presuppose a specific subject position. Equally important is the acknowledgement that the concept of international human rights is not free of context but is promoted by a particular social network made up of the various actors within the human rights movements, organisation and institutions located or founded mainly in the North – that is, the human rights “industry”. The operations of this particular network are contingent on a range of factors, including the production of a particular social life (sociality), which centres around the idea of the primacy of

international human rights standards and human rights as legal language and practice, and which in turn animates those standards as occupying a position of unquestionable centrality. With this reality comes an acceptance of the normative prescription of the primacy of international human rights standards as common sense, meaning that any speech or action that supports the primacy of human rights is regarded as felicitous and effective. Meanwhile, the claim to the universality of human rights, the claim to the non-particularity of human dignity, and the global spread of an institutional human rights landscape, together constitute the human rights industry as a transnational and cosmopolitan project. However, the actual social embeddedness of, and the sociality underlying the human rights project, marks it as a class- and culture-specific project. Belonging to the human rights network is primarily contingent on being knowledgeable about the prevailing international standards of human rights and the concomitant institutional landscape; on being able to speak the (semi-)legal language; and on having a social investment in identity, status and recognition within the international human rights network. With regard to the semi-legal character which the international human rights standards assume, socialisation into the network is informed by the availability of and accessibility to judicial capital, applying a hierarchy that is built around "middle-classness" – from aspiration to, or possession of, a middle-class background, to access to higher levels of education. The sense of belonging to the international human rights realm is further underlined by a more cultural repertoire, built around the particularities of a cosmopolitan culture such as mobility, an acceptance of the predominance of the English language, and certain questions of lifestyle. The factors that form the conditions of belonging are normalised so that charges of exclusivity can easily be refuted. Meanwhile,

as a consequence of this particularity, the expectations and prescriptions inherent in the concept of human rights permeate its products, prescriptions and practices in the form of "parochial residues".

In the application of human rights to policing, these parochial residues translate into various prescriptions and expectations. For example, the police officer who abuses human rights laws is imagined to be an ignorant or misled subject, who in principle is not limited by his societal structures. From this perspective, the assumption is that this 'ignorant' or 'misled' police officer, once he or she is informed about human rights, will simply choose to apply human rights principles. The concept of inalienable but unspecific human dignity as the ultimate moral principle prescribes for police officers the suspension of their own moral judgement, as well as a dispassionate way of acting, with passion being replaced by submission to the law. Simultaneously, officers are imagined to be highly skilled in the techniques of investigation and forensics, the application of different forms of force, and the intricacies of law. From this perspective, it is imagined that the method of gathering evidence through confession-based investigation, including making the subject point out evidence, and even working with informers, could be replaced by meticulous collection and preservation of evidence, gathered with the help of information provided by the public in a free and forthcoming way. The police force is further imagined as taking on a caring role vis-à-vis certain subjects of society, those who are described as vulnerable. These people are seen as weak, passive and lacking in agency and responsibility for their deeds. Finally, police officers are imagined to take on these prescriptions through pure self-discipline, simply through insight into and internalisation of the primacy and the goodness of human rights. If police officers need to

change their way of doing things, it is they who are to take the responsibility for this process through their natural respect for the primacy of international human rights standards.

Thus, taking together the meaning and particular positioning of the international human rights realm, a policing practice based on human rights offers not only a good and neutral policing practice but also one which rests on the authority of legalistic skill. It is delimited by specific societal and cultural co-ordinates, marked by the conjuncture of judicial and cosmopolitan cultural capital. By inhabiting the norms and standards of such practice and by applying the required skills proficiently, the field of practice can possess a sense of self-esteem and identity emerging as the product of a sense of agency in relation to the structural indicators and prescriptions of the field. Nationally, with regard to South Africa, a policing practice based on human rights can offer a sense of belonging to the "new South Africa", providing moral leadership in justice and virtuousness, and a sense of racial equality and a better future for black people. It would allow for professional acceptance by and co-operation with the courts, soliciting broad respect from society. Such practice even offers a share in worldliness and in global cosmopolitan mobility and the matching life-style of consumer goods, as well as a sense of sophistication, relaxed gender relations, professionalism, visibility and respect in the eyes of the wider global society.

However, this version only carries such fruits for those who are able to occupy the field of practice comfortably. Only an authentic performance and recognition by others can bestow a real sense of belonging.

## **8.4 The uneven effects of human rights**

It is not easy for police officers to occupy this particular position or to perform with ease and a sense of authenticity in the practice as prescribed by human rights. Firstly, the daily interaction of police officers with members of society does not automatically put them under pressure to conduct themselves within a human rights based paradigm. The public's often outright demand for a more tangible and violent presence of authority prevents police officers from applying an authority that is mediated through the law. I will pick up on this under 'local justice' (section 8.6 below).

Secondly, historically, recruitment of police has never been from the middle-class but rather from the lower-class, which has meant the entrenchment of low educational standards, a lack of literacy and limited use of English, and even a rejection of everything international. These limitations have been reinforced by a lack of training and advancement of skills in police culture, in combination with an acceptance of violence as a compensation for the lack of skills. Through this, certain work realities have become tenacious inhibiting factors, which prevent police officers from comfortably occupying a human rights based practice.

This works out to be especially disabling for black police officers who were recruited prior to the 1990's, and who arrived with a minimum of education, largely from the rural areas, with the idea that they would easily submit themselves to authority. After being recruited, this particular grouping of police officers were then systematically prevented and discouraged from furthering their policing skills through study or specialist training. The only path left to them to earn respect within the organisation and possibly

get promoted was through the employment of a ruthless and violent authority. Over time this situation has led to a huge investment by these police officers in operating on the backstage. The chance to acquire the requisite skills in order to perform in any way authentically on the front stage has passed them by. From their perspective policing according to notions of human rights remains out of reach, thus representing a future and a promise of belonging which they are unable to become part of. This is for example reflected in Sergeant Khoza's (Chapter Four, section 4.7.3) history.

This situation is not much different for the older police officers who were recruited from the cities (pre 1990's) though with a better school education. They had often chosen the job because of the lack of other opportunities. While they had equally been prevented from furthering their skills, because of their good literacy, they had often been dumped with some of the administrative and clerical work. This past trajectory means that they are not as entirely cut off from accessing the front stage in the sense that they have less problems with the increasing administrative requirements of human rights based police work.

It is the better educated but younger black police officers who feel a certain affinity with the human rights front stage. They still see a chance to advance their skills and realise some of their middle class aspirations – both status wise and materially. For them the human rights front stage reflects such aspirations and is thus a medium through which these aspirations can take shape.

Also, many white police officers (the majority of them Afrikaans) had been recruited (pre 1990's) with a minimal educational standard – a measure which was meant to make up for the lack of willing more highly-educated white recruits. At the time this

group of police officers had nevertheless good prospects of being promoted without furthering their studies. Also, often in concordance with their lower class status, these officers conformed with and felt at ease within a more violent and physically invested, masculine form of authority. They saw their success and promotion prospects as contingent on the skilful application of this type of authority. This means that they find themselves equally alienated by the human rights paradigm. In fact, the need to wield the type of backstage authority has become even more urgent for them as it serves to reinforce the boundary which protects them from black people's challenge of their former privileged position in society (Sergeant de Bruin and Sergeant Le Roux – Chapter Four, section 4.4.2 and Chapter Seven section 7.6.3 – are good examples here).

It is thus not only racial issues which determine police officers' difficulties in taking on human rights. In the contrary; white women (primarily Afrikaans women), had exclusively been allowed into the police force on the basis of a matric school leaving certificate. Trying to compensate for the skills which were squarely rooted in masculine authority, such as the dramatic use of force, they had consequently been quite willing to advance their studies. This has given them a great advantage in relation to taking on the writing and language related tasks and the particular investigative skills which the human rights based approach demands. In addition their femaleness allows them to feel less challenged by the devaluation of masculine authority that the human rights approach brings with it. In addition, equity policies which aim at advancing women and black police officers within the service, offers ample possibilities of promotion and as such a bright future for them within the police. Combined, these factors make it relatively less

difficult for them to perform authentically and convincingly on a human rights (front) stage and might even produce a certain enthusiasm for human rights.

Also, those who were previously in the most privileged position, namely white men who had entered the police service (pre 1990's) at levels of better education, still have less to worry about human rights. Their privileged position had allowed them to advance quickly within the organisation, and to study and to accumulate policing skills, which makes them less vulnerable in relation to the skills demands of human rights. Their position has also allowed them to build up powerful networks across the organisation, which although they may not help them fit into the human rights approach, certainly help them in being successful police officers and investigators, making them indispensable to the organisation. This policing strength can partly compensate for the fact that the human rights policing paradigm might present a challenge to their superior masculine status. The sense of belonging, which the human rights approach offers, might not be exactly their sense of belonging, but the possibility of a future in the service makes them quite willing to accept a certain form of belonging to the new South Africa. Still, this type of belonging is not so much as political subjects but as materially secure or even consumerist subjects. As such they do not totally have to eschew the human rights paradigm.

But it is the new (post 1994) black recruits who are most eager to occupy the front stage and the status which comes with it. They necessarily have a high educational standard and they see themselves as rightfully benefiting from the privileges and new opportunities that a human rights dispensation has created. However, this sense of ownership which makes this group embrace human rights also produces a sense of

immunity and entitlement – of having the right to either qualify or limit the application of human rights. I will come back to this aspect below.

Thus, for police officers, although to markedly different degrees with which they seek to occupy the front stage, the need to adhere to human rights can expose them to pressures and dangers that they had previously, with the help of their backstage authority, learned to navigate with some sense of sufficiency in their work. They can suddenly find themselves swamped by the docket load, and by a sense of futility in being at the bottom of the complexity of social life and having to face up to the impossibility of reducing crime. They might actually inhibit possibilities to advance their livelihood, while suffering a sense of emasculation and being caught up in the messy and socially contagious life of the people they deal with. The process of authorisation of powers (mainly through courts) means police officers have an increase in administrative and bureaucratic demands, which in turn creates tension, especially among those officers whose administrative skills are not their strong point. Further tensions come from the gendered inscription of different tasks.

Some of these aspects become especially accentuated in the implementation of the Domestic Violence Act. This Act covers a specific form of human rights policing, derived from the international paradigm. It is exemplary especially in the way it redefines the private sphere as an object of state intervention in order to transform society, and in the pivotal role the police are given to play in this. Here the human rights approach does not just increase the administrative part of the work load, but in recasting domestic violence as an object for law enforcement, the overall work load is expanded. This contributes to the heightened sense of anxiety created by the “docket culture”. The

enforcement of the Domestic Violence Act also increases the exposure of police officers in relation to a sphere which they find destabilising. To them, the private sphere represents a messy, contagious and morally ambiguous realm, which undermines their masculine sense of being in control.

Adhering to human rights thus means that police officers must in some way subject themselves to the standards and expectation, and most of all to the hierarchy, of the field of practice. However, by doing so, police officers can find themselves at the bottom of the human rights social hierarchy. As such human rights policing can be experienced as a desirable but ultimately exclusionary project. It represents a project which tends to result in a sense of inadequacy, anxiety and even humiliation. Working within a human rights paradigm not only bars them from doing certain things, it also requires police officers to work within a social and educational space which they can realistically only partially occupy. The act of abandoning a primary sense of self for a secondary one, which cannot be fully appropriated, translates into an identity crisis. This sense of crisis can trigger – especially if it appears too absolute – a violent reaction by police officers trying to compensate for the humiliation. It is therefore warranted to say that the adherence to human rights can produce its own form of violence.

Because of the inability of many police officers to comfortably occupy the human rights oriented space, their policing practice is being split into a front stage and a backstage act. In this way, the human rights agenda can be carried out in the front stage as long as this front stage act can be suspended at other times, in other places, and in other situations. This dual existence allows police officers not to be confined to the realm of human rights oriented policing alone. It reserves the possibility that they can resort to a

more violent and personalised form of authority. This in turn, sustains a police practice which can confer a more complete and less challenged sense of self onto police officers. In this sense, the backstage and front-stage are discrete realms, although they are interlinked through a relationship of interdependence. The front stage act needs the backstage act in order to avoid causing the breakdown which a confinement to the front stage would otherwise provoke. At the same time, the backstage needs the front stage to hide the backstage act.

### **8.5 Drawing the line: backstage – front stage**

One could say that during apartheid a similar split characterised police practice. At that time, the accountability towards the law also played a representational role, a kind of window dressing covering the state's atrocities. It can also be argued that humiliation was sometimes inflicted upon police officers by the legal establishment, since even then the gap between police and courts was marked by educational and class differences. This would suggest that the change from apartheid to post-apartheid policing was not abrupt. However, there is a marked qualitative difference, which becomes visible if we understand human rights as going beyond the law, and as being formative of a specific historic moment. What marks the post-apartheid moment is that the audience to the human rights performance demands a more authentic performance and are less complicit in the purely representational evocation of the law. In fact many organisations, which make part of the audience such as civil society organisations and state commissioned watchdogs have an investment in human rights as their *raison d'être*. Most important, the

inextricable inclusion of the human rights concept in the nation-making discourse contributes to human rights' importance and permits their prescriptive force to radiate beyond the interactions with specific legal practitioners. This also means that a moral high ground and a sense of virtuousness can be derived from the open and official espousal of human rights. Thus, the concept of human rights creates expectations through a partly more amorphous but penetrating presence in broader society. It is this omnipresence of human rights which has made the exclusionary effect of the human rights project much more encompassing for police officers.

Furthermore, within this human rights context, the law is not just a national product any more, it becomes linked to the international realm. This means the national law becomes much more cosmopolitan, and as such operates with a different set of cultural markers of inclusion and exclusion. In addition, the law has taken on new dimensions which stress less patriarchal and conservative gender relations and new, more caring responsibilities for the police.

Thus we have to understand that while policing in South Africa has undoubtedly undergone change, that change has not been a radical one. If we take the dual (backstage/front stage) performance of police seriously as being a specific articulation of human rights policing, then we could describe the change that has occurred as being a shift in the line between front stage and backstage in favour of the former. The line between front stage and backstage should be viewed as a historical one, constantly shifting; the interdependence of the two stages is thus constantly renegotiated in the meeting place between transparency and secrecy.

The international human rights industry is complicit in upholding the illusion that the front stage act – the pure human rights performance – is all that can exist. This may be seen in their conflation of what is with what should be, in reducing issues of social difference to questions of “context” and practicalities of implementation, and in omitting their own agency and particularity. These human rights ‘professionals’ are also easily deceived by seeing the export of their own products – that is, human rights training – and the socialisation of certain people into the social life of human rights, as an actual extension of the impact of human rights. This phenomenon presents an expansion of their human rights common sense, which can only exist at a certain distance from police reality. Nevertheless in their eyes it encourages the idea of the working of accountability towards the realm of international human rights and as such contributes to how an institutional arrangement of accountability can become the token for the unfolding of liberal democracy.

## **8.6 Vernacular articulations**

The split of policing practice into backstage and front stage manifests itself at various police organisational levels – at management level, on the level of actual police practice, and even in the more ceremonial realm. It also manifests itself – as variations on the theme – in different police officers or groups of police officers finding different ways to move between the front and backstage realms. For instance, a senior officer in age and rank can be found working with a junior, where the senior’s role is to perform on the front stage while allowing and even demanding the junior officer to carry out an action

on the backstage – for example, in order to supply a sufficient number of arrests so that the senior officer can be seen as an efficient manager. Individual police officers might at times strategically enact a front stage performance, momentarily satisfying the audience, while continuing a practice based on a more violent or personalised form of authority at other times. Here the concept of human rights is used as a shield. Such contradictory situations serve as forms of strategic appropriation of human rights in order to manage accountability towards the law, while at the same time keeping at bay and being able to deal with the demands and challenges of people who make recourse to the law. Another formation used to manage the split between front stage and backstage is that of a female police officer working with a male police officer as a team. Here, it is a division of labour in which her educated investigative and administrative skills compensate for his lack of skills and lack of affinity with the front stage due to his low level of education, or his masculine repulsion for it. For example she would help him work through all the dockets before they have to go for inspection, or she would convince a witness to co-operate, or she would patiently spend hours going through some old cases trying to link cases together. On the other hand the female officer would count on the male officer when her search for evidence came to a dead end and the only possibility to get information about a case would be by intimidating the suspect with the use of violence. Sergeant Kloppers (Chapter Five) operated within such a constellation. It was through this that she continued to participate in networks which were carrying out investigations on spectacular and prestigious cases, although officially she was working on general investigation cases which were known as petty cases. Meanwhile her male colleague would be protected

from disciplinary humiliation, such as his seniors rebuking him for his failure and inability to do the paper work correctly.

These hybrid formations, although they keep front stage and backstage as discrete realms, rework the dominant human rights discourse. They push a practice based on human rights into interdependence with a practice based on a particular and different kind of practical police world. For many police officers one of the demands of police work has meant learning about the ways of the front stage, not to the extent of investing one's whole sense of self in it, but investing just enough to make sure that disciplinary and social threats can be kept at bay and some recognition can be reaped from it.

Yet, it would be a misconception to consider the boundary between front stage and backstage as absolute and rigid. The theoretical and methodological approach underlying this research has, as just summarised, brought forward the split in police performance. This was enabled through putting the normative articulation of human rights on an empirical par with other less reified social practices such as everyday embodied practices and occupational, informal or personal working rationales. It is however through the idea of the vernacular that a "ruse" of human rights – along with the tacit practices that bring about the "ruse" – can be recognised as something in its own right. This allows for the highlighting of those instances in which police officers attempt to reconcile the two realms and consequently find a language and practice which transcends the split between front stage and backstage. These are vernacular formations, which in a way create something new. This study has described at least four forms of such new vernaculars and the expediency and context of their emergence.

The first vernacular articulation of adherence to human rights is actually only faintly discernible from the “real thing” of human rights policing. Its vernacular nature however becomes more evident when we consider that its articulation takes place against the background of a conspicuous absence of the “real thing” in the everyday practice of policing. This vernacular emerges in the context of a police officer trying to do justice to human rights against the background of people’s general experience of the police’s abusive practice. It takes the form of a dramatic performance and a conjuring up the just world and the truly public police as stipulated by human rights discourse by an individual police officer. To be convincing the police officer himself (or herself) has to become the embodiment of human rights policing. For this, the officer makes himself personally accessible, allowing himself to be personally contacted and personally drawn upon, offering his openness and direct response in exchange for the buy-in of those who otherwise mistrust the police. As such, the police officer personalises the impersonal policing powers that human rights prescribe.

This vernacular is linked to a police officer’s affinity with human rights through that he or she recognises human rights as bestowing a sense of entitlement in relation to the promise of a prosperous and better future for black people; and at the same time recognising human rights as a medium through which he or she can advance and realise some of his or her middle-class aspirations. This proves attractive for police officers such as Inspector Chetty (Chapter Four and Six), who are black and reasonably well educated and who have already succeeded in approximating “middleclass-ness” through owning a house, maintaining a double-income household, living in a predominantly white suburb, purchasing certain consumer goods and going on holidays (in contrast to merely visiting

family). Enacting human rights allows Inspector Chetty to imagine and momentarily inhabit the realm of professionalism and respect, which is derived from working in a human rights context. As such it compliments his aspirations through a momentary sense of the professionalism with which the legal realm is imbued.

The second vernacular articulation of human rights policing occurs when police officers view the process of submitting themselves to the hierarchy of human rights as a matter of faith and religion. Here the primacy and universality which the human rights perspective claims to occupy is explained through the transcendental Christian claim of doing the morally right thing. Such claims to superior justice are made outside of the common sense of the sociality of the international community. Nevertheless, difficulties in police officers' lives, provoked by trying to live up to the expectations and prescription of human rights policing practice, can be made meaningful to themselves through the idea of faith. For example, isolation from colleagues by insisting on a human-rights-based approach to policing instead of succumbing to the backstage performance becomes meaningful and sustainable if read as an act of faith. Faith makes it possible to imagine doing something for a reason other than the immediate reward, and to persist in the face of hardship. It makes it possible to survive the "social suffering" and inadequacy which is produced by the discrepancy between trying to live up to a certain human rights police practice but actually being humiliated by it. Further, through the idea of religious conversion, police officers are able to make sense of the liberal subject prescribed by human rights. The religious subject mirrors the liberal subject in that individuals who behave in the expected way do so by controlling themselves through internalising the rules as faith. The prescribed life becomes a form of freedom.

For police officers to translate and merge human rights with the language of faith and Christianity becomes expedient because the language and practice of Christianity forms a vivid part of most police officers' everyday lives and moral imagery. Most police officers, no matter if they are black or white, subscribe to some religious Christian denomination. Either they are active churchgoers or at least they have been socialised into a Christian morality while growing up. Also, Christianity pervaded both Afrikaner nationalism and the anti-apartheid struggle. As such, a human rights language mediated through a Christian imaginary smoothes out some of the racial and historical antagonisms which the internationally rooted language of human rights otherwise provokes. The concept and application of human rights is strengthened locally through the strong anchorage of religious discourse in police officers' lives, but it also means that a more explicit moral and morally discriminating judgement replaces juridical technical and abstract judgements. This enmeshment however also reveals the limits of the police officers' sociality, so that in the full purview of the legal regime, for example when testifying in court, a Christian interpretation of rights invariably fails them.

The third articulation, probably the most racially specific one, is the one in which the human rights language is accessed and becomes meaningful to police officers through their experience of having been part of the black police union movement. The black police trade union, drawing from its relationship with other union movements, translated human rights into a language of political struggle, which was less imprinted with middle class aspirations, and carried the traces of a more working-class (and less legal) outlook. However, translated into this version of human rights, this perspective also allows for an interpretation of human rights as foremost concerning police officers' rights, in a way

even strengthening police officers' sense of entitlement vis-à-vis the people they interacted with. This perspective further mediates black police officers' new-found sense of righteousness, which can translate into a strong sense of immunity from wrongdoing. As such, this particular use of the human rights concept produces a legitimising language for the use of violence, as in Inspector Kekana's (Chapter One and Chapter Four) account of human rights.

These three vernaculars have emerged at the interface of policing and human rights. They are created by accountability to the realm of international human rights, the national law and to people making recourse to the law and claiming their human rights vis-à-vis the police. What each of these versions of vernacularisation shows is that police officers do submit themselves to the productive and restructuring effect of human rights, but that in so doing they enmesh the human rights discourse with a meaning which is reflective of their particular context and sociality. While this still keeps police officers from full participation in the international human rights realm, something which is determined by the formalism of law, it might make their acts on the front stage more bearable, and indeed, if only partly, allow for an authentic performance. It also allows them to carve out a space for social manoeuvres within what is otherwise for them a very restricted realm. This in turn can give people the possibility to access the police through a claim to human rights, however only in as far as there is a congruence between people's claims to human rights and the kind of human rights that police officers have made acceptable for themselves.

The fourth vernacular variation is very much one which takes into consideration the alteration and translation which emerges at the interface of accountability between the

police and members of society. Here, following a human rights approach compels police officers to participate in people's everyday life and to speak the people's language. In this very moment of creating a public police force – which means being responsive to the needs and demands of the public, rather than employing the awe-inspiring but distant language of the authoritative state – the powers of police officers can be personalised, localised and imbued with a sense of justice which is contextual rather than abstract. Through this process of appropriation, community policing can be the medium through which bonds are created in a continuum of practices, but which, from a normative perspective, would be called corrupt. This can happen to every police officer, who in some form enacts or carries out a responsive form of policing. While some police officers might be more susceptible to certain acts of appropriation, the expediency here is not so much rooted in a particular societal stance of the police officer but in the rationale of the people with whom police officers interact. This expediency becomes particularly pronounced with regard to policing at the margins of society and can be better understood as a form of local justice.

## **8.7 Local justice**

This research has concentrated mainly on interrogating the interface between human rights and policing from the point of view of the police force. It has however also been derived from observation of many encounters between police and people and from looking at these encounters from the perspective of the people being policed. From this perspective, policing that is characterised by navigating the tension between the

backstage and the front stage makes its presence felt particularly in socially marginal spaces such as the inner city and Westbury. In the inner city and Westbury, albeit in different ways, there is a shortage of resources, and the struggle over access to the few resources available is often fought out violently. These spaces are often characterised by the apparent absence of formal governance, a lack of security, a strong prevalence of violence as part of private, gender and other social relations, and by residents being excluded from social care and basic forms of services.

Policing in such margins in many ways contributes to the tribulations and precariousness of living there. They are spaces in which the backstage authority of the police can be easily acted out. The police project themselves into the marginal space primarily as a fragmented, unpredictable and always potentially threatening presence. The course of formal justice seems far from reliable and predictable, both because of outright extortion and because of the erratic ways in which police officers deal with cases.

However, people living in Westbury and the inner city apply what one could call a realist approach which disentangles and demystifies the present from any conflation with a normative and idealised future vision of what the police should be. They take cognisance of the turmoil and tribulation of the marginal space without losing the ability to create meaning, even if such meaning means taking insecurities into account. To them policing becomes legible as private policing; police powers are reconstituted as the social and personalised powers of police officers. This perspective shows up a formally public police as being unpractical and illegible. And while it normalises policing as always potentially threatening, it also indicates that policing presents a powerful potential

resource in the struggle for survival for those who are able to channel it to their advantage.

It is against this background that the implementation of human rights in these spaces has to be read. If the backstage act dominates the picture of policing, any human rights front-stage act is easily integrated into it. These human rights performances can be the keen enactment of human rights by police officers in which the police officers offer themselves as the embodiment of openness and accessibility, or as compelled by a very strict and specific legislation such as the Domestic Violence Act. Human-rights-based approaches to policing are contingent on channelling victim and perpetrator through the official criminal justice system to fulfil their promises and keep their claim of legality. In marginal spaces, however, people are easily absorbed through the rationales of local justice, which offer their own expedient reading of the police as primarily private protectors and personalised powers. This allows those living on the margins to appropriate police officers and their practice, without engaging in the rules and processes of the broader criminal justice system. Through this appropriation, people translate the legal police authority into forms of heavy-handed persuasion and tangible punishment, which they consider to be a more expedient way of renegotiating the boundary of violence in an environment which is pervaded by violence.

Such forms of appropriation represent a refusal by people whose life is afflicted by crime and violence to submit themselves to the civilising mission of the state and to the state's attempts to gain a monopoly over the means of violence. Here the human rights perspective not only reveals its dominance in the way it attempts to capture and transform the conduct of police officers, but it also works in a prescriptive and exclusive

way for people living on the margins of society. This means that human rights policing is not simply about protecting people, but about protection in the sense of altering people's life-worlds in a more fundamental and encompassing way. People are only supposed to get the full support of the state if they are willing to alter their lives in a way which fits the broader image of the kind of non-violent society which is envisaged by a human rights culture. While it might seem desirable, the better life which people are expected to buy into in order to become full citizens remains, from the perspective of the margins, at best a promise but hardly a guarantee. Subscribing to a human rights perspective seems to be clear in relation to what people are expected to give up – namely anything which is familiar but violent, such as a violent husband. However, giving up something which is tangible and concrete but which, although it carries the threat of violent social relations, is also the place of belonging and identity, is not easily done, especially when the promise for its full replacement is uncertain.

In Westbury such refusal to give up the familiar becomes particularly sensible because decades of racialised social welfare have inscribed women's identity with a sense of burdensome patriarchy, which gives them an ambiguous role of gendered power and coercion. In Westbury, contemporary human rights policing forms a continuity with the apartheid state's racialised welfare approach – a reality which challenges the claim to radical change claimed by the liberal democratic paradigm.

In the inner city, informality often offers the only mode for city dwellers to carve out a life for themselves, especially with regard to immigrants and those in informal dwelling places. In such cases, policing, which offers conditional or fundamentally different protection, becomes a threat and is rejected. It becomes more prudent to

preserve the informality, and to “informalise” policing in order to suit the situation, since living in conditions of informality means there is a need to preserve forms of manoeuvre within precarious living conditions. Buying into the promise of justice could mean the erasure of the conditions of existence of many city dwellers.

Police officers’ preoccupations with private business as part of their work directly plays into this local dynamic, especially if it involves the seeking of private advantage among those whom they police – as in the case of Sergeant Legodi and Sergeant Mpala (Chapter Six) in the inner city. Tapping into local networks enables the localisation of police powers, because it means participating in local modes of sociality, which are underlined by moral obligation, mutual support and generalised exchange. Here police officers tend to indebt themselves socially and sometimes materially. This renders them into socially recognisable, sometimes even socially needy people, and permits their powers to be treated as valuable commodities which can be exchanged for other services. Sergeant Legodi for example, having a low educational standard that does not qualify him for further promotion, has shifted his prospects to the informal realm of the inner city, where he has built up a huge network of contacts which he can rely on as a source of profit for himself. This shift is further aided by a good sense of street-smartness as a result of his having grown up as part of the rebellious youth of urban townships, combined with an attraction to modern city life and urban sociality due to his age and bachelordom.

Police officers employ such modes of personal and informal sociality, not just to advance their livelihoods but also in policing activities, especially the solving of cases through receiving free information from people who know them and trust them, and who

consider handing over information to be an investment in their interdependent relationships with the police. This type of interaction takes place against a background of the absence of a so-called "forthcoming public", and allows for surprising success rates. When combined, all these factors add up to a policing practice characterised by social interdependence and entanglement.

What is important here is that in order to operate in the inner city through networks of sociality, policing powers have to be seen as personal powers, otherwise they could not be "commodified" for the kind of exchange of mutual obligation – they have to be recognisable as powerful and awesome in order to have any purchase in the inner city and to produce immediate effect. As such they clearly present powers derived from the backstage authority. At the same time, however, they cannot just be applied arbitrarily or indiscriminately because that would inevitably destroy the trust and interdependence on which the networks are based. Therefore, the application of backstage authority has to become somehow predictable, and balanced with investment in the networks and the maintenance of trust and willingness for exchange. What emerges is what I would highlight as a fifth articulation of a human rights vernacular; one that emerges not so much by vernacularising the front-stage authority, but by enmeshing the backstage authority with an element of popular sovereignty, which renders it momentarily and locally legitimate. This vernacular happens to embody some of the ideal principles of accountability towards community policing and its effect of enabling crime fighting. It does however create a continuum between the public, private and illegal services delivered by police officers, encouraging the expediency of reading police powers as

powers which can be accessed through personalised relationships rather than through a claim to formal public policing.

Forms of appropriation of police powers, such as calling a contact or acquaintance who happens to be a police officer ("my police"), allow people to negotiate a local situation without radically altering it. Similarly this is also what happens when complainants withdraw cases and through this dislodge the police officers' powers from the wider system, but nevertheless open cases in the first place and seek police intervention. Yet these 'uses' of the police present forms of tactical agency and the production of new tacit social manoeuvres from carving out a provisional sense of security, as well as protection from other people or "other people's police". They include the possibility of recovering some self-respect within a personal conflict, or a momentarily shifting of the line of violence within an intimate relationship, or recovering goods without access to civil procedures, or retribution or compensation. These are manoeuvres which are in the prevailing policy literature on policing – due to its investment in reified categories – overlooked as being of no significance for people living on the margins; alternatively they are blown out of proportion and consequently considered to belong to and constitute the realm of purely non-state informal justice and vigilantism. Meanwhile, in fact, this type of policing takes place precisely with the involvement of the state through the police, and is significantly enabled through the acting out of a human rights paradigm, with both the police and state being altered in the process.