

"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)

# **“Don't push this constitution down my throat!”**

## **Human rights in everyday practice. An ethnography of police transformation in Johannesburg, South Africa.**

"Don't push this constitution down my throat!" Mensenrechten in de praktijk. Een etnografie van een veranderende politie in Johannesburg, Zuid-Afrika.

(met een samenvatting in het Nederlands)

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"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)

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Summary

Samenvatting

# 1

## 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 Gauteng<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup> 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”

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<sup>3</sup> 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.<sup>4</sup> 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”.

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<sup>4</sup> 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).<sup>5</sup>

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.<sup>6</sup> As such, a new

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

<sup>6</sup> 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

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(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 vernacularised<sup>7</sup> 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

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<sup>7</sup> 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.<sup>8</sup> 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

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<sup>8</sup> 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).<sup>9</sup> As with Foucault,

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<sup>9</sup> 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.<sup>10</sup>

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

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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).

<sup>10</sup> 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.<sup>11</sup> 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

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<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> So-called humanitarian interventions, while originally purely military in nature, have more and more assumed a civilian component, with the

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<sup>12</sup> 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).

<sup>13</sup> 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.<sup>14</sup>

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

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<sup>14</sup> 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.<sup>15</sup>

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

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<sup>15</sup> 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.<sup>16</sup> 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

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<sup>16</sup> 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.<sup>17</sup> Partly, they are legally (constitutionally) prescribed, and their functions are regulated through the national law.<sup>18</sup> In a constitutional democracy – which the accountability model fits best – the national law is bound by the constitution, which should have been

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

<sup>18</sup> 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).<sup>19</sup> 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

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<sup>19</sup> 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.<sup>20</sup> 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.

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<sup>20</sup> 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.<sup>21</sup> 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

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<sup>21</sup> 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.<sup>22</sup> 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

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<sup>22</sup> 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.<sup>23</sup>

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.”<sup>24</sup> 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

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<sup>23</sup> 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.

<sup>24</sup> 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%)<sup>25</sup>, 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

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<sup>25</sup> 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),<sup>26</sup> 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.<sup>27</sup> Added to this were 101 attempted murders and 188 rapes.<sup>28</sup> 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

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<sup>26</sup> 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).

<sup>27</sup> 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).

<sup>28</sup> 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.<sup>29</sup>

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

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<sup>29</sup>Ecks 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.<sup>30</sup>

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

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<sup>30</sup> 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.

# 2

## Remembering the Police

"We salute those who paid the highest price" (In golden letters on the cover of *Servamus*,<sup>31</sup> July 2000).

"...it is funny, the more things change, the more they remain the same" (Senior officer in Rauch 2004).

"Apart from standing orders forbidding any policeman from discussing or taking an active part in politics, the subject was seldom mentioned, except, of course, jocularly in its relation to every policeman being the dog of every succeeding government; to be whistled up, leashed, muzzled and made to jump through figurative hoops by whoever held the office of Minister of Justice" (Van Onselen 1960:118).

### 2.1 Introduction: At the police memorial

In Pretoria, tucked away to the left of the Union Buildings, stands a memorial honouring dead police officers. It is a forlorn place, unnoticed by most of the tourists who tend to favour the sloping terraced gardens below the seat of the South African government, where they take pictures in front of the statue of Jan Smuts. One could almost say the police memorial, with its amphitheatre-like layout and its back to the city, its three wind-bent palms serving as a lonely guard of honour, does not *want* to draw people's attention.

The polished granite structure forms a three-quarter circle around seven square pillars connected at the top by a vertical bar forming a kind of arch. Several huge bronze plaques are attached to the granite walls, bearing long lists of the names, ranks, staff numbers and dates of death of police officers. The memorial, constructed in 1983, was

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<sup>31</sup> A glossy police journal.

officially unveiled on 17 October 1984; the moment of its inauguration is commemorated in a central plaque that carries the name of the prime minister of the time, P.W. Botha, and announces in Afrikaans and English the memorial's function as a "Roll of Honour".

Every May a ceremony takes place here, for police officers by police officers. A memorial service under the guidance of the South African Police Service (SAPS) Spiritual Services is held to honour those who died on duty. Family and friends of those who died, a range of senior level officials from the SAPS and from the relevant government ministries, and a broad representation of high- and low-ranking members of the SAPS are present, flooding the rows of the theatre with the dark blue of their uniforms.

Memorials are forms of public remembrance, and in these forms we can find certain historical discourses made tangible (Sturken 1991). Walking between the bronze plaques and granite features, I go through the endless names and dates, again reading the main plaque, then I sit down on the bottom step of the surrounding amphitheatre and take in the memorial's surroundings, I wonder what kind of narrative this memorial "wants" to tell. Have I invaded a space, which, although publicly accessible, is not really intended for "talking to the broader public" or even "talking to the nation" as its public location next to the government building initially seems to suggest?

It is after all 2004, more than ten years into South Africa's new constitutional democracy, yet here is a memorial which has been carried over from the early nineteen eighties and has been used continuously in the same way ever since its day of unveiling. In contrast, monuments and memorials in other so-called transforming countries have had very different fates. In East Germany, for example, stone statues of Lenin and Marx have been dismantled, chopped up and brought to depots where they crumble away and disintegrate under a cover of moss. Renaming streets and cities has been another form of obliterating the authority of the past. If not literally removed, memorials and monuments have frequently been neglected and not maintained, making it publicly clear that the heroes and disciples of past regimes no longer matter.

Something similar can be observed in South Africa. Streets, rivers, places and cities are being renamed, in an ongoing process. New parks and buildings are being inaugurated in honour of liberation struggle heroes. Here and there discredited white men

have been kicked off their pedestals. One memorial even went of its own accord, when, in central Pretoria, the sculpture of J.G. Strijdom, a former prime minister, fell off its elevated pedestal in the middle of the night (Voortrekker Monument Heritage Site 02/03/2003; Mining Weekly 13/07/2001).<sup>32</sup>

Not so for the police memorial. As an SAPS communication officer conveyed to me in his fax, “apart from the normal transformation” – and it sounded as if he was speaking of a negligible detail – “that has taken place within the SAPS the program is *more or less the same* [since 1985]...the purpose to commemorate members is *still* the same” (my emphasis) (Ngobeni 2005). As such, it appears that the police memorial purports to tell a narrative of continuity. Continuity is achieved by continued use and the annual ceremony, and it is inscribed in the memorial by the simplicity of the wording on the plaque: honouring those “who died while executing their duties to protect lives and property of others.” It evokes the redeeming myth of a purely civil police culture which transcends any governmental or sectarian partisanship, and which is imbued with apparently neutral and universal values, such as the protection of citizen freedom and adherence to the rule of law. The ideals of duty and service are elevated to something worthy and honourable, as if police duty could transcend the political and violent tides of history. It conveys the message that honouring police officers who died on duty is a matter which deserves to be spared from moral and historical scrutiny. It is a message of loyalty: no life that has been lost in the line of duty will be disregarded. As such it creates a sense of continuity which overrides historical hiatuses. This message of continuity is powerfully assertive, especially considering the reality that the death of a police officer will very often have occurred in highly politically charged circumstances. When a police officer is killed on duty the nexus of the individual’s life and the broader mission and function of a police organisation converge. It marks the point where the role of a police officer ceases to merely be a job and becomes a sacrifice. While the memorial might be intended to be seen as an act after the fact, as if the casualties on duty had never been foreseen, by its very existence the concept of dying on duty is institutionalised and established as integral to police work. It represents an acceptance from the outset that in

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<sup>32</sup> Contributing to the symbolism of the collapse, it happened on the fortieth anniversary of South Africa becoming a Republic (*Mining Weekly* 13/07/2001).

becoming police officers, individuals accept that they might have to give their lives. This message is confirmed by the memorial's empty wall space, yet to be plastered with bronze plaques, which will bear future names and dates in chronological order, leaving no doubt that not a year will pass that will not demand the sacrifice of police officers' lives.

Admittedly, the death of a police officer might not be as explicitly politically determined as that of a soldier who goes to war in defence of the nation – a notion even less tangible and more sweeping than “law and order”. Nonetheless policing practice always involves some measure of differentiation by the police service, and by extension the individual officer, in relation to the society's normative expectations of behaviour. Whatever this interpretation is, it is always backed up by force, and ultimately the threat of violence. This begs the question of who is the criminal, and whose life and property is being protected against whom?<sup>33</sup> And if policing is not a relationship with the nation, or complicity in the social order, then it is at least a relationship of loyalty to an organisation, which inevitably will have its own particular cultural and political bias.<sup>34</sup>

In South Africa's history, and its history of policing, there has seldom been a time in which the question of police partisanship has been limited to issues of “organisational culture”. Policing in South Africa has always been crucially instrumental in the social, cultural and political conflicts of the country. The willingness of the South African police officer to take the risk involved in policing so as to protect the social order is what makes him or her automatically complicit in the broader politics of policing in South Africa. Thus commemorating the dead also means commemorating – or at least evoking in a spectral form – what the police stood for and in whose service they stood when they died. In its explicit quality of constructing a police-specific version of history, as well in its spectral quality of holding the stories of the dead police officers in their historical

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<sup>33</sup> See also Chevigny (1995, cited in Huggins 1998:8) who, writing about policing in the USA and South America, states that “politics, in the most direct sense, has been part of the police as the police have been part of politics.”

<sup>34</sup> In many (northern) countries it is not so much the broader police mandate which is under question, but the dynamics which attract particular conservative and even racist people to work for the police which lends police organisations a particular conservative and/or racist bias. This, combined with carrying out particular police tasks which demand the making of practical judgements about different members of the population, can manifest as organisational culture, which in turn can influence those who enter the police with less of a conservative and/or racist inclination (Reiner 1997).

embeddedness, the memorial serves as a narrative and interpretive device to recall the history of the police, which is the focus of this chapter. However, in highlighting the meta-narrative of the memorial – that is, the version of history that the police establishment would like it to bring across to its members – the memorial also provides an insight into how the police force presents itself to itself, and how this relates to a history of human rights. This will be explored towards the end of the chapter.

## **2.2 *Partisan policing***

### 2.2.1 The beginnings

The earliest death of a police officer mentioned on the bronze plaques is in the year 1913; the same year in which the South African Police (SAP) was founded. The coming into being of the SAP is inextricably intertwined with the formation of the Union of South Africa in 1910, and with the first Union government under Louis Botha asserting its central governance over the spatial and political fragmentation resulting from historical Afrikaner and British rule.

Under the Union, the various police forces from the four colonies – Cape Province, Natal, Transvaal and Orange Free State – were merged into one police force and centralised under the authority of a single Commissioner. Each of the four colonies had similar traditions of paramilitary rural police forces and metropolitan police forces. The Cape Mounted Police Riflemen and the Natal Mounted Police in the English-dominated colonies, and the South African Constabulary in the Transvaal, for example, carried out the classic colonial tasks of putting down internal and border conflicts mostly between white farmers/settlers and the black rural population. The city police forces dealt with the protection of property and the detection of common law crimes in cities such as Cape Town, Durban, Johannesburg and Bloemfontein, as well as in the smaller towns (Van Onselen 1960:29). However, even then, in the cities “the task of policing was perceived to be the protection of white suburbs from the threat, real or imagined, from black locations” (Chanock 2001:38). A range of other police forces oversaw infrastructures such as the railways (Railway Police) and harbours (Durban Port Police),

protected private assets such as mines, and served special government administrations (the magisterial police) (Shear 1998:259-261).

Not all of these forces were integrated into the SAP at once. Disagreement about terms meant that some places, such as Durban and Pietermaritzburg, at first kept their municipal police forces. The Railway police, and later the Railway and Harbour police, remained outside of the SAP structures until 1986 (Van der Spuy 1990:88). In addition, the pre-existing rural-urban split of police organisations was carried over into policing in the Union. The South African Mounted Riflemen (SAMR) force absorbed some of the paramilitary mounted police forces. They also functioned as a contingency force “in the event of uprising and strikes during which a force such as this would be necessary” (Van Onselen 1960:29),<sup>35</sup> and continued their work of military policing, imposing colonial rule on black subjects in rural areas which had been demarcated as “native reserves” (Brewer 1994:39-41).

### 2.2.2 Racial policing: consolidating the origins

The centralisation impulse of the Union government, and the new Police Commissioner's conviction that a centralised police force meant “modernisation and efficiency” (Brewer 1994), was overridden by the need to deal with racial issues. In that sense 1910 meant the consolidation of various administrations and policies so as to enforce segregation between the black and the white population. A whole set of laws and state practices were introduced which dealt exclusively with regulating the movements and the lives of black people, including policing the racial boundaries of the city. The Land Act of 1913 was the first in a string of legislations limiting the rights of black people as equal citizens, dividing the country into white-owned land and black reserves, and entrenching the principle of migrant labour. An important part of segregationist policy was the establishment of a dedicated police contingent to serve this cause. Until 1920, the Native Affairs Department (NAD) held authority over a separate mainly black

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<sup>35</sup> The SAMR was finally abandoned in 1926, after the SAP had successively taken over the areas previously policed by them (Van Onselen 1960:30).

police force, administering and, through indirect rule, controlling the reserves<sup>36</sup>. Thus, racial policing was part of Union rule from its very beginning. The Union government sought to standardise an encompassing state control over black citizens – an aspect which would consistently increase over the years (Ross 1999:87).

### 2.2.3 Lines of partisanship: Boer or Brit; capital or (white) labour

Although these segregationist policies had a life-encompassing impact on the majority of the population, they were met with little protest because of the lack of a black franchise, because of the application of strategies of co-option (e.g. of chiefs), and because of the existence of only a small and self-restrained opposition. While racial policing was taken for granted, what was seen as the great challenge at that time regarding questions of police partisanship and complicity in governmental affairs was industrial conflict.<sup>37</sup> It was a period of rapid industrialisation and urbanisation, and the police soon became instrumental in putting down a number of industrial strikes. In 1913 and 1914, and then again during the Rand Revolt of 1922, the SAP was employed to put down strikes and riots by white mine workers, mostly under martial law and with little restraint in the application of brute force. During the Rand Revolt 150 people were killed. Here the police served a government which supported the interests of mine owners who were more interested in capitalist profitability than the protection of white labour (Cawthra 1994:9; Ross 1999:104-105). In a discussion of a genealogy of emergency power legislation and the SAP's latent repressive role, Shear (1998:98) argues that the SAP had inherited (from pre-Union times), and happily continued to use, emergency legislation which purported "...to manage the 'ordinary' under the guise of forestalling the 'extraordinary'....Especially after 1913, the managers of the newly formed South

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<sup>36</sup> By 1920 the SAMR and the SAP took over institutional control of the African policemen who had previously been under the control of the NAD's Native Commissioner (Shear 1998:245). From then on, black police officers were seconded to the NAD (Shear 1998:246).

<sup>37</sup> It has to be mentioned, however, that at the core of those industrial conflicts lay a racial issue: the protection of white, especially unskilled labour from cheap black labour. For more information on the Rand Revolt see <http://sahistory.org.za/pages/specialprojects/randrevolt/rand-revolt.htm>.

African Police developed an institutional interest in moving beyond the ascendant laissez-faire framework within which political and judicial notables approached issues of 'public safety'".

The other major issue which haunted the police force, not just in its early period but throughout its existence, was the increasingly politicised division of the white population along the lines of Boer and British. The two World Wars served to accentuate the latent ethnic and class tensions. These tensions would, in different forms, put pressure on the internal unity of the police. At its inception, the SAP was neatly divided: generally, the lower ranks were occupied by poor and poorly educated Afrikaners, and the officer ranks in the main comprised English-speakers. There were occasional complaints about the ill-treatment of Afrikaners by their English-speaking seniors, and issues of language aroused discontent.<sup>38</sup> Yet the Afrikaner rebellion, which was sparked off by the Union government's ready participation in World War I on the side of the British, only had slight repercussions within the police force. In fact, the police were in the forefront of the forceful quelling of the rebellion.<sup>39</sup> Police stations became targets of attack by anti-British Afrikaners, particularly because of the perceived "traitor role" of Afrikaner police officers (Brewer 1994:45, 57-59).<sup>40</sup>

Matters intensified at the time of South Africa's participation in World War II. This was a moment where the SAP's pro-government partisanship triggered a contestation of loyalty within the police force. By that time Afrikaner nationalism had already gained much more currency among lower-class Afrikaners, while at the same time Afrikaners had moved up into the high ranks of the police. The government again decided to take the side of Britain against Germany. Police loyalty towards the government was expected to go beyond basic policing duties, and police officers could sign up voluntarily for a special police battalion, or at least take the so-called *red oath*,

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<sup>38</sup> Van Onselen (1960:103) gives anecdotal evidence of this when he recounts in *A Rhapsody in Blue* how "on a medal parade, once a typically English officer was inspecting the men when he noticed that one of them was wearing a pair of pointed civilian boots. The officer walked up to this man and asked him why he was not wearing regulation boots. The constable himself not noted for his command of English replied: 'I wear them for my lit-thorns, Sir!' (corns - Afrikaans 'littorings'). The officer, not wanting to show his ignorance, replied: 'Oh! Good show! Carry on!'"

<sup>39</sup> Some Afrikaners even deserted the police to join the military forces to fight in the war.

<sup>40</sup> It did however have the effect of repelling those Afrikaners who were ethnically more politically conscious from joining the police. In their eyes the SAP was a British imperialist tool.

which even if not called upon, declared willingness to participate in the war. Meanwhile, the Afrikaner nationalist movement had clearly pronounced its opposition to the government's decision to enter the war. Van Onselen (1960:118), in his at times quite nostalgic history of the early years of the SAP, describes the sentiments at the beginning of the war as follows:

When the war came, an indefinable change came over the men in their dealings with each other. There was much dissatisfaction and controversy. Certain elements were against the declaration of the war, while others expressed their full support. Where there had been easy camaraderie, there was now tension even between friends. Some of the older men openly declared their hostility and around these gathered those who were like minded and who shared their sympathies. Men had worked together, lived together, without knowing where the political sympathies of each or the other lay. The declaration of war split the force asunder. Before much time had passed there were definitely two camps.

In addition, rebellious and paramilitary movements such as the *Ossewa Brandwag* and *Stormjaers* were carrying out acts of sabotage. Some members of the SAP were found to be secretly involved in these acts. For the police, this turned the war into a question of loyalties, and refusal to take the so-called red oath was treated as a blemish on the trustworthiness of a police officer. The Special Branch, which later became apartheid's elite intelligence division, was set up in 1944 to fight these rebellious movements. Refusal to take the oath was punished through revoking certain pension rights, delaying promotion and other career disadvantages.<sup>41</sup> However, once the National Party (NP) came into power in 1948 the "stigma turned into status" (Brewer 1994:186).

#### 2.2.4 Apartheid policing: dim beginnings – forceful manifestation

Generally speaking, the changes that took place with the National Party's first election victory and its pronouncement of apartheid policy were at first merely

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<sup>41</sup> Giliomee (2003:488) states that "many Afrikaners felt victimized by the way in which war time measures were applied....Rumours were rife of Afrikaners who had been refused promotion merely on the say so of informers."

enforcements in degree (Brewer 1994:184). The groundwork for the Afrikanerisation of the police force (perhaps mainly due to the lack of willing English-speaking recruits), and the focus on policing race relation and oppressing opposition had already been well-established by the former United Party government under Jan Smuts.

However, this would prove to be only temporary. Giliomee (2003:496) points out that “the Afrikaner ruled state, which excluded a large and fast-growing majority from the vote in a rapidly democratising world, faced profound security dilemmas....It was an under-policed state that rested on the assumption that blacks would continue to submit passively to pervasive white domination. But such submissiveness could no longer be taken for granted” because global historical developments made the rule of white people over black people as colonial subjects morally and political increasingly untenable. In addition to these pressures, urbanisation had taken place at a rapid pace during the war, which had advanced economic and spatial racial integration and increased the claims and aspirations of the black population to equal treatment. Therefore, after the National Party had consolidated its continuity in office<sup>42</sup> and after it had restructured the police force through, for instance, ensuring loyalty by putting Afrikaner nationalists into leadership positions, it turned towards the tightening of racial policing necessary to the efficient working of the apartheid system.

The installation of apartheid policing meant firstly increased security legislation and an incremental increase of police powers. Police discretion was widened by legislation such as the 1950 Suppression of Communism Act, which was so broadly formulated that any opposition to the state could effectively be oppressed (Ross 1999:128). Then there was the 1955 Criminal Procedure and Evidence Amendment Act, which allowed for premises to be searched without a warrant and for 180 days’ detention without regulation by the courts. The 1958 Police Act had a range of provisions to further enable the “preservation of the internal safety of the Union.” Brewer (1994:215) argues that, as a clear sign of a security apparatus taking shape, “*systematic* inhuman treatment and torture for the first time happened in the ’50s.”

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<sup>42</sup> By the elections of 1953 the National Party had, through gerrymandering, managed to secure 59 per cent of the seats in the House of Assembly for an estimated 45 per cent of the vote (Christopher 1994:57).

Secondly, on the level of everyday policing, apartheid policing was instrumental in a systematic control over black life and labour, as well as the enforcement and creation of racial and ethnic boundaries among the non-white population. The 1950 Population Registration Act elevated ethnic differences into absolute and legal categories. The boundaries of these categories were safeguarded sexually by the 1949 Prohibition of Mixed Marriages Act and the 1950 Immorality Act; and spatially by the 1950 Group Areas Act (Ross 1999). This legislation allowed the police to enforce apartheid in the most intimate aspects of everyday life. Movement and labour would be regulated by new and stricter pass laws, which narrowed further the black man's – and from the late 1950s on, the black woman's – capacity to be legally in the city. These multiple and complementary laws entrenched apartheid policing practices firmly within the legislation, and allowed racially partisan policing to be presented as simply defending the law.

The mounting protest against the regulation of black urbanisation, which culminated in the bloody Sharpeville protest in 1960, was, as Posel (1997) documents, interpreted by the government and by the Bantu Administration Department not as a reason to loosen control but as an insufficiency of state control. The apartheid state believed that further tightening of state control would enable it to control the urbanised black population (Posel 1997:245). This required further policy shifts with regard to policing (Brewer 1994:225; Ross 1999:134). Influx regulations were legislatively strengthened and the policy of separate development and self-governing homelands was reformulated and pushed ahead.<sup>43</sup>

Previously, pass and labour laws had allowed for limited residential rights for black people, based on a distinction between “urbanised and detribalised Africans” who

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<sup>43</sup> The 1913 Native Land Act had already restricted black land ownership to demarcated African reserves. This was ideologically and politically consolidated and elevated into a far-reaching reality through the apartheid homeland (Bantustan) policies. Ross (1999:126) elaborates: “idealist visionaries of apartheid realised that total segregation in the cities required the building up of putatively viable economies and political units for their African population away from urban centres, which would now be for whites only. In addition they hoped that they could diffuse black South African nationalism by fostering loyalties to the tribal groups from which Africans were supposed to come.” Reversing a history of “social fusion of Africans from all over the country, and from far beyond its borders, in its great cities” (Ross 1999:126), the apartheid policy prescribed to each African an ethnicity and a historical belonging to a particular homeland. This meant that individuals could always be “deported” and dumped there even if they had never lived there. In return, so the deal went, a so-called independence of those homelands was offered, including homeland administration, elections, police and so forth. This independence, however, always remained farcical, since the homelands remained in the tight grip of the apartheid government for their security, budgets and the economy generally (Ross 1999:135-136).

were sociologically and pragmatically accepted as urban dwellers, and those who had a “tribal identity” and “strong ethnic links with the rural areas” who could be expected to be sent back to the rural areas. This distinction allowed “urbanised Africans” to remain in the urban areas even if they were unemployed. With the beginning of the 1960s – and H.F. Verwoerd, now prime minister, consolidating his power with the help of the *Broederbond* – this distinction was discarded. Instead *every* African was assigned an ethnic and tribal identity. This in turn authorized an attack on residential rights and an increase in deportations to the ethnically determined homelands, for all those classified as “non-productive” (Posel 1997:227-235).

On the security side, the experience of Sharpeville triggered the extension of security policing structures. The Bureau for State Security (abbreviated to BOSS by its opponents) was set up to co-ordinate police intelligence (the Special Branch) and military intelligence (Brewer 1994:253). State infiltration into the newly formed armed wings of the Pan African Congress (PAC) and African National Congress (ANC) soon annihilated the advances made by these opposition movements and forced many of their members and leaders into exile. In 1963 many of the leaders of the PAC and ANC, who had either stayed in the country or returned from exile, were captured and sentenced to life imprisonment. The government had succeeded in effectively erasing all organised black opposition in the country for many years to come (Ross 1999:131).

#### 2.2.5 Escalation of security issues – military policing

The internal security role of the police would soon be complemented and intensified by an external security battle. The decolonising of bordering countries posed a threat to South Africa. In response, the police were given a new counter-insurgency role. The government, claiming it was holding off black communist movements and preventing communist infiltration into South Africa, embarked on an anti-guerrilla war in Rhodesia, deploying 2 000 policemen. Fighting began in 1975 in Angola (Giliomee 2003:571), later to be extended to Namibia and Mozambique.

In this period the police force increasingly developed its unique style of military policing. Military policing means a usurpation of regular policing by a military stance,

with military methods and equipment. Military policing also means that chains of command are centralised, resulting "in a top down system of control that cuts off political participation and dissent" (Huggins 1998:20). This means that those who are subject to policing become seen as enemies and can thus be easily dehumanised, which in turn permits excessive use of force. According to Huggins (1998:20), it produces the "bureaucratising, rationalising, and routinising [of] secrecy, violence, and terror, all under the guise of 'modernising' social control to protect internal security against communism."

In South Africa, military policing manifested itself in various ways. The Special Branch was reorganised; specialised units were introduced; specialised training was provided in counter-insurgency and crowd and riot control; new weapons and vehicles utilising new military technology were purchased; ranks were militarised; co-ordination was centralised; and there was a constant interchange of manpower between the military and the police (Brewer 1994: 250-251). As a result, regular members could apply for anti-terrorism training, which by 1970 "was the most popular in-service course at the Police College" (Brewer 1994:254). After 1976, "in a kind of call to arms", it "became policy for all personnel to undergo crowd control and counter-insurgency training" (Marks 2005:43), testifying to the fact that military policing was not just a limited specialisation but had pervaded everyday policing.

The government's relative success in quelling internal dissent during the 1960s and early 1970s came to an end. In the second half of the 1970s, South Africa experienced the beginning of a different kind of internal resistance as a consequence of the politicisation of industrial workers and of the youth. The Soweto uprising in June 1976 sparked the birth of a slow but steadily broadening mass movement. The politicisation of the youth provided the police with a new challenge, since the youth, compared to their parents' generation, were less susceptible to authority. In addition, prevailing unemployment and violence in the township meant this new generation had little to lose in a confrontation with the state and its police (Giliomee 2003: 580).

In defence of a white supremacy, which seemed to be threatened from inside and outside the country, P.W. Botha, the former defence minister who had succeeded Johannes Vorster as prime minister, employed his dual strategy. This entailed firstly what was called "total strategy" (Grundy 1988), a militarisation of politics, with a vigorous

attack on anything internal or external which could undermine the regime's stronghold. Secondly, Botha embarked on an operation termed the "winning of hearts and minds", which aimed to regain some legitimacy among the black population. By introducing reforms to soften the everyday effects of apartheid, the government aimed to co-opt the more middle class and conservative sectors among the black population. The most obvious aspects of this strategy were the abolition of so-called petty apartheid legislation and the passing of the 1982 Black Local Authorities Act. This Act was presented as self-governance for black people within black areas, and along with this nominal self-governance a so-called Municipal Police was given the task of serving these local authorities, although the Municipal Police remained under the control of the SAP. Thus, at the time that the apartheid government was embarking on its most brutally oppressive measures, on the surface it shed some of its most obvious and ideologically-conceived characteristics. With this dual strategy, the government remained confident that it could hold on to power.

#### 2.2.6 The memorial at its inauguration – the dual strategy inscribed

The period of P.W. Botha's dual strategy coincides with the building and inauguration of the police memorial. In fact, the Prime Minister spoke at the memorial's inauguration in October 1984 saying: "we unveil a Police Memorial which serves as a symbol of the task of the South African Police and their sacrifices for our country" (P.W. Botha quoted in Dippenaar 1988:718). The use of the notion of sacrifice establishes a link between the memorial and the challenges the police faced in serving a government which saw itself as protecting white sovereignty against a "total onslaught". Confirming the police memorial's identification with the Afrikaner nationalism of its time, a loyal police historian remarks that "the growth from national history and faithfulness to the State are emphasised through the visual link with the Voortrekker Monument and the Union Building, together with which the memorial forms a triangle" (Dippenaar 1988:719). In this sense, just as various aspects of the total strategy were related to policing, the memorial might be considered to evoke these aspects directly or indirectly, simply by virtue of being built in that period.

One such aspect was that P.W. Botha substantially shifted the government's allegiances towards the military. As part of this he transferred to the military many of the international border surveillance duties which had previously been carried out by police.<sup>44</sup> In contrast to his predecessor Johannes Vorster, who had limited his counter-insurgency to pushing back guerrillas from the borders, Botha moved far beyond the country's borders, using not only the army but also police officers. In Angola he built up a buffer zone against the increasing presence of Cuban troops. In Mozambique (boosting RENAMO and bombing ANC bases) and in Namibia, he embarked on destabilisation missions. In Namibia, the Botha government used a special counter-insurgency unit, *Koevoet*, which operated as part of the police force. This unit was employed to carry out brutal attacks on members and supporters of the South West African People's Organisation (SWAPO). Consequently, from the late 1970s on, the number of deaths of policemen on border duty began to rise, with the extent of white fatalities becoming hard for the government to justify (Brewer 1994:255). It became expedient for the government to employ more black officers on border duties. Their ability to infiltrate black guerrilla movements was further reason to consider their inclusion in such operations.

Internal (national) policing duties were also increasingly militarised as the handling of security issues, buttressed by the 1982 Internal Security Act, became conflated with crime issues. By this stage it had become totally acceptable that the military would support the police force in its riot control function in townships (Cawthra 1994:26). Cawthra (1994) also mentions that in 1983 the police Security Branch was strengthened and the "police budget substantially increased", which can be read as the result of a sense of embattlement in the face of increasing local protest around issues of education, housing and the imposition of the Black Local Authorities Act. The growing merger of policing and military structures meant that the two forces were almost indistinguishable in their tasks and in their relations to the government. If there ever had been claims that the police force served a "purely civilian" role, and that its work was

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<sup>44</sup> P.W. Botha, having come from the ranks of the military, trusted the military more and saw its chain of command and strict organisation as an expedient tool for implementing his vision of a *cordon sanitaire* of countries along the South African boarder, securing it from infiltration.

non-partisan and independent of the state, by the end of the 1970s these claims had become impossible to uphold.<sup>45</sup>

By the late 1970s the underground structures of the ANC had stepped up the frequency of their sabotage acts. These included attacks on police stations: the first happened in 1977, followed by others in 1979 and 1980 (Brewer 1984:292). While, as Giliomee (2003:593) argues, those sabotage attacks had no real disruptive effect, their significance was mainly in the symbolic idea that the ANC had an active armed resistance wing, which encouraged and motivated young people to mobilise and fight against the government. On the part of the police, these attacks brought about a realisation of the precariousness of their lives as police officers, in the sense that they had now become attractive political targets.

However, it was not only the “total strategy” which had consequences for policing. It was also expected that police would carry out the counterpart “winning of hearts and minds” strategy. The Soweto uprising in 1976 had badly damaged the image of the police. Their brutal actions in putting down the protest (Jeffrey 1991; Marks 2005) – captured in the internationally publicised iconic photograph of the dead Hector Peterson – triggered global condemnation. In response, P.W. Botha introduced selective reform measures in an attempt to counter public perception of the police as brutal and partisan. To strengthen the impression that the police played a primarily civilian role, the motto of the police force was changed to *servamus et servimus*” (we serve and protect). In an extension of this perspective, the idea that fighting common law crime was the main duty of all police officers was promoted. Forms of community policing were introduced, although this applied primarily to those living in white areas. In addition, some internal accountability mechanisms were set up in order to restrict the use of force and to control police brutality (Brewer 1994:297). It was this motto – *servamus et servimus* – which was mounted in bronze letters on one of the granite walls of the Police Memorial, evoking explicitly the memorial’s role in this public relations effort.

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<sup>45</sup> Ellis (1998:226) argues that the complicity of the police and later the military in the political affairs of the country was epitomised by the fact that the ministries of police and defence each provided a prime minister of the country. It seems that a successful political career in South Africa at that time was dependent on having good standing with one of these security forces.

A further aspect of the “winning hearts and minds” strategy was the loosening of petty apartheid legislation: the Immorality Act, the Mixed Marriages Act and even the pass laws were abolished. The police did not embrace this development with much enthusiasm. Their *raison d'être* was closely connected to upholding these laws, and their sense of authority was invested with the routines of enforcing them. The enforcement of the laws governing petty apartheid had given the police the means for instant displays of authority over nearly every black citizen (see also Giliomee 2003:626). This sense of erosion of their powers and authority was exacerbated by the perception that the black population, with its increasing protests, was getting more and more unruly and threatening.

These reforms were meant to impress the outside world as much as the South African population, and the general political strategy of co-opting black moderate forces was also applied within the police force. Most of the formalised discrimination between white and black police officers, which had existed ever since the founding of the SAP, was discarded in the early 1980s. It was officially announced that there would be no more differential treatment regarding payment, pensions, perks and living conditions for black and white police officers. This is reflected in the ciphers on the memorial's plaques. For commemorated police officers who died before 1982, the staff numbers are coded to reveal the person's racial group, whereas for those who died after 1982 these letters have disappeared (I will come back to this point in more detail below). Furthermore, after 1982, the names of black and white police officers are commemorated together on the Roll of Honour, which had not been common practice before.

The year of the unveiling of the memorial, 1984, was also the year of the formation of the United Democratic Front (UDF), an umbrella opposition organisation drawing together many anti-apartheid initiatives and groups within the country. The emergence of this powerful and co-ordinated opposition movement was a clear signal that the “winning of hearts and minds” strategy was not working out as hoped by Botha and his government.

### 2.2.7 Continued meaning of the memorial

Ironically, the importance of the memorial in honouring police officers' sacrifices and as a "message of comfort and encouragement" (Dippenaar 1988:685) increased as the civil unrest swelled. Townships literally became battlegrounds, and attacks on police were no longer isolated incidents. Police officers' houses in townships were looted and black police officers, long considered the ultimate betrayers of black people, were attacked and killed (Giliomee 2003:613). Many black police officers were thereafter moved out of their township homes and into barracks at police stations. The SAP also formed special guard units to protect dignitaries and key sites from guerrilla attacks (Brewer 1994:293). With South African troops (both police and defence force) still fighting against Cuban troops in Angola and still attacking SWAPO in Namibia, "between 1985 and 1988 the Afrikaner nightmare of simultaneously suppressing a continuing uprising and fighting a frontier war" came true (Giliomee 2003:615). Thus, some of the white population's and government's confidence, which had prevailed at the beginning of Botha's premiership, dissipated with the intensifying protest and the advances the ANC/UDF made in the townships. In response, Botha embarked on a drive to further politicise the police, and militarise politics. In June 1985 a State of Emergency was declared and the State Security Council, originally a cabinet subcommittee, became the central decision-making organ.<sup>46</sup>

From the State and Security Council also came the directives to tap into and exploit prevailing political, ethnic and generational grievances among the black population; certain fractions were to be trained and armed, in order to carry out an "anti-revolutionary" role. This included groups such as Inkatha, political groups in the Ciskei, local vigilante groups, and any desperate and willing recruits, often from the rural areas. The latter received a superficial, six-week policing crash course and became the infamous *kitskonstabels* (instant constables) (Ellis 1998:266-275).

Ellis (1998) argues that the idea was to fight fire with fire. The uprisings in the township were understood or interpreted by the government to be a guerrilla war fostered by the Communist-led insurgency movement. Thus the government intended to employ a

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<sup>46</sup> The State Security Council was a sub-committee of the Cabinet. As Ellis (1998:271) argues, "after it had acquired its own full time secretariat in 1979, [it] became more powerful than the cabinet itself." Its task was to oversee the so-called local Joint Management Committees which combined security and welfare departments, reflecting the double-bind strategy of social upliftment and the brutal crackdown on anti-apartheid activists.

kind of guerrilla movement of its own, using experienced personnel of units which had carried out atrocities in bordering countries to fight back against ANC/UDF advances in townships and provinces, and to instigate infighting there. During this period, many of the security units received a huge boost in staff, money and importance, which probably increased their ruthlessness and lack of answerability to any state authority.

At the same time, public-order police were being sent into townships on a regular basis in military fashion, in armoured vehicles called Casspirs with wide discretion to shoot to kill as a way of quelling unrest. Often, it was the unrest instigated by the apartheid security forces themselves which the public-order units had to confront, which they did in an equally ruthless manner (Marks 2005).

The brutality and the counter-insurgency tactics brought about temporary victories for the government. By 1988 the overall uprising had temporarily been quelled, with many activists dead, incarcerated and tortured; townships were disabled by being deeply embattled in faction fights. However, there was no promise of long-term stability (Giliomee 2003:589).

F.W. de Klerk came to power in 1989, due to P.W. Botha's bad health, and negotiations started between the ANC and the National Party. State sponsored guerrilla tactics, especially the instigation of fighting between Inkatha and ANC supporters, violently erupted on the Witwatersrand and in Natal (now KwaZulu-Natal). Another form of destabilisation by secret government forces was the "launching of unprovoked and random attacks on blacks, particularly among the commuters on Johannesburg's railway network" (Ross 1999:187). The ANC took this as a reason to refuse to participate in negotiations. The ANC leaders argued that the Nationalist Party government was only committed to negotiations on the surface, while simultaneously using its security forces to run a destabilisation campaign. This campaign, said the ANC, was an attempt to discredit it; to make it look as if an ANC government would bring terror, as if the ANC was unable to protect the population. After the breakdown of negotiations the violence continued, culminating in the Boipatong massacre in 1992. The possibility of the whole country plunging into a state of violence was what finally brought the parties back to the negotiation table. This time, however, the ANC occupied the moral and strategic high

ground, with the consequence that any disproportionate statutory accommodation of ethnic minorities (such as the Afrikaners) in the future South Africa was ruled out.

The extent to which De Klerk's government knew about counter-insurgency and third-force tactics and the covert activities of the military and police has never been totally clarified. It appears that De Klerk elected to take a passive stand on the security forces, especially since he did not have the special relationship with them that his predecessors did (Ross 1999:187). The first two investigative Commissions (Harms and Khan), which were convened to investigate the nature and extent of "third force" involvement in unrest and violence, proved to be total farces, particularly the Harms Commission. Later, the independently-minded Goldstone Commission substantiated some of the suspicions that there was a government-instigated third force implicated in much of the unrest. De Klerk reacted by firing some individuals and reshuffling the management of the police and military. Mainly, however, he was in denial about the state-sponsored violence, preferring to concentrate on organisational reform processes. He wanted to shift the focus of the police away from political policing towards crime policing. It also emerged that some of the security units and even individual security agents, both within the police and the military, had not acted on direct commands from their superiors, but on their own broad interpretation of what the lack of political curbing of their activities meant; of what in their eyes the government's strategy *should* have been. Sometimes they acted out of personal interest; hence, among other things, the burgeoning of the weapons trade and smuggling (Ellis 1998).

Publicly, the police service and its management were abandoned by the National Party government, in the sense that the government refused to bear responsibility for police atrocities and denied that any of the apartheid governments had ordered extra-legal activities to be carried out. The police argued in their own defence that in carrying out the government's orders they had simply shown their loyalty to the government and should therefore be exempted from political responsibility for the government's deeds. Feeling betrayed, the police directed their focus towards pleasing the new rulers (the ANC), and embarked on a reform process in an attempt to pre-empt outside intervention.

Thus we see that throughout its existence and to the very end of the apartheid era, policing played an explicitly political role. Public order policing, everyday apartheid

policing of “statutory crimes peculiar to South African modes of control” (Chanock 2001:46) and the counter-insurgency role, absorbed and occupied the better part of the capacity of the police force, which had clearly submitted its function to serving the interests of the government of the day. This did not allow for much crime control (in the sense of what is generally accepted as common-law crime) in black townships and homelands (Rauch and Storey 1998:22). Civil duties and crime control received adequate attention only in white areas, so that the claim by the police force that it was performing a non-political civil function, was itself politically driven. Thus, not only was policing about politics, it was *all* about politics. Policing capacity was fully employed to safeguard, albeit in different forms, the security of the white population and the sovereignty of the apartheid state.

Perhaps, sensing that even the claim to civil policing is tainted, the police memorial represents something defensive, and can be seen as playing down the police force’s tainted role. Maybe that is why it does not reach out to the broader public, but remains turned in on itself, ceremonially as well as architecturally. Maybe that is why it invites only police officers to its ceremonies, as well as a few others whose loyalty and receptiveness to this protective maintenance of continuity is assured.

## **2.3 Racial narrative**

### 2.3.1 Hidden traces

There is another narrative that the memorial happens to tell, which is also played down by the assertion of continuity that the memorial suggests through its continued unaltered usage. Depending on where I stand, it becomes more or less palpable. As I move closer to the minute names and dates which are immortalised on the commemorative bronze plaques, it seems that I can hear whispering voices. The names and numbers stand out against the background through their polished shininess. It is as if those left behind have been here over and over again, touching the names and indeed keeping in touch with the dead. This helps to make the names and numbers easier to read. But letters do not just form names, and numbers do not just form dates. In front of every name there is an

administrative code, and it is the letters in some of the codes that strike me. The letter "S" accompanies African surnames and mostly the rank of constable. The letter "W" goes with Afrikaans and occasionally with British surnames, and sometimes with some of the highest ranks. Then there is the "A". It goes with Indian surnames and mostly a low rank. Then finally there is the letter "K" which accompanies white Afrikaner and coloured people's surnames, also going mainly with low ranks. S, W, A and K thus reveal themselves to be the demarcations of race within the police force denoting *Swart* (Black), *Wit* (White), *Asiaties* (Asian) and *Kleurling* (Coloured). However, the letters are only part of the administrative code from 1973 on, the year of the introduction of apartheid racial classification within the police; and they disappear again in 1983. Thus, the memorial bears the traces of apartheid racial classification and speaks of how apartheid played itself out within the police. And this cannot be separated, however, from the general idea of apartheid and the role of policing within apartheid. In addition, the absence of racial markers before 1952 and after 1983 begs the question about the role of race in those periods, the segregation in pre-apartheid policing and the official end to racial classification in the last years of apartheid. It is this history which I will discuss in the following section.

### 2.3.2 Segregation and apartheid within the police

Segregation, and later apartheid, played itself out in terms of racial discrimination in every aspect of policing in South Africa. From the beginning, the relationship between black and white police officers was structured in a way that made sure that although they served in the same organisation, no claim to equality for black officers would flow from it. Black police officers had to remain either in a subservient or in a separate position, not comparable to white police officers.

In the early days of the SAP, black police officers were mainly recruited from the rural areas. The recruitment would take place by way of recruitment tours into the rural areas, sometimes following arrangements with chiefs who would select and nominate recruits. A record of tribal discipline was seen as a good qualification, a guarantee that a black police officer would be willing to submit to the police hierarchy (Shear 1998:308-

312). Shear (1998:292) notes that in this vein W.E. Earle of the Natal Criminal Investigation Department argued in 1912 that "the better native is the kraal native."

By contrast, better-educated Africans from the city were always seen as a threat and challenge to the racial hierarchy within the police. They could cause embarrassment to the racial hierarchy by being better educated than some white police officers, many of whom had a very low educational standard (Chanock 2001:51); or they would make demands about conditions or complain about treatment. They were therefore considered "untrustworthy", "failures", and "prone to corruption and indiscipline" (Shear 1998: 292-293). Elements of this pattern continued right through to the late 1980s when *kitskonstabels* were employed in turbulent townships to destroy opposing community leadership. Their lack of skills and their rural background pitted them against urban blacks and exacerbated the excessive use of force (Cawthra 1994:62).

The pattern of poorly educated black police officers continued within the police by giving differential training to officers of different races. Black police officers received substandard training, or were simply expected to learn on the job. The underlying rationale was to keep to a minimum the advancement which training and skills inadvertently supported. This happened to the disadvantage of police professionalism, so that violence often was used to compensate for a lack of other policing skills. At the same time the education and the skills that better educated black police officers could offer were systematically ignored and under-utilised. For example, up to the mid 1930s, literate police officers would have to report statements orally, with a white police officer writing them down, neatly dividing "oral native tasks" from "white literate tasks". In this sense, "reporting procedures served to...enact subordination" (Shear 1998:346). If training was invested in black recruits, it tended to be with regard to drills such as "saluting, turning and simple marching movements" (Shear 1998:328). Only from 1947 on did black recruits receive a standardised training of eight to ten weeks (Shear 1998:329). Training continued to be segregated in four different training facilities until 1992, corresponding with the four apartheid-defined racial groups (white, black, coloured, Indian).

The carrying of guns and wearing of uniforms, as well as issues of promotion, housing subsidies and pensions, were all subject to further differential treatment. Besides individually approved exceptions under extraordinary circumstances, black police

officers were unarmed until the 1970s. They were only equipped with sticks, *sjamboks* and knobkerries to enforce highly unpopular and often violently resisted laws (Shear 2003).

Differential uniforms, such as shorts instead of long trousers, were used to further confer upon black police officers a status of emasculation, "incomplete adulthood" and inferiority, and to signal this status to the outside (Shear 2003). Black and white officers did not wear the same uniforms until 1976.

Until the 1930s, black police officers had very little prospect of being promoted beyond the lowest rank of constable. For years to come, if considered at all, their promotion depended on their number of years in the service, ignoring any skills they might have acquired or their record of success. Mostly, however, promotion depended on the arbitrariness of white superiors. In the early period of the SAP, only a transfer to the administrative and clerical work of the Native Affairs Department offered a slightly better opportunity for educated black police officers (Shear 1998:334).

Then from the late 1940s on, the shortage of white recruits, group areas policing and later, apartheid's homeland policy, made it necessary to promote black police officers beyond the level of sergeant. For this, however, new ranks were introduced, such as senior sergeant, in order to avoid the appearance of black police officers occupying higher positions than white non-commissioned officers (Brewer 1994:232). This is also reflected on the memorial where "*s/sers*", the abbreviated form of senior sergeant, is only to be found in connection with the letter "S" [*swart/black*] at the beginning of the staff number. It was only in 1978 that the first black police officer was promoted to major, and it would be three more years before black police officers were allowed to have authority over lower-ranking whites.

In addition, black policemen could easily be dismissed on entirely subjective and arbitrary grounds such as "bad character". The ease with which black officers were dismissed as a way of dealing with so-called "ill discipline" was made possible by the abundance of willing black recruits, and also because the investment in a black police officer did not pose much of an economic loss (Brewer 1994: 83).

### 2.3.3 Betrayal, survival, aspiration – recruitment of black police officers

Considering such conditions, it might seem surprising that there was never a shortage of willing black recruits.<sup>47</sup> Why would black people voluntarily submit to a system that systematically discriminated against them and which, in addition, made them complicit in the oppression of other black people? This question reveals certain assumptions about both the homogeneous experience of society from a black perspective and the prevalence of a particular political consciousness. It underestimates the importance of the opportunity and status that policing offered within a limited range of career and employment options. The literature about the different kinds of constraints facing black people and the motivation that made them join the police is limited, however, and only allows for partial reconstruction of an answer.

Shear (1998), looking at the early period of the SAP (up to 1935), provides an insight into the particularity of the social strata from which the SAP drew its black members and the dynamics that underlay such recruitment. As already discussed, tribal structures and patronage relationships with chiefs were used to recruit rural officers with low educational standards (Shear 1998:314). Generally, "black policemen's wages...were geared to a migrant workforce, and like migrant workers" black police officers were expected to live in compounds, without pensions and without family benefits in the case of their death (Shear 1998: 298). During this early period the salary was not suitable for urban blacks who aspired to a middle-class life; they could earn more in other sectors. In addition, the obligation to stay in barracks and to leave their families vulnerable because of their absence discouraged them from joining the police. The educated and Christian social background of urban blacks also clashed with the rural and traditional one of the majority of black recruits and further repelled urban black people from joining the police (Shear 1998: 297-299).

In these conditions it is not surprising that many police officers came from the ranks of the very poor. Major agricultural restructuring following the 1913 Natives Land Act forced blacks off their land, barred black people from becoming individual

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<sup>47</sup> Such "surprise" has been expressed at one point or other in all the treatises on the police that were published at the end of apartheid and the beginning of the transformation period (Brewer 1994; Cawthra 1994; Brodgen and Shearing 1993). One could argue that these authors are informed by a time of high politicisation and united resistance against apartheid and therefore accentuate the notion of complicity. Nevertheless, they have not paid much attention to explaining the surplus of black recruits.

titleholders outside reserves, and banned the sharecropping system. The Natives Land Act, and the reserve and later the homeland system, has been widely viewed as the legislation which compelled the emergence of a black industrial and agricultural proletariat, as it forced people off the land to seek work at the mines or as farm labourers (Ross 1999:90; Van Onselen 1996). It also contributed to augmenting the pool of willing black recruits for the police.

Finally, as Shear points out, for some, becoming a police officer was motivated by what was to be gained by bypassing local structures of authority and loyalty. It becomes clear that from an early stage black recruitment thrived on tapping into and exploiting fissures due to local grievances between different social groups and ethnicities, as well as between rural and urban, and between mission-school educated and traditionalist.

The Police Inquiry Commission in 1937 and the Landsdown Commission in 1947 both recommended better pay to attract better-educated black police officers (Shear 1998:311). Although these recommendations were not fully implemented, in the late 1930s the improved pay meant that many, particularly those educated in rural mission schools, chose policing over teaching, as the pay was better (Shear 1998:314). The recommendation of the Landsdown Commission also led to the establishment of formal training for black police officers. With this came a demand for literacy and a minimum school education among black recruits (Brewer 1994:175). Later, when the apartheid ideology resulted in the establishment of homeland police and black-run police stations, the entry requirement was raised to Standard Five (now called Grade 7). This opened up the possibility of promotion to higher ranks, and offered perks and pensions. Thus, even for black people, policing became a career in so far as it offered the possibility for social mobility, if not for themselves then for their children.

Finally, becoming a police officer at an urban police station allowed black people to receive residence permits for urban areas. Especially in the 1960s when pass laws were being tightened, this proved extremely compelling to those who did not want to leave urban areas or to those who wanted to enter urban areas (Interview with police officers at Johannesburg Central). In a half-reportage and half-fictional form, the story of a police officer in the book *Deafening Silence* by John Miles (1996) allows us some insight into the recruitment patterns in the 1970s. It shows that the rural pattern, as well as tapping

into social fissures, continued to be the main lines along which recruitment took place. The main character is Tumelo John Moleko, who comes from a very poor rural background. His parents are impoverished farm labourers, but Moleko manages to leave school with a Standard Five certificate, which allows him to apply for and be admitted into the police. The huge discrepancy between his rural life and the better life which employment offers soon becomes apparent. Even his room at the police barracks seems luxuriant to him. When he gets married he first has to lodge with his wife at an aunt's place, but soon he gets promoted. With some extra income made on the side, he is able to buy a house and a second-hand car. He feels as if he has achieved everything he ever wanted in life.

Although only a secondary character, the story of Moleko's colleague Sithole provides a glimpse into recruitment in urban areas. Sithole's family is well-educated and politically very conscious. His brother, "who has for ever been the bright one" of the two, went into exile and became a medical doctor in Canada (Miles 1996:22). In contrast, Sithole feels neglected by his family. In a provocative gesture he joins the police, for which "his family apparently refused to forgive him" (1996:24). Having alienated his family through his decision, he fully embraces the police and later even becomes a security agent in the Special Branch. This shows what consequences recruitment from the black urban middle class could have and how, on the level of the family, recruitment exploited educational cleavages and grievances, pitting people against each other.

#### 2.3.4 The need for black recruits

The inclusion of black people into the police force was always connected with a sense of uneasiness from the side of government since it meant transferring power to those who were supposed to be ruled (Shear 1998:229-230). However, apartheid and even pre-apartheid segregationist and colonial rule were continuously hampered by the ultimate lack of viability of a whites-only force, even in policing areas and policing units that exclusively served white areas. Not only the police force, but apartheid South Africa in general, was affected by conditions and forces which rendered apartheid ideology inconsistent and hypocritical. For example, actual state practice always allowed for and

accommodated the nexus between restricting urbanisation and the need for a cheap but functional labour force, even during the heyday of the homeland policy during the 1960s.<sup>48</sup>

For the police, the need for the increased recruitment of black police officers was exacerbated by the lack of suitable white recruits. In the early days of Union, (until the late 1920s) there was a huge turnover of white recruits and it took some time before policing came to be seen as an acceptable career for whites (Shear 1998:239). Even then, as Brewer (1994:109) remarks, "they were not necessarily those 'educated types' whom the police wanted to attract." Furthermore, for whites, policing was often a vehicle for social aspiration, but only if there was no other way to climb the social ladder. This meant that whenever there was a period of economic expansion – for example, such as after World War II, and particularly in the 1960s and 1970s – the SAP would struggle to find enough white recruits (Van Onselen 1960:159, Posel 1999). In addition, the partisanship of the police, before 1949 as pro-British/English-speaking and then from 1949 on as pro-Afrikaner, made it unattractive first for Afrikaners and then for English-speakers to join the police, which diminished the pool of white recruits even more. To make up for the consistent understaffing of white police officers, the SAP management turned actively towards the rural areas. They lowered the entry requirements with regard to age and educational standard for white recruits (Brewer 1994:190). This led to a compromised "professionalism" and a chronic lack of skills (Posel 1999).<sup>49</sup> Van Onselen (1960:159) vividly describes this development and expresses his worries about the decline of the standards:

Desperate measures were, therefore, implemented to bring the force to strength to combat the ever-increasing crime of the post-war years. There is no question that the relaxing of the borderline cases had a universally bad effect on the character and the discipline of the force and men were admitted who would once not have been considered.

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<sup>48</sup> Industries would not have been able to function without cheap migrant labour or without a stable skilled, or at least semi-skilled, urban labour force.

<sup>49</sup> To at least partly counter the low education standard, the SAP introduced internal education. As an alternative to matric, white police officers could study for a Diploma in Police Science through the correspondence-based University of South Africa (UNISA).

The shortage of white male recruits was the main reason why the SAP admitted white women into the police force in 1972 (Shear 1998:228). Interestingly, women were required to have at least matric, which made the average white policewoman in the SAP better educated than the average white policeman.

The remaining lack of manpower had to be made up with black recruits. It was also a convenient economic solution, since the employment of black police officers was much cheaper than the employment of white police officers, since for blacks there was little investment in training, fewer perks and a lower salaries. Brewer argues, therefore, that the "own areas police" so central to apartheid policing ideology was not just an ideological move, but at least in part a solution to the problem that there would never be a white police force big enough to control the black population (Brewer 1994:191).

Black police officers also brought particular skills to the job which made them necessary for the SAP. They were instrumental in closing the gap of the white state's lack of knowledge of its black subjects. They could speak African languages,<sup>50</sup> understand certain social and cultural aspects, and move among other black people without being recognised. This situation institutionalised the role of black police officers within the SAPS as informers (Shear 1998: 319-323).

### 2.3.5 Apartheid policing – separate policing

While there always had been racially separate areas within South Africa, apartheid made this separation rigid, and attempted to weed out all possible racial grey zones and to stop racial integration. In addition, apartheid ideology and practice assigned every person to an ethnically defined group, dividing the non-white population into Asian, coloured and various ethnic African groups (Zulu, Xhosa, Venda, North Sotho, South Sotho, Tswana, Tsonga, Ndebele and Swazi). This classification provided the basis for further apartheid interventions and attempts at social engineering. Under the Group Areas Act, each of the four groups (whites, Asians, coloureds, and Africans) was assigned to a separate housing area, which would come to spatially structure every city,

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<sup>50</sup> There were far more black police officers who were at least bilingual than there were white police officers who could speak an African language.

town and village in the country. Apartheid was further entrenched by the introduction of "homelands" that were supposed to become (through deportation and restriction of movement to urban areas) independent territories for each of the African ethnic groups. However, the practice of only minimally interfering with white land ownership in those areas made sure that most homelands were not cohesive territories but rather a collection of patches (Ross 1999:135). The economic viability of the homelands was further rendered impossible by the fact that there was far too little land for far too many people, and by the absence of industries which could have absorbed the landless labour force (Giliomee 2003:515/6). Thus, homelands simply served to justify the restriction on urbanisation and to legitimise the denial of franchise to the black population. At the same time, by serving as labour pools, the policy supported the migrant labour system, which served urban industry and capital well.

Still, ideologically speaking, apartheid envisaged a total independence of each ethnic group, which in turn demanded separate policing of the different areas. This translated into the concept of homeland police forces and of police stations run by Indians, coloureds and Africans in their respective urban and peri-urban areas.

In 1976, the Transkei, the first homeland to be given "independence", was also given its own homeland police. The same moves were subsequently made in the case of Venda, Ciskei and Bophuthatswana. The other homelands, although not seen as independent, were still given their "own" police forces. KwaZulu, where so-called independence was resisted by the black political elite, nonetheless had its own police force, the KwaZulu Police (Cawthra 1994:63-66).

In the black urban and peri-urban areas attempts were made to establish black-run police stations. The first black station commander was appointed in 1951; he was responsible for a township in King Williams Town. This was followed by similar appointments elsewhere in the Eastern Cape and on the Witwatersrand (Brewer 1994:192). By 1978, accelerated through a so-called reform process – including the Bantu Administration Act, which aimed at increasing self-governance of black areas – 69 stations were staffed exclusively by black officers. Townships were also subjected to the so-called municipal police who were there to serve and protect the Black Local Authorities.

However, nowhere did this development lead to true autonomy, either of police stations in black townships or of the homeland police forces or of the municipal police forces. While white police officers disappeared from the immediate picture, accountability, training, decisions about resources and policy decisions were all kept firmly in the hands of the central white management of the SAP. The withdrawal of white, often better-trained, police officers from townships sometimes even caused a decline in policing. In addition, the lack of experienced leadership – due to sudden rapid promotion (Cawthra 1994:63) – and the lack of resources in staff and equipment meant that policing in black areas was bound to fail.

Most importantly, however, the mandate of these police forces was not so much the control of common crime, but first and foremost the enforcement and policing of racial boundaries and the suppression of dissent. Because of this, black police in black areas were never able to establish much legitimacy among the population.<sup>51</sup>

The lack of crime control went back as far as the emergence of townships (Kynoch 2005:7) and was firmly entrenched as a structural feature of apartheid policing. Because of this, “township policing encouraged both criminal gang activity and the emergence of vigilante organisations” (Kynoch 2005:4). Kynoch argues that the proliferation of gangs and the increase of violent crime in the 1950s was not matched by an increase of policing activity. Gangs quite happily boasted that they could go about their violent business without the police bothering them (Kynoch 2005:6). Such conditions produced the formation of civil guards and vigilante groups. These groups, however, were always a two-edged sword and characteristically blurred the lines of the law. While they aimed at protecting certain sections of the black population, they tended to use equally violent methods and brutal revenge to do so. They became decisive in the factional politics of townships as well as in fights along generational, ethnic, migrant-resident and gender lines (Kynoch 2005:7-9; Goodhew 1993:447-470). Local government and police often actively encouraged vigilantes, and sometimes even armed them, in order to control areas or to instigate township unrest and crush political opposition.

In the homelands, security legislation was even harsher than in the rest of the country, which allowed for even more brutal oppression of any dissent (Cawthra

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<sup>51</sup> Besides occasionally through patronage.

1994:663). In addition, partisan policing by the homeland forces helped to keep homeland leaders in favour with the apartheid government – it also allowed them to back up their local politics with a police force. Policing of crime was less important than these political functions (Marks 2005:50).

Another structural feature of policing of the black population was the use of violence. This went back as far as the beginnings of the SAP. Shear describes how in 1912 senior officers denied complaints of abusive behaviour towards black civilians by claiming that black policemen had no discretion to act independently of white policemen's orders. Shear (1998:355) concludes "that since such denial was hardly credible given the sheer number and consistency of complaints, one must infer that black policemen's harsh treatment of African civilians was a part of [the] structured function of the police institution." The fostering of fear of the police was seen as the easiest way to impose regulations on them (Shear 1998:355).

The policing of pass and labour laws was hated by black people. There was tremendous resentment from black urban residents towards rurally recruited black police officers. This, combined with the disdain white police officers had for black people, meant that on many occasions the police abused their powers and used extra-legal force.<sup>52</sup> The policing of laws that criminalised everyday life, in combination with the lack of skills and the perceived lack of legitimacy of police officers, encouraged a policing that operated through fear and violence. In the 1960s, when influx control was at its peak and when the category of the urbanised African had been abandoned, the pass laws had become the prime tool of power over the black population in the form of legally sanctioned harassment.

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<sup>52</sup> Divisions within the black population because of the rural-urban divide as well as educational, religious and class differences provided fertile ground for confrontations between black urban city dwellers and black constables, who had mostly been recruited from the rural areas. Resentment on both sides, accusations of being traitors, the fear of the uncivilised, humiliation, and using police powers to harass women were some of the issues that played themselves out as part of these divisions (Shear 1998:363).

Later, as the townships became more unruly, the police increasingly concentrated on public order policing to control the unrest and on security policing to fight opposition. Already during the Sharpeville protest of 1960 (against the pass laws), and more so at the time of the Soweto riots of 1976, the brutality and the lack of preparedness for such situations had become visible (Marks 2005:42). SAP management half-heartedly tried to keep up through increased training and more equipment. However, the police remained understaffed and under-trained in non-violent methods. Janine Rauch (2004) argues that South Africa's isolation cut it off from new developments in crowd control techniques which meant that, even if training was provided, anti-escalation was never on the agenda. Chains of command regularly broke down, leaving low-ranking officers with their own fearful defensiveness (Jeffrey 1991). This translated into police techniques in which torture and brutality were the main tools for (criminal or political) investigations; public order policing became a matter of dispersing crowds, and there was easy recourse to lethal weapons (Marks 2005).

Also, the ideology of the time, especially after 1976, simply blamed the protests on the "total onslaught" and communist insurgency, which instigated the "unruly mob" and the "black peril". The demonising, de-individualising and dehumanising of the protesters contributed substantially to the heavy-handed attacks on protesters and at the same time provided an excuse for the abuse of force (Posel 2001).

Meanwhile, the law and judicial practice contributed substantially to rationalising the use of violence. The police could act out their brutality with impunity. The formal and statutory norms applicable, which allowed for the use of force under certain conditions in police practice, had been increasingly widened. Weitzer and Beattie (1994), in their analysis of police killings in the 1980s, explain that a broad range of legal devices were available to justify the use of (deadly) force. The Criminal Procedure Act "stipulates that a police officer may use deadly force to make an arrest when a person is reasonably suspected of having committed an offence punishable by more than six months in prison or resists or flees and arrest" (Weitzer and Beattie 1994:102). Being attacked and acting in obedience to orders were commonly acceptable as justifiable circumstance for the use of force, even of lethal force. Emergency regulations and security legislation legalised the

application of force and discretion over detention even further, and placed the burden of proof for extra-legal activity on the victims (Weitzer and Beattie 1994).

Many complaints against the police never reached the courts. The state paid huge sums of money for compensation for complainants, thus preventing complaints from becoming a public and political matter. Other cases were averted by intimidating complainants and frustrating their attempts to lay a complaint. When cases did reach the courts as criminal cases, judges and prosecutors proved to have a broad understanding of the use of the force by police, rationalising it as part of their jobs and part of the climate of siege at the time. They also accepted that use of force was making up for the lack of police skills.

Apartheid policing in the end was a messy system. The brutality with which political dissent was treated, and the military appearance and performance of the police in the townships, has often been mistaken for a sign of strength. However, while some elite police and security officers were highly skilled, particularly in the Special Branch and some security units, apartheid policing in general was always dependent on its own contradictions and to a large extent substituted violence for control. It wanted to maintain a white police force as a sign of white sovereignty, but for that it had to lower its standards. To stay in control it needed black police officers as informers and as manpower to bridge the gaps between the state and its subjects. It announced the independence of black homelands, but it always kept ultimate control. The authority given to black police in certain areas was always undermined by providing substandard training and equipment. The use of force compensated for the lack of legitimacy, lack of skills and equipment, and lack of manpower and co-ordination. Thus in many ways brutality was a deficiency made into strategy. The law and the legal system legitimised and therefore in many ways normalised this brutality. Lenient sentences and excusing of brutal behaviour inscribed brutality as a necessary part of police work.

This brings us back to the police memorial, where the shadows of apartheid policing are inscribed through the marking of race. Interestingly, the memorial does display names of black police officers from the very beginning of the SAP. Honouring black and white officers together was a gesture deliberately made at the occasion of the opening of the memorial, symbolic of P.W. Botha's "winning hearts and minds" and

“total strategy”. In fact, however, the death of black police officers was only actually honoured from the mid 1960s on, when for the first time “a wreath would be supplied at state expense for the funeral of Black policemen who had lost their lives in the course of duty” (Brewer 1994:238). Thus the memorial’s commemoration of black police officers going back to 1913 was clearly a manipulation of history. The retrospective honouring of black and white police officers *together* – something that would never have been possible at the time of their deaths – had the effect of erasing, or attempting to erase, the differential treatment which had been the order of the day for so many years.

Furthermore, through the continued practice of inscribing the names of police officers into the memorial (done today without racial classification), the memorial powerfully connects the present with the past. It builds a bridge of continuity, playing down racial divisions. However, through the irrevocable engraving of apartheid racial classification into the administrative codification of the staff numbers, the history of apartheid policing slips through the assertion of the memorial’s meta-narrative which presumes that black and white police officers had always been on an equal footing. Like a scar, which fades but which never really disappears and always embodies the moment of the infliction of the wound, those administrative numbers remain.

## **2.4 The self-referential discourse of the police**

### 2.4.1 Continuous modernisation

One might wonder why and how it is that the police force, in the light of its partisan and racially determined policing, has been able to maintain its claim to an apolitical notion of policing from the time when the SAP was founded in 1913, to its renaming as the South African Police Services (SAPS) after 1994, until today. Is it pure police *fiction*, as Elrena van der Spuy suggests (Van der Spuy 1990:103)? Or is it perhaps a different version of history, characterised by a specific selection of “facts” accepted as truth by a police constituency?

Van der Spuy's (1990) analysis of Dippenaar's (1988) *History of the South African Police 1913-1988* provides us with an insight into how the police force portrays itself. It is a history of the police written as a commemorative volume for the seventy-fifth anniversary of the police, and therefore, as Van der Spuy (1990:86) argues, it can be best described as a "*police* history of the police." It is in the description of its long-term development that the police preoccupation with presenting itself as having evolved as a modern police force becomes obvious. Issues such as technological advancement, institutional and bureaucratic differentiation and professionalisation are elaborated in great detail in the book. The acquisition of high-tech weaponry, modes of transport, and advanced forensic capability; the establishment of specialised branches and task forces; and the lifting of the educational standard and the supposed introduction of an academic ethos (through offering study opportunities through correspondence at UNISA), are all taken as indications of how "professional" the SAP has become, evoking similar developments in the emergence of international modern policing.<sup>53</sup>

In a similar way, the Police Service's Police Museum exhibits the force's technical evolution. This comes to stand for the continued evolution of the police, which overshadows the issues of partisanship and political complicity. The part of the museum, which in the past held a range of exhibits that proudly highlighted the ideological role of the police during apartheid, has been closed. Jean and John Comaroff (2004b) read this seemingly indefinite closure as indicative of the trouble the SAPS has in finding a new way of representing itself – both in terms of its history and its contemporary self-image – without betraying either its loyalty towards its members and its need to please public visitors. What has been opened in part of the museum is a so-called transport museum, which displays, among others, old bicycles, the first Mercedes Benz sedan purchased by the SAP, and a 1940 Harley Davidson. The museum appears here to have diverted attention from the actual activity of the police force and found a way to demonstrate an innocuous and interesting sense of progression through technological advances in modes

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<sup>53</sup> Van der Spuy's analysis is primarily interested in the way Dippenaar represents and justifies the brutal employment of force in crowd control (obviously the most immediate concern at the time of the publication of the book). However, for the sake of my analysis I am more interested in some of the long-term imaginings that have some structural substance and that are more tainted because of selective representation; the direct contribution of the Afrikaner nationalist state ideology of the 1980s is of lesser importance in this regard.

of transport. Perhaps in this way the police force has found another way to iron out the frictions of history and corroborate its narrative of continuity (Hornberger: forthcoming).

### 3.4.2 The rule of law

Another aspect of policing that the police force can invoke in order to stress its continuity, and particularly its continuity in terms of integrity, is the aspect of “serving the law”. As Brewer (1994:11) suggests, “in presenting their public image, the police themselves draw on the liberal tradition of policing.” What Omar (1990:17) calls the “lawlessness of law”, Giliomee (2003:626) casts in the following terms:

Apartheid showed a gross disrespect for human rights and international law, but it was never lawless. The state had developed a strong tradition of legalism. Afrikaner rule was characterised by an obsession with imposing restrictions through proper legislation and with due process in executing these laws. Opponents of the National Party government were regularly appointed as judges. The government did not attempt to cover up deaths in detention, despite a torrent of unfavourable publicity. Although political opponents were at the mercy of their interrogators in prison, both the policeman and the prisoner knew that neither was outside the law – as Jews were in Nazi Germany. If there could not be survival in justice, survival at least had to observe properly drafted and promulgated laws and regulations

In a less defensive and less contentious way, Ross (1999:440) argues as follows:

Moreover, the apartheid state had to maintain the formalities of the law at least enough to make plausible to those who looked kindly on it that it was a bulwark of Christian civilization against communist barbarity.

Ross (1999:440) immediately balances the impression of legitimacy and decency that lawfulness might convey by adding:

...this though, is much more outbalanced by the uncontrolled brutality with which agents of the state attempted to maintain order. These included the army, a whole variety of shadowy, mutually competitive and lethal security bodies and the police.

Still, the two authors' comments highlight the apartheid government's obsession with law, and the desire to present itself as a democracy. It is against this background that we have to understand what the police force makes of the fact that its own members have themselves, at times, been tried in the courts of law. In this respect, the outcome of many court cases against the police bolstered the police's sense that they were almost by definition indemnified for many of their acts, because the law allowed for very broad discretion in the use of force, including lethal force. The practice of the law – meaning cases heard and adjudicated by prosecutors, magistrates and judges – frequently applied extenuating circumstances that had the effect of favouring police practice. Nevertheless, the fact remained that police officers were tried at times for charges of abuse of (lethal) force, and that those trials received a great deal of publicity (Weitzer and Beattie 1994:99-117).

Moreover, apartheid legislation in general, and the State of Emergency and security legislation in particular, had rendered illegal certain activities of (black) people, such as demonstrations, gatherings, and work migration. Such illegality was not only invoked by the police, it was still emphasised, for instance, in 1991 by the researcher Anthea Jeffrey of the South African Institute of Race Relations – an institute critical of the apartheid government on the one hand, but strongly committed to the basic idea of the “rule of law” on the other. Jeffrey (1991) clearly defends the aim (although not the means) of the police to quell protest marches. Such liberal and compliant sentiments could be invoked by the police to support their claim that at all times they have been accountable to the law, and to refute the allegations that they had been a law unto themselves.

#### 2.4.3 On their own initiative

There is another line of argument which the police use when they react to being told that they can only become democratic through a radical incision and outside intervention (see below on the human rights narrative). This argument emphasises the fact that many of the reforms which have been attributed to the post-1994 period, were actually implemented long before 1994, or even before 1991. Some of these reforms were only rhetorical; others were more substantial. Some of them do indeed go back to the 1980s, to P.W. Botha and his strategy of “winning hearts and minds”; others were initiated in the early negotiation period by F.W. de Klerk to show goodwill in the face of “third force” allegations; still others arose from the 1991 Peace Accord. These measures include the introduction of community policing; shifts away from politics towards “real crime”; the Strategic Plan for the SAP, which acknowledged for the first time “the necessity of a representative, depoliticised, demilitarised, service oriented police” (Marks 2005:57); an increased policing budget in order to provide better policing; and the integration of surrogate police, such as *kitkonstabels* (Brewer 1994:321-322).

It has been argued that the police management introduced some of these reforms in order to be able to keep management discretion in its own hands and to avoid provoking interference from outside (Shaw 2002). Even later, towards 1994, the police took the lead in certain decisions, since the ANC did not have its own “party line” on the police. The ANC did not have its own police force, and as a result the chief negotiator on behalf of the ANC was less politically dogmatic on the subject of the police (Rauch 2004:14). The idea of a centrally managed police force (instead of a more federal governance model) suited both police management and ANC alike, and the police were thus quite willing to diverge from the National Party negotiation line of favouring a more provincial model (Rauch 2004:14). In these circumstances it was relatively easy for the police to present any proposed changes as if they emanated directly from themselves, and therefore as if they had been self-imposed rather than externally enforced. Janine Rauch (2004) further shows that the policy recommendations, which were made at the conclusion of the Truth and Reconciliation (TRC) report, had by that time already been implemented.<sup>54</sup> The police could, therefore, present the reforms as gradual ones, and

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<sup>54</sup> Not all those reforms can be credited to the police management. Several of the reforms were initiated by the Police Board, which was made up of activists, experts and lawyers – outsiders with roots in the anti-

position themselves as continuously and progressively working towards the realisation of civil policing.

#### 2.4.4 Unanimity between black and white police officers

Such a position, which stresses continuity, tends to give the impression that issues of racism within the police force were not as antagonistic or pronounced as racism was in the society as a whole. The line between "outside the police" and "inside the police" is sometimes made out to be decisive. To some extent, the South African Police's "cop culture" assimilated black people and, within limits, created some sense of unity and at times solidarity between white and black police officers (Brewer 1994). Also, in the 1980s, when protest in the townships increased, black police officers often became targets. Being singled out as police officers and rejected by the wider community, was a contributing factor in black police officers' shifting their loyalty to the police force as the only support base and community left for them. In such an environment, racism and racial hierarchies within the police force were often played down or accepted as part of the job by black police officers. Such dynamics and experiences could be used to refute outright claims of racism.

#### 2.4.5 Not responsible

Finally, what proved to be decisive, in terms of the ability of the police to reject accusations that they were solely responsible for the evil deeds they had carried out under apartheid, was how the National Party (NP) dealt with its own responsibility for the atrocities. The party flatly denied having given direct orders for atrocities to be carried out. For their part, the police claimed that they had been obeying orders and could therefore not be held responsible for the brutality. Without doubt, the police felt betrayed by the National Party's stance. Their disappointment coincided with the growth in influence of the anti-apartheid and liberal establishment and its followers, who wanted

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apartheid struggle. The point here, however, is that in terms of these recommendations the police for once did not have problems with the TRC, which generally had been seen by them as painful, frightening and humiliating public scrutiny.

key NP government leaders to take responsibility for many of the killings. In this, the police found some common ground with the new government, from whom they received some support for their claim that they were not solely responsible for their actions.

It is aspects such as these that support the narrative of civil policing and its claim to historical continuity. The self-referential history presented by the police cites several factors to substantiate continuity – gradual rather than radical change; internally motivated and self-designed change, instead of change merely imposed by the ANC and the post-apartheid establishment; simple adherence to the rule of law and accountability towards the law; and carrying out orders rather than accepting responsibility for atrocities. It is a narrative which allows for the expression of loyalty towards its members beyond the winds of political change and the tides of history; or as mentioned in Dippenaar's (1988:718) police history: "...the Force never forgets its members. Each policeman is a special person and is seen as that wherever he is and whatever he has done."

However, this is a very fragile discourse, if not a discredited one. It has little currency outside the self-referential space of the police memorial and its guests. It has to shield itself from contestation because it could so easily be contradicted by a more powerful narrative that carries much more credibility with the broader public, the national government, civil society and international bodies.

## **2.5 Making the cut or just another myth? – The human rights' version of events**

What does the memorial shield itself from, and why is it so self-referential in its assertion of continuity? Beyond the boundaries of its amphitheatre, where it can perform its own version of history, a different narrative about the police prevails. This other narrative does not make allowances for any of the continuity or the gradual changes over time. Rather, it is a narrative which stresses the before and after of history – apartheid and post-apartheid, apartheid and democracy, arbitrariness and rule of law. It elevates 1994 to a seminal date that turned everything upside down, that marked the end of one history

and heralded the beginning of another. It is a narrative of change, a story whose heroes are human rights and democratic accountability, and which uses the evils of the past to legitimise the measure of today as good (Wilson 2001). There is much evidence to make this narrative a credible one. The narrative goes as follows:

In 1994, eleven former police forces were merged into one centralised police force. As agreed by police management and ANC negotiators, policing would remain a national function with limited provincial control. Military ranks in the police were abolished and replaced with civil ones. To mark its newness and its reorientation, the South African Police (SAP) was renamed the South African Police Service (SAPS). The addition of 'Service' to its name was meant to reflect the police's change of philosophy towards service delivery and a civil approach to policing. The old emblem with its two springboks and a coat of arms was discarded and a new one was introduced, with an aloe plant at its centre. The aloe symbolises "resilience and steadfastness": according to a police brochure, it leaves its "old dry leaves behind at the bottom of the stem while creating better and stronger leaves high up on the stem" (SAPS 2005:14). New uniforms and insignia for the various ranks were introduced. The change of name and symbolic paraphernalia were inaugurated with much ceremonial splendour and public announcements.

Institutional mechanisms reflective of the international policy consensus on police transformation (see introduction), through which a human rights based approach to policing was to be implemented, were then introduced. The most prominent were the Independent Complaints Directorate (ICD) and the advancement of community policing in the form of Community Policing Forums (CPFs). These two instruments of accountability were statutorily defined and made obligatory by the Interim Constitution.<sup>55</sup> The ICD was established to investigate deaths in custody and other complaints of police misconduct. Although community policing had its forerunners, the idea now was to infuse the whole organisation with the idea of community policing instead of just nominating single officers to serve as liaison officers. Furthermore, Community Policing Forums were to give communities a way of influencing policing in their areas. The

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<sup>55</sup> Later the provisions were considered too detailed to feature in the Constitution. They were removed from the Constitution and included in the 1995 Police Act.

predominance that these mechanisms occupied on the transformation agenda is reflected in the fact that civil society, in the form of (local) non-governmental organisations (NGOs), began concentrating their research on evaluating the implementation of these mechanisms (see for example Rakgoadi 1995; Mistry 1996, 1998; Shearing 1998; Melville 1999; Dixon 2000; Palmer 2004).

The idea of accountability for the police was further entrenched through the relatively broad influence granted to the Minister over day-to-day policing matters, and through the parliamentary standing committee on Safety and Security (Rauch 2004:16-17). From 1995 on an Annual Police Plan had to be tabled and discussed in Parliament. Very prominent as well, at least until 1998, was the Civilian Secretariat for Safety and Security: staffed with civilian (former activist) academics and lawyers, its institutional hierarchy and status positioned it on a level equal to and parallel to the police commissioner. Its function was to advise the Minister on policy developments, to provide civilian oversight over the SAPS and to monitor police performance (Shaw 2002:32).

Equally important, and presented as watershed initiatives, were the legal changes grounded in the Constitution and based on human rights. The Constitution acted as a safeguard that government would never become a rule unto itself again, and constitutional principles informed all laws in the country. This compelled a whole range of legal and policy initiatives. Legal changes ranged from the statutory provisions for the ICD and CPFs, to revisions to legislation and the introduction of new legislation (including the design of an entirely new Police Act). Legislative reform included reworking the Domestic Violence Act and amendments to the Criminal Procedure Act (CPA), especially with regard to the use of force and bail procedures. This was further complemented by the "creation of numerous 'watchdog' oversight bodies to monitor human rights standards and investigate violations" (Rauch 2004:18). The mandates of the Human Rights Commission and the Gender Commission were not exclusively to monitor the police, but they subsumed this role under their broader scope. Finally, a framework was established for how to deal with demonstrations and how to regulate gatherings; this drew heavily, and attempted to reverse, the experiences of the 1980s and its escalatory form of "crowd control" (Shaw 2002, Marks 2005).

Some of these legal changes demanded and informed policy changes internal to the police. Central to the institutional change was the introduction of affirmative action, which was intended to correct the racial imbalance of ranks and undo the historical disadvantage of black police officers. More related to policing practice was the revision of standing orders governing day-to-day police conduct, the introduction of a rigorous selection system for new staff, the introduction of various Codes of Conduct, the redrafting of basic training curricula, the development of anti-torture regulations and policies governing the use of force (especially lethal force but also with regard to non-lethal weaponry), and the design of a human rights training course (Rauch 2004:19).

The Truth and Reconciliation Commission, set up to enable a peaceful transition, was a symbolic high point among the range of political and judicial events which inaugurated the beginning of the "new South Africa".<sup>56</sup> For the police force, the TRC was relevant in various ways. Firstly, it brought to light police involvement in the violence from 1960 on. As Janine Rauch (2004:34) comments:

The intense media coverage of the TRC proceedings revealed to many ordinary South African [and even to many police officers] the extent of police involvement in apartheid atrocities. Much of the detail was revealed in the 'victim hearings' convened by the HRV [Human Rights Violations] Committee which gave victims of apartheid violations an opportunity to tell their stories.

About 250 police officers applied for amnesty; meaning that 6% of security police officers were willing to disclose their involvement in atrocities in exchange for amnesty (Rauch 2004:39). Those disclosures, of which the most prominent was by Eugene de Kok about the workings of the Vlaakplas Commando (see also Pauw 1997), put on record the nature of former security policing and the atrocities committed by the SAP. In addition, the TRC's stress on truth and reconciliation, often in the form of cleansing and spiritual healing, advanced the idea of a new beginning.

The TRC was also significant for the police because it enabled the "sunset clause" arrangement, which protected civil servants from retrenchment and indemnified security

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<sup>56</sup> The Promotion of National Unity and Reconciliation Act, the Act formalising the procedure and exact mandate of the TRC, was only passed in June 1995 and the TRC only began to operate in early 1996. However, the idea of an Amnesty Commission of some form was mooted in 1990, and the plans were given their final shape in 1994, just before the first democratic elections.

forces from prosecution in exchange for full disclosure. This meant that, in principle, the personnel of the SAP would remain very much the same. This clearly challenged the narrative of change. However, a range of interventions was envisioned which would safeguard the narrative of historical incision, completeness of change and a new beginning.

The incoming ANC Minister of Justice saw the change of police officers as happening by “infusing them with new, humane and democratic values...” (quoted in Shaw 2002:27). In a similar vein, in 1993, at a time when the members of SAP management played along quite convincingly and took on the idea of changing themselves, the police journal *Servamus* published an article detailing what the changes would be and what it would mean for individual police officers:

Wanneer ons onself dus objektief en eerlik met die gevolge (konsekwensies) van die onderhandelingsproses konfronteer, is dit duidelik dat ons in die nuwe Suid Afrika nog steeds polisiemanne kan wees, *in der waarheid beter polisiemanne*. Die oomblik as ons dit besef en aanvaar maak ons 'n *psigologiese sprong van die verlede* na die toekoms, en kry die dagelike gebeur en veranderinge om ons nuwe betekenis. Diegene wat die *sprong* maak verkry 'n bevrydende perspektief op die gebeure en verloor in 'n groot mate daardie benouende vrees en angs oor die toekoms (*Servamus* October 1993:VT 30).<sup>57</sup>

This paragraph describes the type of attitudinal, mainly psychological, mind switch that police officers had to undergo. It puts the onus on individuals to decide for themselves how they should act, abstracted from organisational and structural factors. Interventions were thus declared necessary in order to make sure that those individuals were to be exposed to a range of training that would compel them and support them to “change their attitude”. In this way, it was believed, the change towards a policing approach based on liberal democracy and human rights would be complete. This human

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<sup>57</sup> Translation: If we are going to be objective and honest with ourselves in confronting the consequences of the negotiation process, it is clear that we can still be policemen in the new South Africa, in fact better policemen. The moment we realise and accept this we actually make a psychological leap from the past to the future, and the daily events and changes surrounding us get a new meaning. Those who can make the leap will be able to gain a liberating new perspective on the events and to a large degree will lose the suffocating fear and anxiety about the future.

rights training would be designed with the funding, expertise and driving force of international donors and local human rights NGOs.

## 2.6 Conclusion

The history of the police force in South Africa shows that, since its inception in 1913, it has always played a partisan role in the major conflicts and political battles of the country. It has shaped and been shaped by various political and social orders which were marked by inequality and exclusion – from colonial policing, to policing conflicts between labour and capital, between Boer and Brit, to apartheid policing. The challenges of this kind of policing, with its ideological constellations and demands, its policies with regard to recruitment and training, and the means it applied to hold onto and increase control, have substantially shaped the police. These factors have produced a police force which has always struggled to have enough manpower and to attract sufficient skills. It has had to rely on policing by fear, excessive use of force, and the exploitation of societal fault lines. Policing of common law crime was underdeveloped in favour of control of society and the enforcement of laws which systematically criminalised large sections of society.

Despite this loaded history, and despite public displays of new democratic beginnings, in moments of loyalty towards its members – in which it reveals a less public identity and sense of self – the police service continues to reveal an investment in an historical narrative attesting to the prevalence of civil and non-partisan policing with a continuity between the past and the present. A range of arguments are drawn on to substantiate these claims; such as the claim to a continuous evolution of modern policing in South Africa, and the claim that current changes in the police force are simply another step in an ongoing range of developments. The crimes and biases of the past, according to this narrative, are negligible episodes in a bigger process of institutional and technological advancement. This sense of evolution is further substantiated by the claim that current changes have been initiated primarily by the police themselves rather than having being imposed from outside. Allegations of racism are played down by insisting on the historical and ongoing existence of an *esprit de corps* which cuts across the racial

divide. Further, the police claim adherence to the rule of law and to the orders of political superiors in order to redeem themselves in the light of the atrocities of the past.

This self-referential narrative stands in stark contrast to the kind of human rights narrative underlying the broader historical discourse of South Africa's liberation and democracy, as it has been advanced internationally and nationally by the new government, civil society and media. This narrative emphasises the division of history into "before" and "after" dualisms – apartheid and post apartheid, apartheid and democracy, evil and good. With regard to the police, the narrative of human rights democracy highlights all the measures, institutional changes and policies which have been newly put into place. Here, the introduction of institutional and legal accountability mechanisms, such as the Independent Complaints Directorate (ICD), legal amendments with regard to use of force and guaranteeing a fair trial, and the introduction of community policing are treated as a cornerstones that will ensure that the new SAPS will be fundamentally different from the old SAP, and potentially truly democratic. With regard to (the majority of) individual police officers who served under the old regime but remain in service, the human rights narrative spells out a turn around or a '*sprong*' (jump or quantum leap) in attitude from the past to the present. Here, direct interventions such as human rights training are to play the key role and make sure that the historical pledge of the human rights narrative about the watershed of liberal democracy can be publicly upheld.

These two narratives, although hugely contradictory, somehow manage to exist side by side. The one seems to be more of a public performance put up for an official, non-police audience, while the other is clearly a self-referential and inward looking performance, with the police themselves as the audience. As we will see, this type of split performance exists not only in versions of history but in many forms and crosscutting relationships within the South African Police Service and its practice.

## **2.7 Moving on: Between the grand narratives is the everyday**

I am still sitting on the steps of the police memorial and thinking about how these competing narratives about policing in post-apartheid South Africa are fighting it out

among each other. I'm thinking about how each narrative assumes a certain claim over police officers, and submits them to a certain philosophy and mission. I remember a comment about "dying on duty" which had a different nature from that advanced by the memorial. It was a comment made by a police officer whom I got to know quite well in the course of my research. One day, as we were taking a lunch break over burgers and extra-large Cokes, Sergeant Legodi shared with me a moment of contemplation. He had been working for the police service since the early 1980s. In fact he had been part of the township youth – half activist, half rudderless – when he decided to join the police. He came from an urban township not far from Johannesburg and he began working in the tourist protection unit in Johannesburg, operating from the Carlton Centre. From the early stages of his career, he was well acquainted with Johannesburg's inner city and had witnessed its rapid transformation. Now he was responsible for the detection of serious crime in the inner city. The inner city was his territory, not just in his job but in his everyday life. He occupied a flat there, and he socialised in its bars and clubs on evenings and weekends. The inner city was a field which he could harvest. Connections there contributed to his livelihood, benefiting from his influence as a police officer and receiving other goods in return. One might call it corrupt, but it is probably more complicated than that. His thoughts about dying were as follows:

Do you know that I am thinking about what I will be wearing when I die? In fact I think about it every day in the morning, because it can happen every day, so I make sure I am dressed well. I like good shirts. And I used to wear my watch and a ring, but I stopped doing this. It might be your last day and you want to look good when you die. I mean...you do not want to die in your pyjamas, do you? At least you want to look good. [Some silence] Sometimes I see myself getting old. I see myself settling down, getting rested, and then I am telling my grandchildren the story of my life. And I could tell a lot; I remember so much. If I were a writer I could write a book like that [and he shows with his hands how very thick the book would be], at least 2 000 pages. Because I remember so much from my early age on....But the way I live and seeing how life is in Joburg, how fast it is, I don't think I will

ever be that old. It can happen any time, any day, a shot in the back –  
over.

His preoccupation with dying in style reverberates with the expression “a good-looking corpse”, which means to live wild and die young. The expression was coined in the 1950s, and was emblematic of the gangland of Sophiatown (Nicol 1991) but clearly continues to be meaningful.

It strikes me how little relevance this comment about dying has to any of the official narratives. It is not even remotely about preserving democracy nor is it about protecting anybody's life or property. It does not even try to make sense of dying as a police officer. Rather, it declares a sense of total randomness and the banality of dying. The sense of dying is pervasive but it is not a challenge which asks for heroic deeds. Death will come in its most insidious form, suddenly and in the back, giving the police officer no chance to stand up to it and fight. As such, it seems to be totally removed from any of the official narratives about policing. The only way it might relate to these narratives is in an indirect way, referring more to the *consequences* of democracy.

The inner city of Johannesburg has become a “fast city” for black people only, since the advent of democracy. It is one of the places in South Africa that has undergone a rapid transformation, with white residents moving out and black residents – South Africans and immigrants from all over Africa – moving in. It has maintained its reputation for a buzzing nightlife and prostitution and drugs, although with a changed profile of clients and providers. It has become a vital marketplace for formal and informal, legal and illegal trade goods. Fastness here refers to the opportunities and risks and freedom and fear which the place offers.

It is a space which only allows for the here and now, a space of pure contemporaneousness. In a nearly poetic way Inspector Legodi evokes the absence of present and past in this place. He lingers for a moment with a vision of becoming old, of settling down and remembering, of bringing the past to life; and of passing on stories and wisdom to the younger generation, even of writing a book (securing a presence beyond

death). But then he pulls himself away from it, remembering the futility of such fantasies, as if they are pure indulgence and it would be pointless to think about the past and the future. Grand narratives, in contrast, always rely on pulling together the past and the future.

There is no political story to his fantasised killing. Crime has become random. It is not cast in terms of grand politics or even of local politics, which is a messy affair but still provides discernible lines – gangs and factions, competing parties and strong men – along which to imagine the appearance of death. He does not even mention his role as a police officer. It doesn't matter if you just live in the city or if you work there; the lines between the official and non-official have no relevance in light of the insidious death and the fastness of the place.

This comment is a powerful reminder that there is a different reality of being a police officer, one which cannot be deduced from the official narratives. It is the story of everyday policing, which goes beyond but which cannot fully evade those narratives.

This is the realm where my participant observational research is mainly located and from which the discussion of everyday police practices in the shadow of accountability will proceed. But before starting that discussion (in Chapter Four) I will first describe, in the next chapter, how an internationally initiated initiative to compel the “change of attitude” or “*sprong*” of police officers has taken root within the police organisation.

# 3

## Human Rights Training

The task is rather to rethink the normativity of human rights claims within the original contamination and violence of global capitalism, within ineluctable historicity. It is to accept that our principles of rational action are irreducibly conditioned by what we seek to alleviate and transform even as we cannot invoke these principles because they condition us in turn. (Pheng Cheah 1997:260).

The police says, okay you can come and train but who is going to pay? So the NGOs pay for themselves. And then after they have been running the pilot project the NGOs say that this must be going on. Then the police says, unfortunately it was just a pilot project, and it cannot be included in the training. If it must carry on then the NGOs must pay for it. (Member of the SAPS's Human Rights Unit 2002).

### **3.1 Introduction: The training gets cancelled**

For a long time I had tried to take part as an observer in one of the Human Rights and Policing training courses that were intended to transform South African police officers and instil in them a respect for human rights. First, there were several missed opportunities due to the temporary collapse of the programme in Gauteng province. Then there were several cancellations and postponements. Finally, one day in November 2002, I sat in a minimally furnished classroom of the SAPS training centre in Anderson Street

in downtown Johannesburg. There, over the next three days, the Human Rights training course was going to take place.

Slowly the classroom filled with a small group of police officers. Each chose a desk and sat down to wait quietly for the trainer to arrive. Finally Captain Chauke appeared. Dynamic, speaking charismatically, and moving between the tables, he skipped any introduction and attacked the students with a question right away: "Since when do black people in South Africa have human rights?...You!" He pointed his finger at a young black man. "Ehhh, since 1994, since the first elections..." the man uttered. "Ahh, since the first elections, hmmm?" Captain Chauke responded, clearly not satisfied. "You, what do you think?" and he pointed at a black woman sitting right behind me. She timidly responded, "Since Mandela was released from prison?...or....No! I know! Since the Bill of Rights?"

"No, no, you are all wrong," Captain Chauke exclaimed with some self-satisfaction. And then, meaningfully looking round the circle of puzzled policemen and policewomen, he gave the "right" answer:

Black people in South Africa always, all along, had human rights; it was just that the past government did not recognise those rights. Human rights are inalienable. Everybody has human rights, always, even before he or she is born.

While I was still marvelling at the way with which he had introduced the class to the concept of the inalienability of human rights, Captain Chauke moved on to some organisational issues. He asked the class about their positions at their respective police stations. It appeared that of the seventeen policemen and policewomen in the class, five were not actual police officers. They were part of the administrative staff of their stations: typists, secretaries and financial administrators. Explaining that the course was designed for police officers who were doing "real" police work, he told the civilians that they could go home. He then went through the class and asked who had taken a human rights course before. Two of the youngest officers in the group said that there had been a human rights component as part of their basic training. Inspector Chauke explained that his human rights training was for those police officers who had been trained in the "old

way”, and so sent these two police officers home. This left us with ten people in the class, of whom I was the only white person. Looking at me, Inspector Chauke said:

...and seeing that our only white person in the class is not a police officer, I am thinking of calling off the whole course. I cannot teach a class on human rights when there are no white and Indian police officers among the participants. How can I speak about discrimination when there are only black people? People will say Chauke talks bad about whites and Indians, while I just want to demonstrate what the different prejudices among the different groups are. I would mention those with more ease when the respective group is present because then everybody knows I don't mean it.

With these words he cancelled the class, and we all went home.

This experience of a Human Rights and Policing training class was quite telling, and indicative of the politics of the SAPS's human rights training.<sup>58</sup> First, it clearly said something about the commitment and the importance that managers at the different police stations gave to training in human rights. The fact that there were so many non-police officers in the class was not because those civilians were especially keen to join the training. It was, rather, a way in which the station managers could “comply” with the imposed requirement of having to send a certain number of staff members each year for human rights training, while at the same time not having to be without crucial manpower at the station. This was often presented to me as an impossible dilemma between long-term training for the future and the urgency to control crime here and now. Thus civilians were sent as token substitutes. The crude juxtaposition of long-term training and immediate needs happened not only at this level of training: it was indicative, as I will describe in this chapter, of the status of the human rights programme status throughout the police force, especially at the national management level.

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<sup>58</sup> As I explain further in section 3.4.1, the failure to hold the training courses was indeed, as confirmed by an official evaluation, a chronic weakness of the training programme.

Secondly, what was telling about my short experience in the human rights training class were the grounds for calling off the class before it had even started – with the trainer saying that the class could not take place since the only participants were black members.

Before the course began, I had looked at the official training manual that was used for the course (Cronje and Venter, 2000). Based on that, I had expected that the issues that would be covered would include how police officers deal with suspects, witnesses, complainants and other members of the public. The training manual had been conceptualised and produced with input from international and national human rights. It presented a rather technical and legalistic account of human rights translated into policing practice. Issues of equality among police officers and affirmative action only occupied one subsection of one chapter out of thirteen chapters. Yet from the response of the trainer at the Johannesburg training centre, it appeared that the issue of race *among* police officers had come to occupy centre stage and had fundamentally shaped the training and its treatment of human rights. Somehow the training had been given the inflection of a particular understanding of human rights, which diverged substantially from the one prescribed by the training manual.

Thirdly, the failed training class gave an indication of the confusion and ambiguity which surrounded the concept of the inalienability of human rights. The responses of the class member showed that the popular narrative of the “birth” of human rights in South Africa differed from the one that was being taught. In fact through their responses, they suggested that the concept of inalienability might be counter-intuitive to popular moral notions. They seemed to suggest that rights are conditional – they can be given and they can also be taken away again. They provided a sense that the concept of the inalienability of human rights is very specifically understood and can therefore not be assumed to be self-explanatory.

These three aspects suggest that the human rights discourse and its concepts, as conceived by the official format of the Human Rights and Policing training programme, were being contested. Foreshadowing the theme of this chapter, they highlight the possible enmeshment and subversion of the techno-legal human rights discourse in other contextual meanings and discourses.

In this chapter I will argue that the Human Rights and Policing training programme represents a concrete and tangible actualisation of international human rights standards in the context of South African policing. This allows me to talk about accountability towards international human rights standards and its institutions. The Human Rights and Policing training programme provides a case study of what happens to international human rights standards and the influence of international human rights organisations as they are renegotiated in the context of South African police organisation.

My main point of departure is that if we want to understand the “failure” or “success” of the implementation of international standards of human rights in the local context, then we should not just look at the resistance and the forces which undermine or embrace it; we should also consider the particularity, the power and the reconstructing effect which is embedded in and unleashed by the international standards themselves.

This chapter comprises three parts. The first part (section 3.2) introduces the Human Rights and Policing training programme and its training manual. I analyse the manual taking into account the fact that it has been put together with the direct help of the international human rights world, and discuss the cultural meaning and power with which it is imbued by virtue of this origin. The second part (section 3.3) concentrates on the setting up of the training programme at the management level of the police. I show how the training programme’s influence has been defused through the restyling of its organisational status, and how it nevertheless has led to an apparent widening of the transnational consensus on policing and human rights. The third part (section 3.4) is about how the trainers who actually carry out the training reshape its content to make it meaningful to the police officers being trained.

With regard to the conceptual tools I use, I would like to make two points. Firstly, in order to stress the many mutations and variations of international human right discourse, I use the idea of “talk” rather than the concept of “discourse”. The concept of discourse seems to be somewhat overloaded with implications of an all-encompassing nature and it immediately signals a certain reality and regulation of behaviour.<sup>59</sup> “Talk” signals something of a more flexible, even flippant, nature. It is easy to imagine having

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<sup>59</sup> For the difficulty associated with applying the analytical category of “discourse” to a micro analysis, see for example Purvis and Hunt (1993).

various talks in close proximity to each other without these suppressing each other. It is the idea of a cacophony that is expressed through the idea of various talks, while "discourse" implies a more harmonious voice. Using the concept of "talk", however, does not mean that it is just an analysis of the spoken word. Textual documents and institutional arrangements feed off and reproduce a certain talk, and power can be embedded in and derived from this. Thus I am including these in the "talk" analytical category.

Secondly, I will consider human rights talk with regard to two aspects: (a) the social conditions that produce a certain type of human rights talk, in other words the spatio-temporal as well societal and cultural position of the speaker (this can be a group of speakers or a particular institutional arrangement from which talk emerges) of a particular form of human rights talk; (b) the intratextual meaning of the talk: what are the truths and silences which are constructed within a certain human rights talk and what kind of concept of the subject emerges out of this? Following Chalaby (1996), I understand the two aspects as being contingent on each other in the sense that the first reflects fully in the second and vice versa.<sup>60</sup>

## **3.2 Part One<sup>61</sup>: The Human Rights and Policing Training Programme**

### **3.2.1 Setting the scene**

As pointed out in the previous chapter, it was commonly accepted by the new government that some form of intervention was necessary to ensure that police officers would make the transition from serving the old apartheid order to serving the new constitutional, democratic order (Shaw 2002:27). Eager to please the new government, the management of the SAPS obediently took up the challenge. In 1995, the senior police

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<sup>60</sup> For the difference between the intratextual discursive analysis and an analysis of the social conditions see Chalaby's (1996) article, "Beyond the Prison-House of Language: Discourse as Sociological Concept." The article criticises the prevalence of a too textual approach towards discourse analysis, and stresses the importance of the context which produces a certain discourse, and which fully reflects in a discourse.

<sup>61</sup> Due to its length I have divided this chapter into three parts. Each part, while interrelating with each of the others, contains an independent discussion of the subject matter and verges on being a chapter in its own right.

officer, Director H. Brink, was appointed from within the SAPS's Legal Services to set up and head a Human Rights and Policing Programme. His job description instructed him to introduce human rights to police officers, although this instruction was not further defined. Initially at loss about how to master the task, he sought and received input and guidance from various international organisations. With their enthusiastic assistance, he embarked on the development of a training manual and a three-day Human Rights and Policing training course (Interview, Brink, 23 September 2002).

The training programme was launched in 1997. In 1998 an initial 20 trainers were appointed on a voluntary basis. Over the years, this pool of trainers was expanded. The trainer-volunteers received training from human rights experts. The training of ordinary police officers started in 1999. It was expected that 20 to 30 police officers would be trained per three-day course. Courses were to be held across the provinces and coordinated by the newly-appointed provincial human rights and policing training coordinators. The goal was to train 100 000 of the SAPS's officers by 2002 (Rover 2001:2).

The training manual *Human Rights and Policing: Presenters' Guide for Law Enforcement Officials* (Cronje and Venter 2000) was to form the core of the Human Rights and Policing Programme. A great deal of effort went into designing the manual. It is well packaged and is supplemented with a range of visual materials and little handbooks which enhances the sense that a lot of effort and care must have gone into it.

The manual comprises thirteen chapters. The first chapter offers an introduction to human rights, starting with various international documents and the classification of human rights into civil and political rights on one hand, and social and economic rights on the other. This is followed by a history of human rights and policing in South Africa. Chapters 3 to 5 deal with classic issues of human rights in policing, such as arrest, detention, investigation of crime, and search and seizure. The rights and limitations of rights applicable to these four thematic areas are outlined. Chapter 6 deals with the labour rights of police officials. It introduces the concept of the rights of police officers with regard to industrial action, as well as occupational procedures regarding disciplinary issues and grievances. Chapter 7 deals with the various procedures through which human rights should be overseen, including peer control and investigations by the Independent

Complaints Directorate (ICD). Chapter 8 outlines the responsibilities of police management in relation to safeguarding human rights.

These chapters are meant to be discussed on the first two days of the course. The third day is meant to start with Chapter 9, which is about equality and the principle of non-discrimination. Under this heading issues of discrimination between police and the public are discussed, as well as employment issues such as affirmative action. The last four chapters, Chapter 10 to 13, are about so-called “vulnerable persons – non-nationals, children, women and victims of crime.

The training is meant to take place in a participatory manner instead of a lecture approach, with the trainers acting as facilitators rather than instructors. It is meant to end with a test, which serves as an evaluation of how much police officers have absorbed (Cronje and Venter 2000).

### 3.2.2 “The making of...”

I met the Head of the Human Rights and Policing Programme (HRPP), Director H. Brink, for the first time in 2001. He welcomed me to his office at SAPS headquarters in Pretoria in a very open way, and also introduced me to the deputy head of the HRPP, Captain Ngwenja. Director Brink’s office did not appear to be part of its surroundings. Its interior design distinguished it from all the other offices at the headquarters. It was neither the dull, functionally furnished office that is commonplace, nor did it have the romantically frilled pastel curtains and hand-knitted throws which gave testimony to a particular kind of conservative-romantic Afrikaans interior design, nor did it have the props of a real chief’s office such as a heavy wooden desk or oak cabinets. Instead, its walls were painted in burgundy red and decorated with Director Brink’s own paintings. These were surrealistic depictions of rural African themes such as wildlife, the *veld* or a *rondavel*. Office tables and chairs were covered with African print fabric. While not out of place in some bohemian and cosmopolitan middle-class suburbs of Johannesburg, such *Afro-chic* was rather unusual in the middle of police headquarters where neither bohemianism nor cosmopolitanism had many followers.<sup>62</sup>

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<sup>62</sup> The love for everything “African” and “authentic” also tended to characterise the interior style of the homes of those who had come to work for international organisations or local NGOs. It was seen as

In a strange way, the interior design of Brink's office was indicative of the status of the Human Rights and Policing Programme. On the one hand it was an eccentric oddity which was endured out of necessity but hardly "organically" integrated into the larger organisation. On the other hand it spoke of the alliance and orientation of the programme towards a middle-class world, one of international cosmopolitan actors to which the head of the programme clearly aspired. The initial development of the HRPP had relied entirely on funding external to the official police budget. It had been financed from funds of the South African Reconstruction and Development Programme (RDP), and donor money from a range of international governmental and non-governmental human rights organisations (referred to as international organisations or I/N/GOs hereafter). Also the majority of expertise and content input came from these international organisations.

The RDP was the first comprehensive, national economic programme of the new government, and the HRPP fell under its sub-programmes of "democratising the state" and "development of human resources". The RDP had emerged in 1994 from the close co-operation of various actors of the national liberation struggle such as trade unions, the civic movement (including the South African National Civics Organisation, SANCO), the United Democratic Front (UDF) and formerly exiled activists. It was heralded by many as a progressive and truly leftist programme. As Marais (1998:193) states, the RDP represented "the ideals that had propelled the struggle against apartheid", and it set out economic policies which were geared towards transforming South Africa into a politically and economically just and equal society. It drew heavily from an international language of social justice, and championed the inclusion of judiciable social and economic rights (Davis 1994; Klug 2000). Regarding the transformation of state institutions such as the police, it supported the new government's attempts to create legitimacy of its institutions through subjecting them to international human rights standards.

From the international community there had been great eagerness to set up the Human Rights and Policing Programme. A whole range of organisations had stood ready to shape and support it. These included Amnesty International, the British High Commission, the Human Rights Unit of the Commonwealth Secretariat, the Danish Centre for Human Rights, the European Foundation for Human Rights in South Africa, the International Committee of the Red Cross (both the South African office and its

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symbolising an identification with the formerly oppressed "authentic Africa" side of South Africa. In Adam Levin's (2005) book, *The Art of African Shopping*, one can find such Afro-chic taste and its Bohemian and cosmopolitan flavours. Its back cover blurb says: "A fantastic buy for foreigners as well as people who are proud to live on the African continent."

headquarters in Geneva, Switzerland), the International Organisation for Migration, the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, the Swedish International Development Co-operation Agency, the United Nations High Commissioner for Human Rights, and the United Nations High Commissioner for Refugees (Cronje and Venter 2000).

Such readiness had been generated through the developments of post Cold War attitudes which pushed human rights and issues of police transformation onto the development agenda, and the agenda of international co-operation (see Chapter One). The South African case offered the perfect occasion for the application of such an agenda. Firstly, South Africa had produced the embodiment of the global shift in which human rights had become *the* officially legitimate political global discourse following the demise of the Cold War. It had produced what was described as a miraculous transformation from evil to good (Waldmeir 1997). In this context, evil was unambiguously evil, since the violation of civil and political rights along racial lines had been condemned by international consensus, especially after the end of colonialism.<sup>63</sup> "Good" meant without (too much) civil strife and willing adherence to all the requisites of a liberal democracy, such as the (neo-liberal) market economy and human-rights-based constitutionalism. The South African police force represented a case for intervention of special exigency and great symbolic importance in order to complete the rise of this human rights-based democracy.

Secondly, the international organisations happily applied their new agenda to South Africa since it offered a sound case. I/N/GOs were often in danger of compromising their integrity in the course of pursuing the transformation of police organisations due to a lack of commitment from the respective governments and the danger of being seen as complicit in non-democratic activities. In South Africa, the new government was initially rather suspicious of the police force, and actually looked towards human rights instruments and the international organisations to help them to gain control over it (Shaw 2002:28-29). This erased possible ethical pitfalls for I/N/GOs.

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<sup>63</sup> By contrast, in the transition of former socialist or communist countries towards so-called democracy there was always some looming spectre, reminding the world that, even though socialism had failed, it had represented an attempt to realise social justice for all.

Thus the South African police transformation was not only ethically acceptable for I/N/GOs, but made it utterly desirable to provide funding and experts. It offered an undisputed and obvious case for intervention, and the possible success story for which I/N/GOs were looking in order to justify their existence at home (mainly in the North) and to trigger new funding and support (Fischer 1997). The long list of international funders and experts engaged in the development of the HRPP is testimony to this auspicious conjuncture.

The HRPP had thus come about as a product of this international eagerness and its overlap with the South African government's own social justice agenda as expressed in the RDP. The huge share in expertise and funding which the international organisations had in the HRPP's development, and the congruence of the RDP agenda with the international human rights agenda, makes it reasonable to conclude that the HRPP was a direct reflection and actualisation of the international level of human rights within the context of policing. It was produced as part of what has been called the advocacy revolution, in which international NGOs became pivotal to contribute to and watch over the implementation and breach of international human rights standards. Also, the fact that the product of this co-operation was a training course, speaks of such direct reflection. As Stammer (1999) states, training, especially human rights training, forms one of the favoured interventions within the field of monitoring and implementing international human rights standards. The setting up of the HRPP also reflects the shifting agenda of international development organisations to include issues of human rights. As such it provided an international dimension which directly linked the HRPP to the realm of international human rights standards and instruments. In the following sub-section, I will discuss the consequences of this link and the way it shaped the Human Rights and Policing Programme.

### 3.2.3 *The human rights industry*

The international human rights organisations that contributed to the HRPP are listed in the appendix of the Human Rights and Policing Programme training manual. The list reminds one of the extensive catalogue of international donors provided by Ferguson (1994) in his critique of development aid in Lesotho, which he develops in *The Anti-Politics Machine*. The massive development intervention in Lesotho prompted Ferguson to call the multiplicity of organisations a “development industry”. He uses the idea of an industry to indicate that these organisations, taken as a whole, shape and produce their own reality. In the Foucauldian sense, this means that development intervention forms a discursive, productive grid that structures reality for those who are subjected to it. The notion of a “human rights industry” has also been used by others (Stammer 1999; Wilson 2001, 2003) to suggest the manufacture of a mass produced product on a conveyer belt, with its concomitant repetitive motion and standardisation. In such a metaphor the idea of capitalism, profit making and self-interest are not far behind. Calling it an “industry” creates a distance which allows one to examine the phenomenon with some detachment and to scrutinise the claims of “doing good” or “helping” that those organisations promote to legitimise themselves.

With regard to claims of “doing good” made by the human rights industry, Pheng Cheah (1997:247) explains that international governmental and non-governmental human rights organisations advance a notion of human rights derived from “human dignity as the supreme value that transcends all material interest or imperial inclinations. ...Each vision of human rights is seen to be separate from the realm of particularistic political and economic interest.” In addition these organisations claim a “normative status of an international public sphere or ... a global civil society” (Pheng Cheah 1997:253), making claims to a transnational manifestation and cosmopolitan outlook. We can add to this the observations of Talal Asad (1983) who points out the decisive assumptions made about who is local and who is not. *Local* people “are attached to a place, rooted, circumscribed, limited” (Asad 1993:8). By contrast, *non-local* people are “unlimited, cosmopolitan, universal, belonging to the whole world (and the world to them)” (Asad 1993:23). The idea of the local is thus a highly political one, because it implies that while some people are local in the sense of “locatable”, and can “be observed, reached and manipulated” (Asad 1993:24), others, the non-local, are beyond reach, and beyond observation and

description. While the local people are caught up in parochialism, the non-locals are by definition redeemed from parochialism and cultural baggage. As such, it is always local culture which poses an obstacle to the "correct" understanding and appreciation of the universal. In the world of international human rights organisations, this assumption means that it is never the culture of international actors that poses an obstacle to correct understanding. The obstacle that stands in the way of the universal good is always seen to be the *local* misconception about human rights, *the other's* lack of understanding and *the other's* clinging to cultural differences.

Thus, to scrutinise the human rights industry we have to go beyond the industry's own obscuring claims of occupying the moral high ground and being beyond observation. Instead we should turn the tables and consider this industry's perspective precisely in the light of what it tries so hard to mask: particularity and locality, with all the notions and concepts that go hand in hand with such premises, including the observability of people and face-to-face contact between people, and their specific positionality. This approach will allow us to see the extent of the hidden parochial and local cultural norms with which the transnational is imbued.

#### 3.2.4 The culture of legal positivism and the social life of international human rights standards

One of the few people who have taken on the task of describing the culture of the international realm of human rights is Stammer (1999). He contends that the human rights industry draws from and thrives on a legalistic and rather orthodox outlook on human rights, orienting itself towards the international institutionalisation of the instruments of human rights. He characterises the discourse which informs the "industry" as "legal positivist":

[However] the phrase 'legal positivist' is not being used here in its technical sense. Rather I am using it to signal the intention and ambition of...the global human rights industry. There is an enormous literature on the international bill of rights and regional human rights instruments dealing with issues such as standard setting, monitoring and reporting, enforcement, and interventions. In short, this is a literature overwhelmingly

concerned with the establishment, implementation, and enforcement of human rights as international public law (Stammer 1999:991-992).

Legal positivists, preoccupied with the aim of strengthening human rights, and therefore instrumentally drawn to the power that is embodied in the judicial world and which is derived from recognition by states, create a certain exclusive notion of what is "proper" human rights talk. They and their documents draw authority from their orientation towards the international instruments and, as Bourdieu (1987) would argue, push the juridicisation of human rights by arguing for their justiciability of human rights and production of human rights jurisprudence based on international standards and instruments.

For total strangers to the human rights industry, international public law in the form of international human rights standards and instruments means abstract legislation, complicated wording and opaque procedures. For human rights activists, human rights NGOs and international experts in the field of human rights (and policing), however, these standards are familiar, concrete, self-evident and tangible. These actors often have the educational background and the "cultural capital" which allows them to acquire the "juridical capital", which in turn makes those standards legible and possible to apply (Bourdieu 1987). Thus the world of international standards is marked by this cultural capital and these educational standards.<sup>64</sup>

However, it is not just their ability to comprehend and apply the legal aspects of international human rights standards which renders these standards so familiar and important to them. There is also the dimension of their emotional and personal investment in these standards, which is produced by and in turn reproduces what I would

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<sup>64</sup> It has been pointed out that participation in the international legalistic realm requires a particular set of social and cultural requisites such as a middle-class to upper-middle-class education (or at least the possibility to rub shoulders with it) (Bourdieu 1987; Dezalay and Garth 2002a/b), as well as cosmopolitan aspirations (Pheng Cheah 1997; Riles 2004).

like to call the *social life* of international human rights standards.<sup>65</sup> It is important to make analytically accessible the socialising that takes place in the shadow of international human rights standards. By “social life” here I mean how the consensus about the primacy of the standards is contingent on a certain form of sociality. The professional (and even personal) identity of international human rights activists and experts, and their justifications of practice are often closely intertwined with these standards. In carrying out their functions, they meet with their peers, producing, reproducing, aligning and assimilating similar discourses about the international standards and affirming each other in what they are and what they do. Riles (2004) gives an account of how, in the run-up to the Beijing UN Women’s Conference in particular, and in the emergence of women’s issues as international women’s (human) rights in general, a plethora of networks emerged whose official aim was to share information. She shows how the self-referential nature of these networks, including their proliferating flow of information – in the form of documents and declarations – served to draw more and more people into the networks, so that ultimately, the circulation of documents was an end unto itself. Although, on a formal level, participants in these networks refuted the idea that the networks were reflective of personal relationships, Riles (2004:60) shows that there was actually an “underbelly of personal relations to the formal linkages of the network.” She describes, for example, how members of different NGOs, which were part of an international Asian women’s network, regularly spent hours on the phone discussing “persons, their disputes, their personal histories, their motivations, and their mistakes” (Riles 2004:68). In these personal relationships one finds the same kind of self-referential dynamic: “What then defined networkers most of all was the fact that they were personally and institutionally connected – knowledgeable – about the world of institutions of networks” (Riles 2004:59).

To give some examples of the social life and sociability of international human rights standards, I would like to add two partly self-reflexive examples, drawn from my

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<sup>65</sup> The notion of the social life of (human) rights has been applied before by, for example, Wilson (2003) and Oomen (2005). Here the idea of social life stands for the exploration of “rights at the level of social practice: how are rights applied – and what are they applied *for* – in everyday legal processes” (Wilson 2003:5). However, I am applying the term here differently. I am drawing from its colloquial sense as in “having a busy social life” in order to highlight the informal socialising which takes place in the shadow of international human rights standards.

own experience as a participant in this social realm, although neither is directly concerned with the topic of human rights and policing in the South African context. The first relates to a UN conference in Geneva – one of the prime arenas of the transnational circuit of human rights – and the other involves an NGO which is mentioned in the HRPP manual, so this detour may well be constructive.

My first introduction to the social life surrounding international standards was in the summer of 1995, when I went was an observer for a Dutch NGO at the fourteenth annual meeting of the UN Working Group on Indigenous Populations in Geneva. It was the beginning of the International (UN) Decade for Indigenous Peoples, and the Beijing Conference was to be held later that year. The struggle for indigenous populations had gained significant international recognition through reference to international human rights standards. After several days, the various representatives of indigenous peoples' organisations from around the globe made their representations to the plenary session. Progress on the collective document, which was to stipulate indigenous peoples' rights and demands, was slow and tedious. However, for many of the participants, the meeting was primarily an opportunity to reconnect with like-minded participants whom they had met in similar meetings over the years. The exchange of little presents between the delegates was a common feature of these encounters. For first-timers to the event, it was a new experience. By the end of the meeting, however, we had made many new contacts and could link faces and personalities to what had been anonymous affiliations or even unknown entities.

The aspect of sociality was further reinforced by the meeting's evening programme. The delegates were invited to social gatherings at what was colloquially called (by insiders) the "UN Beach". This referred to playing grounds and leisure facilities around Lake Geneva reserved for UN employees and their guests. The term "UN Beach" very comfortably brought together two things which one would normally consider as rather opposed realms – the realm of the global, transnational giant, the official organisation that dealt with all the serious matters of the world, and the realm of the beach, which stands for a spatially-defined – and thus locally-defined – expression of leisure, pleasure and informality. And the same fusion of meaning took place during those evenings. On the one hand, the evenings' sociality gave a face and emotions to the

seemingly purely strategic global networks, international standards and concerns around which the Working Group was built. On the other hand, it made the participants feel connected through their shared interest in the international standards.

My other example draws from the time when I was working for an international human rights NGO. I was evaluating a human rights project, and I had to interview different role players to extract the "lessons learned". These people were members of various international human rights organisations that were critical of each other – for example, the one claiming more independence from governments, another more bound to diplomatic protocol but with more access to state officials. While I was interviewing, it became apparent that they had all at one point been colleagues working in the same organisation. Although they had moved on, they had kept up their friendships and now provided each other with access to their organisations, despite the ideological demarcations. They regularly phoned each other across continents to discuss, informally, both professional and personal issues. This allowed them to successfully feed from each other's programmes while upholding organisational differences. They were very happy to admit all this to me, since they considered me to be an initiated insider, but when I suggested including this information in the evaluation, as one of the aspects that had contributed to the success of the project, I was admonished and told to simply refer to the official positioning of the individuals concerned and their organisations. Several things became clear to me: (a) their similar social backgrounds and career paths had enabled their friendship, (b) their friendship was reinforced because they shared the same kind of realm – of institutions built up around international human rights standards, (c) the friendship animated and brought to life the international human rights standards, and (d) work was carried out by tapping into and reinforcing these friendships. It is factors such as these which make for the social life of international human rights standards.

Of course, the international human rights world is not a homogeneous group. Ideological rifts may be pronounced, for example, between someone who is working for a government as a human rights ambassador and somebody working for an independent NGO. Symbolic struggles, as Bourdieu (1987) describes them, also take place between more doctrinaire people and those who are more praxis oriented. But it is precisely such rifts and conflicts that allow us to call the human rights world a locality. Differences,

which to an outsider appear as hardly noticeable nuances, become for insiders deep ravines and reasons for clashes. At the same time, much more fundamental ideological divergences are rarely invested with the same amount of emotional loading and invite less everyday bickering, since they are too removed to generate heated debate. It is in fact the ability to see the nuances as magnified that makes one an insider and creates a sense of belonging. Proximity in this sense is not a spatial aspect, since the people involved work and live across the world; it is a strategic, social and emotional phenomenon – a “proximity of semiotic patterns” (Mol and Law, 1994, in Riles 2004:65).

Thus the social life of those who belong to organisations involved in promoting international human rights standards produces its own common sense. Within this world, assumptions such as the normality of the legal positivistic outlook, the sense of virtue drawn from working in the name of human rights, and the primacy of international human rights standards are accepted as the norm. This makes a cultural imprint on what is produced. The legal positivist discourse and other normative assumptions stemming from the cultural-specific bias of the industry have left their mark on the Human Rights and Policing Programme in the form of what I would like to call “parochial residues”. By evoking the idea of parochialism, I want to stress that I am looking at the HRPP through a lens that recognises the transnational as local, and brings to the surface the assumptions that underlie the culture of the international human rights (and policing) world.<sup>66</sup> What follows is a symptomatic reading of the training manual and the commentary by actors involved in its making. This reading highlights other ideological assumptions and some more specific aspects with regard to human rights and policing, which have made their way into the HRPP and which clearly link it to the international human rights industry.

### 3.2.5 Residues of international human rights parochialism

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<sup>66</sup> Berger (1992) has used the term “parochialism” to describe the failure of his discipline. He claims that sociologists, because of their parochialism – in the sense of isolation and a tendency to move only among like-minded people – have failed to recognise important new global developments such as the continued importance of religion. Parochialism also blinds them to recognise developments in the world which would contradict the values on which their own community and *raison d'être* is built. The analytical fruitfulness of applying the term “parochialism” here lies in the moment of unexpectedness, applying it to a group that generally claims to be worldly and which is generally the observer rather than the object of observation.

### 3.2.5.1 The primacy of international standards

The fact that “introducing human rights to police officers” takes the form of a three-day training course can be seen in itself as indicative of the influence of the international human rights industry. The “obsession” with monitoring and implementing international human rights standards is common to the “industry”; and training, particularly human rights training, represents one of the favoured interventions and instruments of implementation (Stammer 1999). Duffield (2001) and Jefferson (2005) argue that the implementation of human rights standards in general, and human rights training in particular, presuppose a certain modernist and liberal outlook, with the assumption of a linearity in the translation of rights into practice.<sup>67</sup> Thus the choice of training as the mode of intervention reveals the underlying assumption of a certain imposition of social practice as one of the parochial residues of the international human rights world.

The most pervasive but also the most naturalised residue of the training manual itself is the insistence on the primacy of international human rights standards. This can be seen clearly in the training video that accompanies the manual. In the very beginning, the video presents an address by Mary Robinson, the then UN High Commissioner for Human Rights.<sup>68</sup> As Director Brink proudly recounted, for him and the others involved in the development of the training package, it had been a great honour and achievement to get a person of such international stature to lend her voice

to the training manual by directly addressing the police officers of the SAPS. However, none of the officers to whom I spoke during my research had ever heard of Mary Robinson. Even less did they know the structures within the UN from which she came. If anything at all, for them the UN meant military intervention in troubled foreign countries. As such Robinson’s introduction carried little of the weight that the developers, who were familiar with her, had hoped it would. It seemingly went unnoticed to the developers that for any special authority to radiate from what she was saying, one needed to have a good

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<sup>67</sup> Duffield (2001, in Jefferson 2005:499) argues that best practice manuals and (human rights) training courses “reproduce the illusion of a replicable and predictable environment”. Newtonian models of stable mechanistic machines commonly inform development policy and discourse, failing remarkably to account for the complex, systemic networked nature of subjects of development discourse..

<sup>68</sup> Mary Robinson became the United Nations High Commissioner for Human Rights on [12 September 1997](#).

sense of who she was. Thus her appearance represents a rather self-referential homage by the developers of the manual to *their* human rights heroes. Parochialism here means not being able to imagine that what is important to those “inside” is not automatically of importance to everybody else.

The international status of human rights standards is assumed to have a self-pervasive effect on police officers.<sup>69</sup> This becomes apparent in the first chapter of the manual. After a quick summary about the wide powers police officers enjoyed during apartheid and the abusive deeds some police officers committed, the chapter continues:

South Africa became part of the international community. Our government signed most of the international treaties and conventions, thereby committing our country to the principles in those documents. It is, therefore, important that we also adhere to the international principles applicable to policing (Cronje and Venter 2000, chapter 1: 5).

This might appear as a factual statement within the consensus of international law, where it is a fundamental premise that if a government signs a treaty then its institutions will be bound by it. But it is not clear whether this is equally self-evident for police officers. More than that, in the context of the training manual, this statement is not just meant as a factual statement. Instead, it fulfils a performative function (or speech act).<sup>70</sup> This means that something is *done* with words; by saying something, something is called into being or created. This intent to trigger an act (performance) by saying something is called “illocutionary force”. Here the illocutionary force lies in conflating *what should be* with *what is*. This means turning the normative prescription stating that “when a government signs international treaties it *should* be truly committing itself and its institutions to it”, or “when human rights are recognised internationally they *should* be binding for everyone”, into a truth, which then produces a corresponding reality. The illocutionary force is

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<sup>69</sup> The training manual discusses the role and the establishment of the South African Constitution only secondarily to the international legalistic standards, supporting further the primacy that is given to international standards as the main source of authority and legitimacy for human rights.

<sup>70</sup> For the theory of performative speech acts see Austin (1980). For the application of this language theory in anthropology see Silverstein (1993, 1998) and Das (1996).

applied to police officers with the intent of drawing them into the consensus about the truth of the enunciation and making them act according to the primacy of international standards. As such the list of international documents that are "important" for police officers becomes compelling, simply by pointing out the international status of those documents. By making these statements, police officers are asked to accept and subscribe to the postulation. The illocutionary force becomes the substitute for a more coercive force to compel police officers to adhere to the international standards.

*Equally revealing with regard to the primacy of international human rights standards is the following comment by Captain Ngwenya, a full-time staff member of the HRPP. I mentioned to him that some police officers are not just misled but that they might be convinced that adherence to human rights limits police powers. He responded:*

*South Africa has committed to a lot of international treaties and human rights instruments, which bind South Africa, so there is a real obligation South Africa has in terms of its police force. Unfortunately these obligations are mainly understood and accessible to legal people.*

*This comment is remarkable because it acknowledges the contingency of recognising the importance of international human rights instruments to the ability to access its legal rationale, which is predominantly available only to those in the legal or semi-legal professions. At the same time it confirms the inevitable and compelling logic that is inscribed in the recognition and status of international human rights instruments. Captain Ngwenya did not notice the contradiction in his own remark – that if the international instruments can only be comprehended and accessed through a very particular and exclusive knowledge, how can they at the same time be relevant to*

*everyone, including the police? As such the comment testifies to the fact that the contradiction is masked; instead it is the legal view which becomes normalised as "common sense" and consensus.*

### 3.2.5.2 In pursuit of moral neutrality: don't alienate the trainee

The organisation of the training manual has a substantial bias towards viewing human rights primarily as technical standards, downplaying the moral and political dimension that human rights can take on in specific historical and societal contexts. In this sense it confirms what Bourdieu (1987) describes as the force of the law, where a formalist or technical legal approach assumes the capacity to create broad legitimacy, since it seemingly renounces the idea of subjective and particularistic judgement. This is further confirmed by the great hesitation of the training manual to address the implication of human rights in morally judging the role of police officers during apartheid.

Another subtext of the manual is that police officers commit human rights violations simply because they do not know better. This is applied, in its reverse logic, to how the training will become effective: in other words, once police officers know about human rights, they will stop committing human rights violations. During the preparations for designing the training programme, a so-called "human rights knowledge audit" was carried out. This "was used as the basis for the needs assessment of the RDP training programme on human rights and policing" (Cronje 2001). The assessment concluded that "most members did not know much about the Bill of Rights and basic Human Rights Law and were still abusing other peoples' human rights" (Cronje 2001:3). Note the way in which the phrases "did not know much about" and "still abusing" are linked in this sentence, which suggests that knowing about human rights will put an end to abuse.

This presupposes that there is a strong ability and readiness on the part of a police officer to do the "right thing". This is exactly how the police officer is imagined throughout the manual. The police officer is presented as an *ignorant subject* who has no conscious or unconscious objections to taking on human rights, and who has the autonomy to choose to do so once he/she is given the right information. This depiction of

the ignorant but autonomous subject avoids a more complex conceptualisation of social practice as well as the moral and political dimensions of human rights, especially in the South African context.

The introductory chapter of the training manual attempts to navigate the moral and historical dimension of human rights in South Africa, but this is done with great caution. This caution reveals the awareness of the developers of the manual – despite all the pretences about the neutrality of human rights – of how sensitive the issue of human rights is with police officers. The manual avoids holding police officers directly responsible for human rights abuses in the past. It allows them a way out, so that they do not necessarily feel directly addressed by the moral judgment inherent in a human rights perspective. Any ascription of moral agency in relation to acts of violence during apartheid is kept to a minimum. The moral balancing act between the burden of history and avoiding alienating police officers becomes apparent in the introduction of the first chapter:

Previously the police were perceived as the great transgressors of human rights, because they were given wide powers to deny the people's human rights (Cronje and Venter 2000, chapter 1: 4).

A distance is created by inserting the word “perceived”; this suggests that it is not an indisputable fact that police were transgressors but rather that it is a certain perception of what happened in the past. Also, the implication is that if police officers did do wrong, this was because they were given such wide powers. Thus, it was the system that made them become transgressors of human rights, rather than the fact that they were consciously engaging in evil acts as morally responsible agents. The text continues:

Some police officials used unlawful methods to gain evidence and to solve crime (for example, torture), did unlawful arrests, detained people unlawfully, and in general treated victims and perpetrators in an inhuman and degrading way (Cronje and Venter 2000, chapter 1: 4).

Here the redeeming word is “some”, evoking the bad-apple theory when it comes to acts which would have qualified as abuse even under the wide legal powers of the apartheid state. This leaves the majority of police officers untainted and momentarily suspends the sense of moral agency which the idea of human rights tends to inscribe onto its perpetrators.

The next section of the manual makes a leap into the present, dealing with the continued “perception” of a “bad human rights record”. It says that such bad perceptions by international organisations and by the community “is why it is important for us to change.” Here, under the purview of the international standards, the police officers are suddenly addressed as “us” in their collectivity, ascribing moral agency to all of them. However, it is done in an encouraging and forward-looking spirit which allows the ultimate judgement about their conduct to be suspended until the future. It is interesting to see that as the text turns towards the role of police in the post-apartheid period, their subject position suddenly becomes one of a fully responsible moral agent. This is obviously necessary in order to sustain the logic of the training, because the training wants every police agent to become responsible for his or her actions instead of continuing to hide behind the system or their seniors.

But even then, just as the inclusive “us” is mentioned, the text makes a radical turn towards a different topic, as if it does not want to linger too long on the “us”. It again

draws attention away from any agency that police officers may have in relation to the abuse of human rights:

The greatest threat to human rights of all people in South Africa is crime (Cronje and Venter 2000: chapter 1:4).

If what has been said so far has alienated those taking the course, their “buy-in to the training” is now recaptured. A different enemy is evoked – the criminal – and he is presented as morally even more tainted. Compared to the earlier cautious formulations, this is said in a much stronger, more matter-of-fact tone. The idea of the moral other, the perpetrator, the outcast, is shifted away from the police officer, allowing him to assume the morally positive identity of a crime fighter instead of being under moral scrutiny himself.

### 3.2.5.3 Dispassionate police practice

Following the introduction, the manual's chapters deal with operational issues of policing such as arrest, the use of force during arrest, search and seizure, detention and investigation of crime. As mentioned above, these chapters try to remain primarily technical: elaborating the rights and limits of rights applicable under the various themes. For the most part the chapters are meant to bring about the dispassionate application of policing powers; that is, there is an attempt to diminish the scope for discretion, personal judgment and acts of punishment. The text proposes that police officers accept their role as purely instrumental middlemen between society and the law, without assuming self-

appointed tasks. For example the purpose of arrest is described as the “lawful method of securing the attendance of the accused in court” (Cronje and Venter 2000, Chapter 2: 3). One page further on, the idea that arrest could be a more passionate, self-styled and self-appointed act to carry out justice is explicitly refuted by the statement “arrest is not a method to temporarily remove a person from society in order to clean up the area, nor it is a method of punishment” (Cronje and Venter 2000, Chapter 2: 4). Here the point is to deny the possibility of any form of informal justice where police officers act out of discretion.

Police officers are dissuaded from passing judgement by the promotion of the concept of the “presumption of innocence” – that is, innocent until proven guilty by the law rather than by the insight of the police officer. The principle of the presumption of innocence is repeatedly invoked to inscribe a detached attitude in the police officer (Cronje and Venter 199 or 2000, Chapter 2:3-5, 11, 12, 13, 28; Chapter 4-6, 8). This repetition is a clear attempt to imprint the principle, to make sure it sticks in their minds. Police officers are asked to convert the experience of a specific incident of arrest or crime into an abstract reading of it, where the police officer is simply an enabler so that the legal process can take its course. The police officer is thus put secondary and subsidiary to the legal process. Once the principle is established, then a variety of pointers on how police officers should behave vis-à-vis the suspect follow, such as the suspect’s right to remain silent, not to be forced to confess, and how the suspect can apply for bail.

#### 3.2.5.4 Empty human dignity

The principle of human dignity appears frequently in the manual, evoked as applicable to all the aspect of policing.

Not much is said, however, about the nature of human dignity, or where it comes from. Dignity is said in the manual to be inherent and inalienable, and thus it cannot be doubted or contested. As mentioned earlier, this approach elevates the concept above any particularity (Pheng Cheah 1997: 247), and thus there is no need to give it further substance. Again this depends on an illocutionary act through which the inalienability of the concept, in this case dignity, is established. The illocutionary force is enhanced through repetition.

A reading of the manual tells us that dignity only becomes visible in the negative sense, when it is being infringed. Thus dignity is merely the freedom from infringement of dignity. There is no positive definition to give substance to what human dignity is. For police officers this means that dignity is maintained by their restraint and *not* by doing something in a positive sense.

#### 3.2.5.5 Turning violence into force

In the first chapters of the manual, the use of force is discussed. This could be the use of force to effect an arrest, or the use of force to carry out a search or seizure. The manual attempts to create a clear line which separates violence from force. With regard to arrest, it indicates that force should only be applied if adhering to two basic principles – minimum force and proportionality. Minimum force here means to “only use force that is necessary to overcome the threat, resistance or attack” (Cronje and Venter 2000, Chapter

2: 15). Proportionality means that the degree of force is determined by the seriousness of the crime.<sup>71</sup>

A hierarchy is given of grades and techniques of force that can be applied – from soft empty-hand control, to hard empty-hand control, to motor dysfunctional techniques, chemical agents, batons and impact weapons, and finally to firearms and lethal force. While the manual concentrates on the calculable things, it does not discuss the possible threat a criminal could pose. It basically suggests that a filter of rationality and consideration must be applied before violence is used. The difference between force and violence is thus that force is measurable, deferred, calculable, instrumental, technically specifiable, independent, fearless and subsidiary to the law whereas violence is not that, it is probably vengeful, spontaneous and possibly fearful.

The training itself does not offer any practice in these various techniques. It assumes that these techniques, methods and tools are available to police officers. As such, its guidelines on the use of force assume a well-trained and well-skilled police officer. Although the earlier section of the manual focused primarily on diminishing the discretion of police officers, the section on the use of force in fact reintroduces the necessity of police discretion. Using their own judgment, police officers have to find the point of balance between “the powers of law enforcement which infringe on the fundamental rights to dignity, liberty, life, security and the fundamental powers and the fundamental rights” (Cronje and Venter 2000, Chapter 2: 12-13). The re-entry of

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<sup>71</sup> . At the time when the manual was developed, this meant that a fleeing suspect could be shot at (even if he was not immediately threatening the life of the police officer or bystanders) if the alleged crime was listed as a serious crime and when there was no other way to arrest him. It is mentioned in the manual, however, that this might soon be changed. This indicates that at the time there were already discussions under way which would result in amending the legislation and limiting shooting to pure self-defence or defence of bystanders.

discretion assumes that police officers will apply the discretion given to them responsibly.

#### 3.2.5.6 Professionalising investigation

The rather technical aspect of warrants is handled in a similar way. Warrants are not discussed in much detail, and their intricacies are mainly left to the discretion of the police officer. The manual immediately introduces the possibility “that a person can be arrested with or without a warrant” (Cronje and Venter, Chapters 2 & 4). Only then, and rather tentatively, is it mentioned that police officers should remember that “it is always better to obtain a warrant” (Cronje and Venter, 2000 Chapter 2:4). The manual then refers to the section in the Criminal Procedure Act where these provisions are stipulated. This referral makes it clear that the manual expects to deal with police officers who are professionals and already legally versed.

This image of the professional police officer comes out most clearly in the section on investigation (Chapter 4). An evidence-based form of investigation is put forward, which is intended to replace investigation based on suspects and confessions. As part of this substitution process, the manual devotes a great deal of space to discouraging the practice of admission by conduct (e.g. the pointing out of the scene of a crime or the crime weapon by a suspect). On the one hand, admission by conduct is about gathering evidence. However, this method still relies on the suspect to provide the evidence to the police officers. To discourage this practice the manual states, almost in the form of a concession, that, “the fact that a person makes a pointing out freely and voluntarily and

by doing so, reveals unknown evidence himself, makes the evidence seem more reliable that the accused was indeed connected to the crime” (Cronje and Venter, 2000 Chapter 4: 9). Thus the appeal of such evidence is acknowledged, however it is then immediately qualified. By repeatedly mentioning that the suspect must give evidence absolutely freely and voluntarily and without any undue influence, the implicit suggestion is that it is unlikely that a suspect would actually do so. In establishing the purely evidence-based investigation as the new ideal, the old way of doing things is made to look unappealing, although this is not explicitly stated as such. Thus, the sense that an evidence-based investigation is more labour-intensive and requires a different set of skills is turned into a virtue and offered as an attraction. This elevation of evidence-based investigation is found, for example, in the instruction that it is important “that investigations shall be competent, thorough, prompt and impartial” and “crime scenes shall be carefully processed, and evidence carefully collected and preserved” (Cronje and Venter, 2000, Chapter 4: 5). The counterpart to this is a more negative and repeated insinuation that confession-based evidence is easily shunned by the courts.

#### 3.2.5.7 Implementation through self-discipline

Chapter nine speaks about the labour rights of police officers – their rights as employees. It comes across as conciliatory; as if it were time at this point in the training to give police officers something in return: their rights and entitlements vis-à-vis the police organisation. However, this reversed focus does not last for long. The chapter on labour rights is followed by a chapter which again is about the duties of police officers.

This time it is less about specific rights, and more about the kind of “general attitude” that police officers are expected to have in order for them to operate according to a human rights approach.

The chapter begins with a purely factual statement: “With every human right comes responsibility. Part of the responsibility...is to uphold the human rights of all persons” (Cronje and Venter, 2000 Chapter 7: 3). This circular comment only starts to make sense if we understand it as an attempt to call a truth and its corresponding reality into being, rather than to inform. Its purpose is clearly a performative one.

What the statement tries to bring about is forceful in itself. Responsibilities are very much a matter of internalisation. The statement and the subsequent elaboration on self-discipline echoes Foucault’s concepts of the techniques of the self. In this case, police officers are called upon to take on a human rights perspective of their own account. The impulse to respect human rights is expected to arise from within the police officer rather than to come from some tangible external source of pressure; they take it upon themselves to control themselves. As an extension of this, police officers are asked to report others if they commit human rights abuses. The list of external disciplinary mechanisms is first introduced not as a way of forcing the officers to do this, but merely as information as to where they can report human rights violations. This implies that the police officers who are addressed have already mastered the expected self-discipline and are not themselves in need of these external institutions.

Then, as if the manual is intended to fuse self-discipline and externally imposed discipline, the part on self-discipline moves unobtrusively to the part where the external disciplinary organs are described in more detail. The manual explains quite explicitly that

there are mechanisms which can put pressure on police officers and punish them if they do not act properly. For example, "the failure of the police official to respect human rights can result in... summary dismissal" (Cronje and Venter, Chapter 7: 4).

Of all these mechanisms, the Independent Complaints Directorate (ICD) gets most attention. The ICD is the newest and most tangible invention of external accountability. It clearly reflects the international trend towards forms of accountability, as listed in the introduction.

#### 3.2.5.8 Utilitarian equality

In the next chapter, on equality and non-discrimination, the aspect of inalienable human dignity returns as a central concept, and as the basis for treating all people equally. This chapter mainly deals with how human dignity should inform police dealings with the general public. The focus is on the police duty to protect all people from crime. A widening of police duties is motivated here. The human rights are presented as a positive (proactive) duty, rather than a limitation of the power and discretion of the police. This can be read as a direct response to the belief that apartheid policing made crime control a privilege for a few, while the rest had to experience policing as the enforcement of apartheid laws. Broadening the scope of the police to take responsibility for the security of the whole population is presented as the main way in which the police force will gain legitimacy.

The next section addresses affirmative action and equal treatment of police officers *among* police officers. It begins with setting out the principles of equality and

non-discrimination. This is then qualified by highlighting the fact that historical imbalances have to be taken into consideration when seeking equality. It explains that measures such as affirmative action can address “inequalities and discriminatory practices of the past.” This is immediately complemented, however, with a statement that affirmative action also addresses “the need for representivity for efficiency of the police service” (Cronje and Venter, 2000, Chapter 9: 5-6). Thus, a historically anchored moral argument and a utilitarian argument are presented together. Following a detailed catalogue of measures that constitute affirmative action, a broad range of issues are mentioned pertaining to the efficiency of the service. Affirmative action is presented as a measure to “include and empower those who have been discriminated against in the past” but also “to commit to high standards of productivity” (Cronje and Venter, 2000, Chapter 9: 6). Thus, a clear attempt is made to defuse the idea that affirmative action is purely about reversing the discriminations of the past; instead, the manual tries to “sell” affirmative action as something which will enhance the service of the police organisation as a whole. This section reads like a careful attempt to refute a one-dimensional version of affirmative action as the measure through which black police officers are to be promoted at the expense of white colleagues. It contradicts the manual’s earlier attempt to introduce human rights as morally neutral and its earlier restraint in putting moral responsibility onto police officers for deeds of the past.

#### 3.2.5.9 Vulnerable actors

The last chapters of the training manual deal with the category of “vulnerable persons”. Here, police officers are imagined not so much as people who have to limit their powers, hold back and refrain, but rather as people who take on the positive and active role of protecting those people who easily could become victims of others (Cronje and Venter, 2000, Chapter 10: 4). The image of the child is used to illustrate the idea of the vulnerable person. Accordingly, vulnerable persons are assumed to be weak and in need of special care (Cronje and Venter, 2000, Chapter 10: 5). The example of the child has connotations of limited ability to take responsibility and limited accountability for one’s deeds – a lack of autonomy – evoking the need for patronage.

The second example of a category of vulnerable people is victims. Here, even more so, the definition of vulnerable people has clear connotations. Something happens to vulnerable people; they are the receivers, the passive recipients, rather than the aggressors. Being passive, they lack agency, or their agency is not important.

While each category of vulnerable persons – women, foreigners, the disabled, children, victims of crime – is dealt with separately, by being subsumed under the same heading the attributes are ascribed to all of them.

Finally, the section on the Domestic Violence Act – which is introduced in the manual as protecting women in particular – makes clear the kind of role police officers are meant to play in the protection of vulnerable people. In cases of domestic violence, the manual explains, police are meant to reach out and take an active role in protecting vulnerable people against the belligerence of others, and even against themselves in case their vulnerable status makes them incapable of standing up for themselves.

### 3.2.6 Concluding comments Part one

The human rights training manual envisions and presents a police subject which is morally redeemed. This subject has little moral agency when it comes to the past, and is ignorant about human rights. The policy subject is neutral, not inhibited in learning about human rights, and has the kind of autonomous agency necessary to change his/her practice. The police officer's ability to evolve as a complete moral and autonomous agent is conflated with accepting human rights.

The main approach of the manual is to present human rights as a practical and technical tool, for the purpose of i.e solving crime, rather than as moral rules that are historically and socially contingent. It normalises the social and class aspects which are related to the legal capacity to grasp the language of human rights. The incentive to take on human rights is seen as flowing naturally from the international status of human rights. The aim is to produce police officers whose discretion and judgement have been sublimated by a sense of instrumentality and a detached and abstract reading of their practice. They are imagined as being fully accepting of their subsidiary status in relation to the law. Force is to be applied purely from this subsidiary position, and is further imagined as calculable and rationalised. Police actions are seen as guided by a sense of technically and legally well-versed professionalism. An even greater level of professional responsibility and virtue is inscribed to police officers when they are dealing with so-called vulnerable persons.

Because of these built-in assumptions, the form of human rights and policing training that it gives rise to represent very particular practices and presuppose very

particular types of police officer. The assumptions prescribe how police officers are expected to change and into what they are to change. It is this particularity that binds the training of South African police officers to the international human rights industry and its sociality, which is marked by specific cultural and social capital. As I will discuss in Part Two and Three that follow, these things are both revealed and rejected in many ways, on the national management level as well as at the actual training level. This rejection can only be understood by taking into consideration the cultural specificity which the apparent neutrality of the training and its affinity to the transnational human rights industry conceals.

### **3.3 Part Two: The Human Rights and Policing Programme at Management Level**

#### **3.3.1 Evaluation**

In 2001, two years into the running of the Human Rights and Policing Programme, the Swedish International Development Co-operation Agency (SIDA) initiated an evaluation of the training programme. This was carried out through their project of police co-operation between the Swedish Police Board and the SAPS. The evaluation showed that the success of the HRPP had been hampered in various ways. While the programme's goal had been to train 100 000 police officers by the end of 2002, by September 2001 only 21 974 had participated in the HRPP's three-day training courses

(Rover 2001:2). The evaluation identifies seven main deficits in terms of the implementation of the Human Rights and Policing Programme:

*1) [lack of] institutional commitment to human rights; 2) institutional misconceptions and prejudices against human rights; 3) a failure to recognise the importance and benefits of observing human rights for policing, service delivery and customer satisfaction; 4) a failure to give the programme institutional status and priority; 5) insufficient numbers of qualified and motivated trainers; 6) logistical constraints; 7) shortcomings of the human rights and policing programme itself (Rover 2001:vi-v).*

These points seemed to support my own findings regarding the shrinking of the status and influence of the programme, derived through interviews with the main stakeholders in the programme, Captain Ngwenya, the second in command of the HRPP, was at times quite frank about the status of the programme. He told me that the HRPP has been left by national and provincial management with “too little to live, but too much to die.” As mentioned in the evaluation and as partly described at the beginning of this chapter, there are more concrete aspects accounting for the reduced status of the programme. For example, token substitutes (such as the non-police officers I encountered at the training class) are sent for training; management is ignorant of the “implementation status of the project in the province” and “demonstrate[s] a polite boredom with the subject of human rights” (Rover 2001:12); “the programme on human rights and policing is not clearly presented as a priority within the SAPS” (Rover 2001:11); and “the perception of non-commitment of senior SAPS members exists and persists” (Rover 2001:7). The evaluation also mentions that “a recent instruction sent out from the SAPS

national headquarters to the effect that participants to human rights trainings courses are no longer to be provided with meals and beverage during the three day course has further reduced the willingness of the members to attend” (Rover 2001:13). This – literal and figurative – condition of undernourishment has forced the HRPP to take on a much-reduced appearance. Below I describe the shape that this reduced appearance took. In doing so I will rely mostly on what has come to the fore during my interviews, rather than on the SIDA evaluation. This is because the evaluation does not consider what there *is* in the light of failure of the HRPP – in other words, the precise nature that the “negative form” takes.<sup>72</sup>

### 3.3.2 Reduced but ceremonial status

In an interview conducted with Captain Ngwenya, he discussed the commitment of police management towards the human rights training programme and the unit. He told me:

The commitment is in writing. It is there on the video and in the training manual. But you see, the very management, they are looking at crime, and what they are interested in is that the crime statistics are going down. That is their main thing; they want to see that. There is this gap between management and crime on the one hand, and training on the other hand. And there is no back up in place, of the kind that would say: but within such and such time so many must have been trained.

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<sup>72</sup> As such it is very much in line with the mechanical toolbox style of writing that I criticised in the beginning. This way of proceeding seems to be able to deal only with either the absence of the normative or the normative as projected into the future, but not with what lies beneath the lack, or with what the current situation looks like.

There is an obvious discrepancy between what the management puts officially on paper and what drives their everyday rationale. Crime fighting is played out against human rights and human rights training; the commitment appears as thin and feeble as the paper on which it is written. An inability to make the ceremonial acts of endorsement consequential and significant is expressed in Captain Ngwenya's wish for more leverage to support his requirements for putting the training in place.

Captain Ngwenya even admits that if international NGOs had not taken the initiative, made available the funding, and provided the expertise for producing the training manual, then:

Actually not much would have taken place. You see the budget is confined to purely logistical things. But still there are not enough cars, there are not enough policemen; I am not even talking about salaries. That means it would have been impossible to make money free for the development of the human rights training programme. Without the foreign donors not much would have happened.

He continues:

The same thing happens with the Xenophobia Project. It is a project by the NGOs. And they want to do something about xenophobia, especially for the border police but also the normal police. The police say, okay you can come and train, but who is going to pay? So the NGOs pay for themselves. And then after they have been running the pilot project the NGOs say that this must be going on. Then the police say, 'Unfortunately it was just a pilot project, and it cannot be included in the training.' If it must carry on then the NGOs must pay for it.

This account exemplifies in a poignant way the process of how projects are implemented from outside into the police organisation. The police management willingly offers NGOs a stage on which they can perform their training projects; meanwhile NGOs, out of self-interest, overlook the unwillingness of the police to buy into the project beyond this. Then the NGOs themselves, in order to continue receiving funding and for the sake of their own survival, participate in creating the myth of the usefulness and

efficiency of their training. In the case of the HRPP, they implant rather than implement the internationally oriented and explicit human rights talk within the police. Meanwhile from the perspective of the police management, the project remains a foreign body which occupies and sustains itself like a benign tumour that does not proliferate and spread into the body of the police.

This process of implantation is reflected in the experience of a female, high-ranking Swedish police officer who had been placed within the SAPS. She had been seconded to the SAPS as part of a Swedish programme, with funding of more than R20 million. Her role was to serve as liaison officer between the Swedish steering committee and the SAPS project managers.<sup>73</sup> She was to oversee the whole process of co-operation, and to intervene, assist and of course steer where necessary, so that the money would be spent within the outline envisaged by the foreign donor. These projects encompassed a wide range of organisational matters, ranging from human resources to human rights.<sup>74</sup>

The SAPS for their part had allowed Swedish police officer the privilege of an office in the national management offices at police headquarters, and even on one of the higher floors – a gesture symbolic of respect and appreciation. While on first appearance everything seemed to reflect a genuinely co-operative approach, a different picture surfaced during an interview which I conducted with the Swedish officer. She told me that she was well accepted within the police and invited to all their functions and honorary events. However, the moment that she tried to actually steer decisions, exert influence and advise, in keeping with her brief, she was subtly but firmly rebuked. Her advice was seen as meddling, her outsider role was used against her, and her knowledge

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<sup>73</sup> Within the human rights and policing industry, the approach of letting police officers co-operate with each other, instead of sending in someone who has no policing background, is seen as wise and laudable, and would probably be described as creating new “best practice” standards.

<sup>74</sup> For a more detailed list of the envisaged projects to be run in the framework of the Development Co-operation between the Swedish Police and the South African Police Service, see Swedish National Police Board (2000).

was undermined with reference to her international status: "They like to tell me that I do not understand because I come from a country where there are no police officers being killed and where there is no crime." In this way, although she was visible officially, effectively she was condemned to the margins of the national police organisation.

In 1995 human rights issues were still explicitly listed and were one of the topics of the annually published "Police Plan", but by 1999 human rights were nowhere to be found. When asked about the disappearance of explicit human rights concerns from recent "Police Plans", Captain Ngwenya argued, this time in a more defensive way, that human rights "are now part and parcel of professional service delivery." He said this with slightly exaggerated vigour, as if he wanted to compensate for something. He clearly downplayed the fact that explicit human rights concerns had become absorbed into a broader concept, where it could mean anything from a vague brief to adopt a friendly attitude towards clients, to a regulatory benchmark such as an increase in successful convictions. The fact is that human rights within the broader police organisation have become blurred. Human rights have been stripped of their exceptional status as technological regulations with a distinct relationship to the international realm. Through the organisational absorption of human rights, the explicit anchorage in the international realm has been erased. In fact, at the time of writing this thesis, the HRPP was under review and was itself to be absorbed into the SAPS legal services instead of continuing as a sub-unit on its own.

### 3.3.3 Public relations feature

Despite its thinning out, there has been something in the reduced status of the Human Rights and Policing Programme which has proved itself useful to police management, and which could probably save it from being totally absorbed into the legal services unit. Captain Ngwenya told me:

And you know in times when there is...like last year the Dog Unit incident...then everybody is asking what does the police do about human rights? And then suddenly management remembers there is a Human Rights Unit, and then they can say that this is what we are doing for human rights, and then we here at the Unit have to answer all the questions. It is in such times that they can say we have our Human Rights Unit.

Captain Ngwenya meant to point out to me the importance and success of the HRPP. However he did not cite what the Unit had done, how many people it had trained, or what the training had achieved. What he called upon instead was the programme's usefulness for public relations in a prominent case of public outrage: its presentational role, and how it could be used to calm down the public outcry or deflect pressure from politicians.

"The Dog Unit incident" concerned a video made by members of a police Dog Unit. The video documented the Unit's crude training methods. One method entailed randomly picking up illegal immigrants, holding them in detention and then instructing them to run in an open field. The police dogs were then ordered to attack the immigrants and immobilise them. The men were not given any protection. When the dogs caught up with them, they were brutally bitten. While this was going on, the trainers, mainly white police officers, stood around laughing. The video had been leaked to the South African Broadcasting Corporation (SABC), as a result of an internal dispute with one of the police officers in the Dog Unit. It was screened nationally on *Special Assignment*, an

investigative news programme of the SABC. A few days later, it was broadcast over many international channels around the world.

The pictures were obviously evocative of the well-known representations of apartheid policing, with white police officers inflicting sadistic brutality on black subjects.<sup>75</sup> The programme excited negative sentiments towards the police, which were characteristic of the early transition period and the anti-apartheid struggle years. The police were accused by the public of being “racist perpetrators”, “human rights offenders” and “reincarnated apartheid police”; many viewers were “embarrassed to be South African” (emails to the SABC after the screening on *Special Assignment*). A few years into the transition, such sentiments had generally become much more silent as they were surpassed by concerns with crime, corruption and private security. However, the video had awoken them. To counter the outcry, the Human Rights and Policing Programme was held up to reassure the outside world that the South African police force was dealing with issues of human rights.

Hence, to draw an interim conclusion, the HRPP exists in a logistically malnourished state – consisting of little more than the training manual and its offices – and thus wields little influence. For police management – from national to station level – it functions as a public relations feature which can be employed in times of crisis, when the media, national and international NGOs and politicians decry the police’s human rights misconduct. It then serves to redeem the police force from criticism reminiscent of the early transition and anti-apartheid years.

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<sup>75</sup> Special Branch agents, as recorded in J. Pauw’s *The Heart of Darkness*, were sometimes known to drink and braai (barbeque) while burning the bodies of anti-apartheid activists they had killed – symbolic of similar sadistic callousness.

One could argue that the HRPP has taken on the function of a mirror. The NGOs that had been part of the *implantation* process and which were now demanding to see what the police were doing about the human rights concerns they supported and advanced, were, once the HRPP was used as a PR response, told more or less to look at their own projects and investments. The police threw the NGOs' preferred picture back at them – a picture which the NGOs had enabled the police to hold up in the first place. In a way, the NGOs had given the police the means to create an illusion, a screen through which a different practice could be shielded, while dazzling the outside world with what it wanted to see.

#### 3.3.4 Taking off into the international realm: the broadening of a self-referential consensus

As mentioned before, the evaluation had several points of criticism with regard to the implementation of the Human Rights and Policing Programme. The police organisation was blamed for being unable to recognise the superb quality and importance of the training project. The training manual itself, however, was spared from negative comments. On the contrary, it was heralded as one of the best of its kind in the world. It is worth quoting one of the paragraphs of the evaluation report, which highlights this veneration of the training manual. The evaluator writes:

*The author would like to add his own observation on this point [regarding the quality of the manual] on the basis of a broad familiarity with many different packages on human rights and policing. It is his view that the materials produced for the*

*programme are of the highest quality and deserve to be used as a model for similar initiatives in other countries of the region (Rover 2001:10).*

According to Captain Ngwenya, this is exactly what happened. The training manual came to serve as an example internationally. He recounted:

The programme receives a lot of national and international recognition. It is heralded as one of the best of its kind. Government departments all have to deal with human rights, and they are looking at us as the only ones who have their own Human Rights Unit, and they are trying to get hold of our package. NGOs are very much keen to get hold of our training package. I have been asked from Cairo, who have to deal with their police and human rights, to speak about our training, and just today I have been asked by Amnesty International London. And Zambia has asked us as well. Out of our own development, a lot has developed. I am also looking at SADC. They are all interested.

The enthusiasm in the voice of Captain Ngwenya rose as he was describing how the human rights training and those who worked with it were suddenly in high demand. For him, the outside world's interest in the human rights training programme could so much more easily be presented as a success than the story of the HRPP's internal downscaling. The HRPP had in fact developed into a sought-after "export product", capable of turning upside down the assumptions of superiority of expertise coming from the north. The particular case of South Africa's transition, and the fact that training had to confront and transform what had been the epitome of an evil police force, had allowed for South Africa to emerge as an expert in police training.

However, the curious aspect here is that the organisations which had had such great input in setting up and designing the programme were the same ones (or closely

related organisations) to those which were now requesting South Africa's expertise on the issue of human rights and policing.

The best example is in the evaluation of the training. The evaluation process had been carried out by Rodger Kelly – the very same person who had lent his expertise to setting up the training in the first place, on behalf of one of the international organisations. And he was the same person who was now encouraging the exportation of the training manual.

It is interesting to note that Rodger Kelly had originally come from a policing background, but had built up extensive experience in the circuit of international human rights work, advising and consulting various police forces in so-called transforming countries on issues of human rights and policing. In addition, he was married to a person who worked on issues of human rights for the UN. As such, they were no strangers to the *social life* of the transnational culture of international human rights standards.

I asked the representative of SIDA, who had called for and financially authorised the evaluation, if having the same person evaluate the project who had helped to set up the project was not problematic. She answered that; on the contrary, it was desirable to have someone who knew what the human rights programme was about. However, while insider knowledge might be of great advantage, it also means replication of the basic presumptions of the programme. Criticism from such a source would be most unlikely to touch on the programme's foundational pillars or unmask the shared assumptions, such as the primacy of international human rights standards and the social practice which characterises so much of the international consensus.

One can argue that the South African case brought together many organisations which previously might have worked in isolated, and thus produced something of a concerted effort. However, this does not alter the fact that what emerged was a closed circuit of human rights and policing talk – a circuit that does not want to see itself as such and therefore stresses that it has been interpreted, valorised and authenticated by its application within the context of the South Africa police. However, since the training has been downgraded, compromised and at best tolerated at the organisational management level, what is called a success is actually the self-referential and self-congratulatory effort of human rights organisations and experts.

The occupational development of Director Brink, the programme manager of the HRPP, gives us further insight into the expansion of this self-referential circuit. Director Brink had originally been appointed from the ranks of police management. For him, this appointment had presented itself as a once-in-a-lifetime opportunity. However, there was something about him which made him very well suited for the position. He had an interest, rather unusual for a policeman, in art and architecture. In fact, he told me that he had originally wanted to become an architect but hadn't had the money for a higher education. He had chosen to become a police officer because at least it allowed him to study law through the police. There was a clear sense that he had always aspired to something different and more societally and professionally recognised than a career in policing. The engagement with the human rights programme provided a bridge for him to enter a more middle-class and cosmopolitan world. The making of the manual brought him into contact with international role players, especially a range of Scandinavian NGOs. Increasingly, he was treated like an expert in the field. He was invited regularly to

international gatherings where human rights and policing were discussed, which gave him a comfortable sense of belonging to the circuit of international human rights and policing. At one point, rumours had it that he was spending more time travelling than organising the training.

Director Brink then got an offer to work on a UN project in Indonesia, to train Indonesian police officers in human rights. This offer, in line with the self-referential nature of the field, was extended to him by the same Rodger Kelly who had lent his expertise to the making of the manual and who had carried out the evaluation. The offer came at a time when Director Brink was already quite frustrated that the HRPP was being kept on a short leash by police management and threatened with incorporation into general legal services. Being absorbed back into legal service would have meant that he would have to give up his title as the Human Rights and Policing Programme manager, which had given him much credibility in the international human rights world. It would have meant being drawn back into the more closed-in, and primarily nationally oriented, police world, which by then lacked all appeal for him. The offer to go to Indonesia, to leave the South African police permanently, to earn the salary of an international expert and to become part of the international world was thus a very welcome opportunity. Hence, while the human rights programme was being pruned on a management level and prevented from exerting any further influence, Director Brink was airlifted into the international realm.

The training manual had contributed to the growth of the human rights and policing industry, and it had expanded the consensus around human rights and policing issues. However, it could be argued that this took place more by absorbing people from

the South African policing world into the world of the human rights and policing industry than by disseminating human rights effectively into the South African police force.

### 3.3.5 “The clash of cultures” or “Who is the odd one out”?

Having described how the Human Rights and Policing Programme has been sidelined, I now deal with the question of how and why the police management managed to sideline the project so effectively.

If one follows the evaluation report, then the problem seems to come from the prevalence of the “institutional misconception of and prejudices against human rights” (Rover 2001:iv). More concretely, “members of the SAPS hold serious misconceptions as well as deep rooted prejudices as to the nature, scope, and purpose of human rights in general and the training on human rights and policing in particular” (Rover 2001:9). This reasoning suggests that it is the beliefs and practice of police officers that are the problem in the implementation of human rights. It implies that police officers are badly informed about human rights; that their ideas about human rights are nothing more than prejudices and thus lack foundation. This perspective pathologises the views of the police, stripping them of any claim to validity and inscribing them with a destructive tendency.

A similarly pathologising approach is applied by human rights NGOs and human rights experts in response to assertions that adherence to human rights prescriptions limit the crime-fighting abilities of the police. The curtailing of crime-fighting capacity is the most common argument the police themselves give to explain their own misgivings about human rights. Mostly, this assertion is simply dismissed by human rights NGOs as

populist and misinformed. Alternatively, it is countered by stating that it is an invalid declaration since human rights are superior and have primacy, and are not to be balanced against or considered as competing with other rationales, such as crime-fighting. Or it is argued that, if implemented and followed correctly, a human rights-based approach to policing ultimately delivers better results in the fight against crime, at least in the long term. It then follows that the population will consider the police to be legitimate and thus will co-operate with them, facilitating the achievement of a better conviction rate (Sarkin 2001; Shaw 2002: 39). In all these perspectives and rationalisations we observe a discrediting of the claims of the police, while the concept of human rights is elevated, reified and normalised. As mentioned earlier, it is always seen to be *the other* and his or her wrong assumptions or ignorance which stand in the way of the unfolding of the good and superior effects of human rights.

However, let us once more look at the role of Director Brink, and recall how he brought together policing and human rights without having so-called prejudices against it. This might provide us with different clues as to why the police management isolated and “starved” the HRPP. Earlier on, I pointed to how the interior design of Director Brink’s office reflected his cultural and social aspiration towards a more middle-class and cosmopolitan culture, and how much this seemed out of place in the environment of the national police headquarters. His being an oddity vis-à-vis a normalised police culture highlighted Brink’s stance on the primacy of international human rights standards and his alliance with the international human rights world.

This brings me back to what I discussed in the first part of this chapter with regard to the cultural bias and the clear anchorage of interest and power in the explicit human

rights talk which elevates international human rights standards to their ultimate moral source. What I am suggesting here is that if we really want to understand the rejection of the HRPP, we have to take into consideration that the implementation of human rights has its own cultural bias. This bias stems from a very specific cosmopolitan middle-class culture which inextricably links it to a particular group and its interests.

This line of reasoning allows me to roughly sketch two interrelated explanatory readings of why the police management rejected and sidelined human rights. One highlights the group interest and power nexus, and draws from a more political and strategic perspective; the other highlights the level of cultural and social difference and a notion of power as embedded in the sociality and culture of the different realms.

As mentioned earlier, the HRPP was the product of the overlap between national concerns and the agendas of international organisations. One side of this was that the post-apartheid government looked towards the tools and the institutional landscape of international human rights standards to “tame” the police, of whom they were highly suspicious. This alliance served to subjugate and isolate the police management. The police management had no choice but to accept the interference in their concerns by what they saw as outsiders – the government and the international human rights world. Powerlessness rather than powerfulness was the government’s main interest with regard to the police at that early stage of the transformation process, with little leeway for discretion given to the management of the police (Shaw 2002).

For example, when the legal amendment for the use of force<sup>76</sup> was under discussion, the head of SAPS Legal Services dismissed a draft version with the argument that South

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<sup>76</sup> The amendment regarding the provisions regulating the use of force was treated as a test case for the public display of commitment to human rights, especially by human rights organisations.

Africa “pushed by some over eager NGOs and freedom fighters was driven into an overly compliance with human rights standards and a not workable democracy.” He further stated:

The justice portfolio committee decided to throw away the whole draft amendment [which the police had tabled] and redraft it in total. They based it on the Canadian model with a few amendments to make it a little bit stricter than the Canadian model, which eventually in my view turned out to be a provision which is impossible to work with (Director Geldenhysen, 23, September 2002).

One could read this as pure disagreement over the practical terms of the amendment. However, it becomes obvious from the tone of this remark that the amendment also represented a struggle about influence and discretion, which the police seemed to be losing. The remark shows the anger about “NGOs and freedom fighters”, and even more so about the degradation felt when the police draft, which had been handed in as proactive measure to keep the terms of discussion in their own hands, had been completely thrown out. At that stage a human rights alliance could override anything the police proposed and indeed did so almost with contempt, as described by Altbeker (2005:248).

However, after a period of suspicion towards the police, which coincided with a period in which crime increased and, more importantly, emerged as a political issue, the government realised that they needed to take charge of the police and promote and support them as their only means of fighting crime. The ability to control crime became a test of legitimacy for the new government, both or the population and for the international realm, as issue related to commercial and investment confidence. Given these considerations, the government’s interest in using human rights as a means of controlling and holding the police to strict account diminished.

Furthermore, the waning prominence of the Reconstruction and Development Plan (RDP) and the growing consolidation of the Growth, Employment and

Redistribution (GEAR) strategy became noticeable within a few years of 1994. This was not only an economic shift towards a neo-liberal market economy: it also marked a political change. It signalled a falling away of the political and institutional ground from which the training programme had emerged, and which had substantially drawn from a social justice and human rights language. Also at this time, some of the human rights considerations so characteristic of the early transformation period became less sacrosanct.

With this shift in the political agenda, and with the emergence of a more interdependent relationship between police and government – in which the government came to rely more and more on the police force's capacity for action – the police force gained enough bargaining power to shift its standpoint. The new conjuncture allowed the police management to reassert some of its autonomy and confidence.

The sense that the HRPP in particular, and explicit human rights issues in general, meant a potential intrusion and form of control becomes even more apparent if we consider that it shifted the centre of control towards an outside world to which the police had little access. The human rights world was a world that in many ways contrasted with the SAPS's social profile and cultural outlook. It diametrically opposed what had been shaped by Afrikaner nationalism and what Hyslop (2005:176) has called the "pseudo-traditional organisational complex", which was "a set of institutions aimed at keeping Afrikaners mobilised and separate from English speaking whites and foreign cultural influences." Hyslop (2005) makes an interesting argument which links cultural outlook and social class. He argues that that the willingness of whites to go along with the dismantling of apartheid had been contingent on the emergence of a new consumerist culture. This consumer culture among whites brought them in touch with, and made them

accepting of, a global, Euro-American culture characterised by the pursuit of lifestyle and a sense of “middle-classness”. In such a culture of “individualised sense of self-interest”, making sacrifices such as undergoing military service in the name of white sovereignty became less tolerable. If the possibility of pursuing a middle class lifestyle existed and could be guaranteed under an inclusive government, this would be considerably preferable. In other words, the embracing of a more global culture – of which international human rights are part – mediated through consumerism, was contingent on a certain sense of social class, namely middle-classness. Conversely, those who could not access this middle-classness remained excluded from globalism and worldliness – and as such from international human rights culture, which is dependent on an even more exclusive middle-classness than consumerism is, because it is additionally marked by the possession of a particular quality of educational capital. Instead, those excluded from globalism would have to remain somehow reliant on the state-made culture which so strongly rejected everything foreign and English speaking.

The lower class profile, which many of the police officers revealed, and which had profoundly shaped police culture, thus comes to bear upon the question of acceptance of the human rights culture within the police. As mentioned in Chapter Two and as confirmed by Posel’s (1999) article on “the paradoxes of the apartheid state”, apartheid had produced a primarily white public service which was either suffering from staff shortages and structural inefficiencies, or had to employ a vast array of people who were largely under qualified, badly trained and from lower class back grounds, who often couldn’t manage in the more competitive private employment world. This had come about from the social engineering that had been necessary to maintain racial segregation

and the insistence on “keeping the workforce white” (Posel 1999:118). Where black people were employed, they were as far as possible confined to unskilled work with few training opportunities, which confined them to their original class position (Brewer 1994: 125). Lower class employment is equated with an unwillingness and an inability to become acculturated to and proficient in the world of international human rights standards, this precluding the influence both formally and informally of international human rights [check this interpretation I wasn't sure how the last phrase related to the sense of the whole sentence, there seemed to be a contradiction].

However, with the shift towards fighting crime, backed up by government, the centre of control moved back into the national realm and, more importantly, the language of crime fighting was the language in which the police themselves were proficient, allowing for much greater leeway, discretion and scope for manipulation. Hence the prioritising of crime-fighting over human rights might actually be less about fighting crime than about emphasising the police's cultural and social ways of doing things: which is to draw from their own expertise, to stress their kind of sociability and the influence which can be exerted through their kind of networks. This is hardly the whole picture, but it is an important aspect if we do not want to get caught up in the simplistic opposition of human rights versus crime fighting, or if we do not want to be naïve about the kind of intervention which the international human rights world provides. Each party shelters a world of interest, power and sociability. Each attempts to create a reality that gets in the way of the other at the various interfaces which the globalisation of human rights has produced.<sup>77</sup>

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<sup>77</sup> This does not mean that crime-fighting is only a name or cover-up for police turf, or just a self-interested way of exerting influence. Crime fighting is very real and central to the police's agenda, and will be further

The sense of outside control with which human rights are imbued cannot be underestimated. This is not just because of actual human rights provisions but also because of the adoption of a human rights perspective shifts the centre of power and changes the “language” used to areas in which the police force is not in control. It is from this point of view that the starving of the HRPP into a primarily representational feature becomes meaningful.

### **3.4 Part Three: Training level**

#### 3.4.1 Introduction

I now move from the management level of the Human Rights and Policing Programme to the level of its trainers. As explained in Chapter One and elaborated in the introduction to this chapter, I never managed to observe an entire training session. Only once did I join a training session, and then only on the last day of the three-day course. Admittedly, this is a clear lacuna in the research. Nevertheless it clearly reflects real problems with regard to the scheduling of the training. This is confirmed by the evaluation report. For example, the evaluation report mentions that “It appears that all too often, letters of invitation sent out to solicit participants for a three day course fail to raise the minimum number of participants required to go through with the actual implementation of a course” (Rover 2001:13).

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explored with regard to police practice in the following chapters. However, just as human rights are never simply benign and neutral, crime fighting is also never purely instrumental and goal-oriented.

What I did manage to do, with the help of the provincial training co-ordinator, was to bring some trainers together and conduct an in-depth group interview with them. This provided me with an interesting set of data, namely the trainers' reflection on their training practice and their way of making sense of the gap between the given format of the training and how they run the training. This will be the theme of this part of the chapter, where I describe how trainers put the training into practice. I discuss what it takes to make the internationally conceived format work in the context of the training. This context is still not the real everyday practice of policing, but it is much closer to the reality of everyday practice because that is what both trainees and trainers are occupied with.

#### 3.4.2 Selection and training of trainers

Trainers for the human rights training course were selected from the ranks of police officers. The co-ordinator for the human rights training for Gauteng told me that candidates were chosen from among those who showed special eagerness, interest and a quick grasp of human rights during one of the training courses. They then received "training for trainers" by professional human rights trainers, after which they became part of the pool of trainers, and would be called on occasionally by the co-ordinator of the regional training centre to facilitate a three-day human rights training course themselves.

When I talked to Director Brink about the training, he stressed that it was purely voluntary for police officers to make themselves available as trainers. No financial benefits or opportunities for promotion came from it. The non-monetary aspect had a

pragmatic reasoning. Partly it was because the HRPP had to run on a thin budget. The absence of monetary or promotional benefits was also intended to discourage police officers from volunteering opportunistically. Instead, a sincere enthusiasm and commitment for human right was expected.<sup>78</sup>

Many police officers were willing to become trainers. Some of the trainers, however, mentioned reasons for their volunteering beyond pure enthusiasm for the cause of human rights. Some thought that – despite discouragement to the contrary – it would have a positive influence on their promotional record, or that the advancement of their skills would be recognised, at least in the long run. Others claimed that they simply wanted a change in routine. These reasons were also supported by the evaluation report which mentions:

*When asked about their professional ambitions for the next three years, all of the respondents [trainers] expressed a primary concern and interest in promotions and achieving a higher rank. None of the respondents expressed a firm desire to stay with the human rights programme and see it through in its implementation until its completion (Rover 2001:14).*

From what I had gathered from my group interview with the trainers, and what I could draw from my conversation with the provincial co-ordinator, the officers who appeared to be most ardent about the training were overwhelmingly young black officers who, at the very least harboured no grudges against the idea of human rights and, at best,

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<sup>78</sup> The assumption that human rights training could expect such an altruistic and benevolent stance further revealed the position of the moral high ground from which the training had been conceptualised.

recognised human rights as a liberating force which could create opportunity and freedom in their lives, in the country in general, and within the police organisation in particular. They were often the ones with a quick grasp of the issues, and with enough courage and communicative skills to teach a class. The irony was that it was exactly those skills, in combination with their racial profile, which made them eligible for promotion, especially under the equity policies of the SAPS. Therefore, it often was the case that those police officers who had just been trained as trainers would be promoted to a higher rank or a more responsible position; then the greater responsibilities of their new positions would not allow them to volunteer further to conduct the training. In the evaluation report it is mentioned that, as a consequence, "The number of active trainers out of a total of 730, could well be lower than 100" (Rover 2001:13). This also meant that the recruitment of trainers, which had been meant to take place only in the setting-up period of the course, had to be ongoing.

The would-be trainers participated in a two-week training for trainers course. During this time, they were taken through the training manual and were taught facilitation skills. This training for trainers course was mainly carried out by human rights training experts from national and international human rights NGOs. (Interview, Brink, 23 September 2002). This training was quite different from the training given to police officers in the normal three-day course, because the trainers were more motivated; they came to the training course on a voluntary basis and had some idea of getting something out of it for their own development. Also, the experts training the trainers had authority which was rooted in their superior knowledge and professional experience. Thus, even if

there was a difference in understanding human rights, there was some underlying common aim between students and teachers in the trainers' course.

The three-day course for police officers took place in very different conditions. Here, a full-time police officer was training other full-time police officers. The only difference between them was that one of them had been taught some facilitation skills. This meant that the world of everyday policing was much more present in the class, and had the tendency to encroach much more on the training. In addition, police officers seldom participated on a voluntary basis, but were assigned to it; most likely they would see it as an opportunity to get away from their normal work routine. They brought with them a whole spectrum of ideas about human rights which were often not very favourable. It is under these conditions that the manual had to be applied.

Let me briefly review the content of the manual. The content of the training, despite its claim to neutrality and practicality, was very specific (as described in section 3.2). The training manual postulated a certain truth about the persuasiveness of human rights and the mode of subjectivity of the police officers awaiting training. One pivotal assumption was that the police officers would be persuaded about the importance and validity of human rights by being presented with the fact of the international status and recognition of these rights. This international status was presented as precluding the need for any greater justification for the claim to their universality.

Another assumption of the manual was related to ignorance about the subject. It was assumed that not knowing about human rights led to the violation of human rights. With this focus on knowing, the manual attempted to occupy a morally neutral position. By refraining from making moral judgements, it was hoped that the trainee police officers would not be alienated or antagonised.

From the idea of the ignorant and therefore oblivious and therefore ultimately innocent subject, followed a particular idea of what the process of reversing and

remedying the ignorance should be. What was needed, it was believed, was simply to let police officers *know* about human rights. This stresses an autonomous agency which allows the individual to choose freely and voluntarily what to be and what not to be.

Then there was a whole range of assumptions about specific policing practices. Police officers were asked to apply their policing powers dispassionately. They were expected to submit themselves as secondary to as well as instrumental to the law; to deal with crime incidents in an abstract and detached manner; to suspend personal judgment; and to apply violence in a technical, proficient and considered way. While one aim of the training was to limit the discretion of police officers, sometimes discretion proved to be absolutely necessary. In such cases, the manual assumed the availability of a high level of technical, social and communicative skills and professionalism on the part of police officers. This included an intricate knowledge of the legal technicalities as well as the ability to carry out investigations in a purely forensic and evidence-based manner.

It is these particular aspects of the manual – textured and structured by these postulations and assumptions about human rights, the transformation of the police officers, and the availability of skills – which challenged the training. The trainers had to make the training work on the basis of these assumption and postulations.

### 3.4.3 The training: an exercise in translation

#### 3.4.3.1 Levels of translation

The in-depth group interview with trainers revealed quite clearly that the giving of the training was ultimately an exercise in *translation*. In other words, the trainers did not just follow the format of the manual but created their own format. The trainers stressed the point that they did not teach the training manual in a congruent manner but that they selected, adapted and inserted what they wanted to teach. A trainer in the interview said:

I took a course on how to present a class, but not all what should be used do I implement. But after all I was found competent to present the class.

Because they had taken the training-for-trainers facilitation course, the trainers felt a certain entitlement and competence to select and adapt the focus, form and content of the training. The specifics of what they did depended a great deal on their personal experiences and idiosyncrasies. However, it appeared from the group interview, as well as from the snippets of training that I was able to observe, that there were particular moments in the training process where acts of translation became unavoidable, even necessary, in order for the trainer to succeed in the training project.

The remodelling and translation of the training programme was driven by a certain exigency and necessity, because the trainers had to report a certain degree of success. The official aim of the training was to get police officers to integrate human rights principles in their policing practice. However, in a more mundane and immediate sense it meant that the trainers first had to get the police officer trainees to believe in the course; they had to participate actively, and to absorb enough of the material to pass the evaluative test at the end. However, it became clear during the group interview that sticking to the original manual would not have achieved any of that. Instead, it brought to

the fore the divergences between the original format and the realities of policing and the sense of the trainers about how police officers should change. Translation in its different forms became pivotal at this interface.

Translation can be understood as the process of making the training manual meaningful and intelligible to the trainees, and to the trainers themselves. The act of translation can be characterised by degrees ranging from stringent faithfulness to the original text, to a deviation from the original, to the creation of a new text. Truthfulness to the original is the literal reiteration of the original in a new context, while either ignoring the reception of the text or assuming that there is an overlap between the meanings of words and concepts in original and in the context of application. An intermediate degree on this scale of translation is that the original text is rewritten in a language which is better accessible to the trainees. The third level is that passages and meanings of the original are summarised, interpreted, reproduced and even recreated in the language of the new context. We will see, through a symptomatic and close reading of the group interview, that all these degrees of translation were being deployed, even up to creating a new vernacular in which to speak about policing and human rights.

#### 3.4.3.2 To know or not to know

At the beginning of the interview, the trainers conveyed to me a complete confirmation of the training manual's assumptions about police officers as ignorant subjects. They said that the police officers they had to train displayed ignorance and lack of comprehension about human rights.

People don't understand.

Their mind is limited, they don't think beyond.

The trainers then claimed that the training remedied this ignorance and the limits of the mind, thus transforming the subject.

You empower them to such an extent that they can now distinguish between right and wrong.

The above comment evoked the assumption that police officers who violated human rights must have done so out of blindness and weakness, because they did not know how to do things in a different way. However, ignorance is not just seen as a lack of information. Ignorance is morally qualified. The police officers who undergo the training emerge not so much as more knowledgeable subjects in a purely technical or professional way, but as morally literate and *normatively* knowledgeable subjects. A strong notion of enlightenment is announced, that leads ultimately to moral advancement. It is described as almost an epiphany, with the course providing the means to "see the light". As long as the trainers hold onto the notion of the ignorant subject, the morally neutral position of the subject proves to be unattractive and untenable.

The trainers, being police officers themselves, were more realistic than that. They knew that the assumption that police officers were ignorant subjects regarding human rights contradicted their insights into the everyday experience of policing. As the interview progressed, one trainer said:

They put themselves into abnormal situations to do it ['it' meaning maltreatment in some form], and you do it at night when everything is silent. You don't do it during the day, so you know it is wrong.

He clearly saw the contradiction between the actual practice of police officers and how they are portrayed in the manual. He made clear that police officers who committed human rights violations had a strong awareness of doing so, at least in the sense of doing something against the rules. In a similar vein, another trainer drew from his experience of everyday policing:

They understand a hundred per cent, but the problem is that they feel that the way the lecture has been designed or considering the Constitution: it ties a policeman's hands behind his back when it comes to fighting crime.

He was suggesting that the success of the training might be limited because human rights are perceived by police officers as posing a threat to their effective everyday practice. It is not about "not knowing better", but about acting in a different way because of different rationales. While I discuss these rationales in detail in the next chapter, it is worth mentioning here that they must be understood as embedded in social practice in a sense which is opposed to the liberal idea that feeding facts to people can change their attitudes. The changed skills of social practice which police officers have to acquire in order to become police officers who are able to respect human rights, involves a much more profound process, which touches the foundations of the police officers' sense of self. Such practice might not even be accessible to them because it presupposes a

different kind of social capital to what they have. In addition, the social practice which the course wants to change is not just the product of individual responsibility but has to be thought of as ingrained in institutional and societal structures and as produced through the interaction between police and people.

The training did not provide a language for thinking about a more deterministic and institutionally contingent social practice. This shortcoming could be exploited by defiant trainees who, as the trainers described it, foregrounded structural issues such as the failure of logistics and organisational weakness in order to refute human rights-based policing. They could thus shift the full responsibility towards the institution and morally exempt themselves. This left the trainers stranded, since they felt, at least partly, that the trainees had a point.

However, to make the training possible, such insights were put aside. They could not be brought into play, because the contradiction between the idea of changeability and the idea of tenacity of behaviour and social practice would have made the course pointless. Thus, to some extent, the training had to be given in a state of self-imposed blindness by the trainers. The notion of the ignorant subject did not hold, but it was used nevertheless to maintain the meaningfulness of training and the trainers' own role in it.

One way of slightly bridging this contradiction was to translate the "ignorant subject" into a "morally ignorant subject". For the trainers, the morally ignorant subject provided a conceptual solution in the absence of a language which could capture the apparent paradox of knowing about human rights and still abusing them. In attempting to solve this dilemma, the trainers used examples of serious and very obvious human rights violations. These were morally less ambiguous and allowed the trainers to feel that they

had some means to convince the trainees [convince them of what? The importance of human rights?] by highlighting the good and bad aspects of a situation; thus giving the trainers some sense that they were able to meet the training objectives.

#### 3.4.3.3 Towards professional knowledge

There was yet another rift between the reality of the training and the assumption of the manual that feeding knowledge to the officers would change their behaviour and attitudes. When it came to the more detailed policing knowledge, human rights translated into legal regulations, definitions and standing orders; this introduced new aspects to policing which were indeed often not part of the police officers' repertoire. Teaching these new aspects proved to be very difficult for the trainers. They did not have sufficient qualification to guaranteed superior knowledge of this more specialised content. The training-for-trainers workshop had only taught them how to facilitate and to work through the manual, but nothing about the content of either the new and old regulations. One of the trainers said:

Don't undermine your class; they sometimes know what you don't know.

They admitted that at times during the training sessions, in the absence of superior knowledge, they had to improvise. One trainer described his strategy this way:

I am quite often in the situation that I cannot answer their questions, especially with people who are longer in SAPS than I am. Then they will ask specialist questions which need specialist answers. What I simply do is to listen to the person and then I put

the question back to someone else in the class, or I rephrase it and put it back to the person. Normally when I do this then he says I don't know the answer, but when he knows it, then also other people in the class will ask why are you asking when you know the answer. I just use my facilitation skills.

Another trainer mentioned that it was especially difficult for them to persuade through knowledge when it came to matters of investigations, because they did not command the knowledge themselves.

The other difficulty is about investigations. When I am giving the course I do not present that part. I ask one of my detective friends to help me out there. But when it comes to the rights of the suspected person, when you look at what is being said in the material, there are correlations but no real harmony between the real world and what investigating officers should be doing and what I am teaching.... Human rights goes this way and detective course goes that way...it is very confusing.

Thus, where a real lack of knowledge existed, when training police officers in legal and procedural details and practices could have contributed to the advancement of skills and professionalism, this could not be provided. Given this situation, trainers were inclined to avoid dwelling too long on the complicated aspects of police regulations and practices, and instead fell back onto talking about the morally ignorant subject.

#### 3.4.3.4 Exclusivity of meaning: human rights and race

A different, even more drastic kind of translation of the manual was applied by the trainers when it came to the preconceptions that police officers brought with them to the training course. As much as the manual tried to occupy a value-free position with regard

to human rights, it became clear that this was defeated by the trainees' own preconceptions. One trainer told me how he approached the training:

There is the fear of the unknown; they don't really know what is going to be discussed...once we talk about human rights it is not directly directed against the whites, we are not using the names of people, we are not attacking people. We are attacking a problem, not a person.

The comment started out by stressing the kind of reservations that trainee police officers brought to the training. These reservations were assumed to be especially those of white police officers, who feared that a finger would be pointed at them during the training. Indian and coloured police officers were also apprehensive. As one trainer remarked, they feared that "their 'second class citizen status' during apartheid would be held against them." The comment alludes directly to the fact that the trainees bring with them a self-consciousness of race and human rights. In fact, for these police officers human rights had become almost exclusively about race, and particularly about how the issue of race had played itself out within the police organisation. Trainers were overwhelmingly confronted with this particular apprehension, resentment and uneasiness. For most of them, dealing with issues of racial discrimination in general, and with race and affirmative action in particular, had become the main thrust of the training.

This is exactly what was reflected in the Captain Chauke's assessment of the group and the viability of giving the course as described in the beginning of this chapter. He dissolved the class because its racial composition did not allow him to apply his particular didactics of talking about "racial prejudices". Since the nexus between human rights and race had proven to be a barrier to the trainers soliciting co-operation, the

subject had received greater attention, at the expense of teaching practical rules or other issues related to human rights. For example, on the only occasion that I observed a training course, I had found that the chapters of the manual on vulnerable persons were only browsed through in the very last hour of the course.<sup>79</sup> This was because the class had spent the whole day discussing affirmative action.

#### 3.4.3.4 Creating a new (moral) language

The manual gave trainers much information, but little direction about how to bring about a change of attitude. When it came to making defiant police officers appreciate the universal and inalienable nature of human rights, they were thrown back upon their own resources. The manual offered only the international status of human rights as a transcendental and moral source for arguing the legitimacy of human rights. However, during the interview with the trainers, it soon became clear that the international status of human rights had little relevance for either the trainers or the trainees. Not once in my discussion with them about universal applicability, or in their explanation of how to bring this notion across to the trainees, did they consider it appropriate or expedient to refer to the international status of human rights.

Instead, they offered other lines of argument that they obviously considered to be more compelling. One of these was what I would like to call the therapeutic utilitarian argument. This argument suggests that the cost of treating people badly comes back with a vengeance in the form of personal suffering for the police officer:

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<sup>79</sup> This was on the occasion of my visit to a training course on its last day.

What worries me a lot is that you isolate yourself, and you are suffering the consequences. I imagine you put on your socks and you leave the house and you are telling your wife, I am going to assault so and so, what will she think? Am I going to serve as a servant of the community, or am I going to assault them? That's the thing you must ask yourself...in the end it is you who is going to suffer. You should take caution for yourself.

Hence, the reason for following these norms is constructed as a matter of personal sanity for the police officer. It clearly represents an attempt to "sell" human rights to police officers through the idea of personal gain. This counters the prevailing experience that human rights primarily mean giving up or losing something. The belief that police officers suffer from their more violent deeds draws strongly from a therapeutic discourse which has gained considerable prevalence, both publicly and internally within the police force. Newspaper articles point to "alcoholism-as-a-form-of-stress-relief", "burn outs" and "trauma" to explain police violence. This approach is bolstered by the increasing practice of placing social workers and psychologists at police stations for debriefings and other interventions.<sup>80</sup> These trends are reflective of, as well as responsible for, the prevalence of the therapeutic talk that is being merged with human rights talk.

Offered as even more compelling and persuasive was a form of human rights talk which was saturated with Christian imagery.

Once we talk about human rights we forget about your status, your education...no matter how poor you are, if you are not working, or you are just a hobo, but at the end of the day you are what you act. You know in front of God, you come to the court. Born out of Christians, wherever we come across this: For example, the mother of a young man, this young lady, she is a prostitute, but in the eyes of God this is the image

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<sup>80</sup> See for example *Burnout in the South African Police Service* (Storm & Rothmann 2003).

of God. One does not say he is born from sin; it is just a human being, although this particular baby came out from sin, but it is not the one who has committed the sin...in these times we must respect each other irrespective of where you are coming from.

Some of the basic principles of human rights, especially questions of equality and inalienability, as well as more concrete aspects such the legal principle of “innocent until proven guilty” were explained with recourse to Christian imagery. It appeared that the void which was left when trainers failed to find validity in the international status of human rights brought to the fore the transcendental nature of the claim to the universality of human rights. At least that was what the translation of human rights by the trainers picked up. A new vernacular, borrowing strongly from Christian transcendental reasoning, was created to speak about policing and human rights.

This merger of Christianity and human rights, and its persuasiveness around the issue of policing, emerged from a realm of ideas and practices which was far more accessible to the trainers and trainees than the legalistic and transnational world in which international human rights were embedded. Religion in its many forms far outdoes secular positions as a source of non-official and everyday moral language in South Africa. Many of the police officers subscribe to one of the many Christian churches in the country. Furthermore, as I outline below, the link between Christianity and human rights, as well as the link between Christianity and policing, has many precedents in South Africa.

During apartheid, the state ideology was fed by the national myth of the Great Trek and God's covenant with the Afrikaner people. This state theology was strongly woven into the practice of the police service, with prayers at the beginning of shifts, regular church services and words of faith permeating much of the official policing language. The dogma of the Dutch Reformed Church justified much of the work the police were expected to carry out. This was oppressive in many ways for police officers

who were not of the Christian faith, and for the black police officers, who bore the brunt of the discriminatory practices which were partly supported by Christian national myths. Nevertheless, it created a matrix in which the language of Christianity was never really absent from the institutional setting of the SAP.

Of course the Dutch Reformed Church ideology was not the only Christian position. At the same time there was an overlap between church activism and the anti-apartheid and civil rights movements. Some of the churches developed an explicit anti-apartheid theology (Klaaren 1997:375-379), and anti-apartheid activists were often prominent religious leaders. As Walsh (1997:85) claims, "[in 1988] the meshing of prophetic Christianity and the liberation struggle was far advanced." Funerals became public rallies and defiance campaigns started with prayers.<sup>81</sup>

The affinity between Christian religious discourse and human rights found a continuity and new prominence in the practice and representation of the Truth and Reconciliation Commission (TRC). Richard Wilson (Wilson 2001) describes how, throughout the TRC process, notions of religion, human rights and nation-building were woven together. This manifested itself in the borrowing of religious symbols and ceremonial practice and rituals for TRC procedures, creating a collective spiritual moment; as well as in the institutional links between the TRC and religious organisations – the networks of personnel, especially around certain people who worked both for the church and for the TRC. Most importantly, the ideas of forgiveness and reconciliation, crucial for the nation-building project, were expressed, channelled and made possible through a Christian narrative and the evocation of the Christian identities of many of the

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<sup>81</sup> As Constitutional Court Justice Albie Sachs (1990:43) put it, "Take away the anthem, Regina Mundi Church, and the St George's Cathedral, the Tutus, Naudes, Boesaks, Mkatshwas, Solomons, Chikanes, and internationally the Huddlestons, and the anti-apartheid struggle is no longer the anti-apartheid struggle."

actors in the TRC, not least the Chairperson, Archbishop Desmond Tutu (Wilson 2001:130-140).

Christian imagery and vocabulary, therefore, provided an expedient language to convey the message of human rights in the training course. It was a language that was mostly already shared by trainers and trainees. It also had the potential to bring a sense of continuity and proximity of ideas into a realm which was otherwise haunted with frictions and antagonisms, such as between apartheid policing and the anti-apartheid movement, and between everyday moral imagery and international human rights.

In fact, some trainers treated Christian norms and Christian identity as equivalent to conduct based on human rights. Right and wrong according to human rights was equated with the good and bad of Christian norms.

There was this police officer. He got a transfer from the POP [Public Order Police] to go to work in Katlehong. That was in the late '90s. On his arrival there, one of his new white colleagues said to him: 'Welcome to the place of milk and honey.'

He looked at the place and saw how people were suffering there. He went outside and he saw a child with a bloated stomach and he asked himself: 'Why do they call it a place of milk and honey?' But before the sun had set a truck arrived from Mozambique, with illegal immigrants, and each of them paid them 50 rand. And he calculated: 'Okay 500 divided by two...' and he said, 'Oh, that's why they call it by the name of the land of milk and honey.' He started to cross-question his principle values of life: 'I am Christian, but what am I doing now?' ...but he came to the conclusion that if you can't beat them, join them. They had told him: 'If you don't take the bribe, tomorrow you will go and spill the beans, that's why we don't trust you if you don't join in.' They threatened him. But he really wanted to go home, and he wrote the story to his parents, and he was crying: 'What am I doing?'

I wasn't sure what was going on at that unit at that time, but this man, he really tried to join them, he really tried, but then he was wondering: 'I am a Christian, now I am a barbarian.' He said he really tried, but he could not join them.

This story was told to me to show how difficult it was for a single person to withstand peer pressure. It evoked faith as the force that was able to transcend the seductions and pressures to do wrong in the course of everyday police work. Faith was depicted as being stronger than the individual, who without faith had nothing to prevent him from giving in to worldly pressures.<sup>82</sup> The transcending of bad conduct, peer pressure and a weak self was made possible through the persistence of the religious truth. Doing right was to adhere to a higher truth than the immediate social truth of the situation. Secular authority is clearly replaced here with the authority of Christian truth.

The Christian imaginary also helped the trainers to make sense of some of the predicaments they faced in providing human rights training.

Whether the deadline of the end of training is tomorrow or not, it must go on and on and on. If I proclaim to be a Christian, people must be able to see that; they must see that I am a believer. They must see it on you at the same time you are preaching. When you preach, don't try to change them.

Another trainer comments in a similar way:

When you talk about evaluation, you talk about changing the mindset. Change is internal, change is painful, and change affects those around you. It would be wrong to change other people's minds. You change yourself, and people must see change in you. You see, in the minute you try to change another person, the more you make him aggressive, you use force in a way, you abuse your ideas on him, so actually what you have to do is to do the right thing, so that those next to you can see you are doing the right thing.

Using the analogy of preaching and training, the trainers try to make sense of the predicament of being expected to change people's behaviour against their will without having any coercive means at their disposal. The point of the preaching analogy is that the coercive nature of unwanted change has been replaced with the repetitive mentioning

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<sup>82</sup> Ironically, even in the story itself – in the dialogue between the protagonist of the story and the white colleague – a Christian vocabulary is deployed, talking about the land of milk and honey, showing a rather cynical side to the persuasiveness of Christian language.

of the international status of human rights. Preaching in a way is the ultimate speech act where a transformation in a person's spiritual state is brought forth merely through the power of the words uttered. The need to refer to preaching, however, shows the powerlessness of the original postulated speech act, and the not very compelling nature of the international status of human rights. After all, in preaching it is the authority of a god[upper case is used only when referring specifically to the single Christian God] and a transcendental truth which is being evoked, and not the secular authority thought to be inherent in the international status of human rights standards.

The trainers; substitution through analogy of preaching for teaching (implementing change), also evokes another issue. This is the awareness that trainers are conscious that any attempt to change police officers' behaviour through more forceful interventions only produces resistance. In describing change as "internal, painful and affecting those around you" the trainer makes it clear that the change expected by human rights proponents is not a simple one, but that it entails a fundamental shift of the self; to do things according to human rights is to become a different person. It underlines the fact that the changes expected of police officers potentially go much deeper than can be admitted by the original rational design of the training. This is in the light of a seemingly more deterministic reality, which trainers, as police officers, already now about and which in practice inhibits change. It speaks of a form of social suffering provoked by the demands of human rights.

It is then the act of "conversion" (or the kind of moral enlightenment police officers speak about), which becomes the mode through which change can be imagined. Conversion speaks of change of an "inner" state but it also implies that it happens totally voluntarily. The subject takes the conversion to a human rights perspective of its own accord, inflicts the pain of change onto itself, and is therefore responsible for it. This eliminates the possibility of blaming an external agency for the pain of change. In fact, outside intervention in the form of visible disciplining is made redundant. Thus to take on human rights almost by definition becomes a self-disciplining undertaking. The restrictive powers, which are inherent in human rights practice, are being subsumed into the consciousness of individuals and experienced as freedom rather than as a burden.

It is an underlying affinity between the autonomous liberal subject and the Christian subject which allows such an assumption to be made, although it is only in the religious and not the secular realm that such a production of the self and moral autonomy becomes meaningful to police officers.

### **3.5 Conclusion**

This chapter throws some light on the dynamics of accountability towards the international level of human rights. By means of the case study of the Human Rights and Policing Training Programme, I show in three sections how the attempt to implement human rights as conceived by a range of international human rights actors (who represent so called international civil society and promote international human rights standards), is in practice being renegotiated.

For this I firstly (Part One) show that the seemingly neutral and well meaning human rights training is in fact a value-laden instrument. However, its specificity and the cultural baggage with which it is encumbered, as well as the socio-political positioning of its producers, are well-concealed. Claims of “doing good” and the apparent transnational and cosmopolitan nature of the producers and their activities serve well to conceal such cultural baggage. However by employing an analytical position, which refuses to go along with these normative claims, the human rights industry’s own culture of parochialism is revealed. Social and emotional attachment to purely technical international human rights standards and a legally framed human rights language speak of its cultural specificity and its contingency on a middle-class form of social capital.

Cultural and social specificity is also revealed in the format of the training manual of the Human Rights and Policing Programme in the form of parochial residues. These take the form of normalised assumptions, for example, about the liberal and autonomous position of the to-be-trained police officers and the primacy of the international status of human rights. They also translate to more policing-specific assumptions, such as the availability of skills and professionalism, and that idea that police officers are able to apply a detached and subject-to-the-law kind of rationale for their actions. It is these parochial residues, derivative of the explicit international techno-legal human rights discourse, which in turn bind the human rights and policing training to the cultural and social group of international human rights actors.

In a second step (Part Two) I show that an analytical focus on the contingency of the Human Rights and Policing Programme helps to explain why it has such a difficult time at the police management level. Historically, police management has been steeped in a police culture characterised by a combination of lower class status and the anti-English speaking and anti-international tendencies of the apartheid state culture. This culture was far removed from any middle-classness or easy access to cosmopolitan cultural capital. As such, for police management, the hegemonic claims professed by the human rights industry easily translate into a social and cultural intrusion, and can be perceived as a manifestation of the complacent exclusiveness of the human rights industry. A full unfolding of the human rights programme would mean a handing over of discretionary powers. This would leave police management feeling undermined and humiliated, not so much because they cannot order atrocities, but because of the social and cultural alienation this would entail.

Therefore, the tendency at management level, is either to keep the human rights programme in a downscaled and undernourished form in order to contain its influence, or to totally absorb it into the organisation and dilute it with the police organisational culture in order to make it lose its transnational association and defuse its impact.

In a third step (Part Three) I show that also on the actual training level the Human Rights and Policing Programme faces severe problems due to the particular format of the training which is inscribed with the parochial residues of the international human rights world. Here, it is very much the parochial residues which assume the police officer to be an ignorant subject, and include assumptions about the availability of skills, the political neutrality of human rights and the possibility of change through a veneer of thin learning. All these clash fundamentally with the experience of policing of trainers and trainees

To manage the gap between the training's structure and actual policing experience, trainers translate the "ignorant subject" into a "morally ignorant subject". Thus the training comes to be about moral enlightenment, which draws from Christian imagery to substantiate its moral thinking. The Christian imagery offers expediency in the sense that it is already a popular and everyday moral language that has the ability to capture a majority of police officers. The transcendental language of faith can fill the void left by assumptions about the primacy of international human rights, which means little to the trainees. In addition, it offers a range of concepts through which to express a central predicament of the training. The idea of preaching allows people to make sense of the idea of teaching something that people resist, without having any recourse to force to make them do that thing. It also allows the trainers to speak about the social suffering ("change is painful") involved in the unlearning of old ways and the tough learning

process of the new ways of doing things. The idea of conversion also plays a role, since it acknowledges the necessity of changing the self; and that can only become an experience of freedom if it is accomplished in a self-disciplinary manner.

Such vernacularisation of the international human rights talk shows the “remoteness” and the lack of legitimacy of the international discourse of human rights. It highlights the gap between the sociality of the transnational level and the sociality of police officers. It is important to stress that this gap emerges out of a substantial social difference between these different realms and cannot be simply conflated; they form two different languages reflective of two different social realities.

Thus, the meaning that the notion of human rights carries in its more orthodox international form has no real purchase power within the police organisation. The notion is either rejected or transformed. Yet, the notion of human rights in its orthodox form has remained useful to the police organisation at least in one form. As a presentational feature the concept of human rights has been a mirror which has projected an illusion of implementation back to the world of international human rights. Through this, the harnessing of legitimacy from international and national human rights institutions has been guaranteed. In addition, as the case of the international evaluator and the head of the human rights and policing training programme has shown, there has been an apparent widening of the consensus on human rights and policing on international level – even though this has meant the absorption and acculturation of local people into the international realm instead of an incorporation of human rights into local culture. This substantiates the illusion among the human rights industry that the human rights training

"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)

and the accountability towards the level of international human rights is working and its effects proliferating.

# 4

## *"Don't push this Constitution down my throat ..."*

### The Use of Violence in Everyday Policing

"Within humiliation, there is a profound apprehension of the power of others to control one's soul" (Katz 1988:45)

#### **4.1 Introduction: To use or not to use violence**

Johannesburg Central Police Station rose up in front of me with its eight floors on the one side and the twelve floors of its adjunct building, and its shatter-proof windows and heavy grilles. It was the police station which served the inner city of Johannesburg – with its business district, its hawkers and small-scale traders, its moribund flats densely populated by immigrants from outside both the city and the country. The area's violent crime rates were the highest in the country.

Not many years back, when the inner city was still officially for whites only, the station carried a different name: John Vorster Square, which is still sometimes used colloquially. A notorious station indeed, it was named after the Minister of Justice, Prisons and Police under Prime Minister H.F. Verwoerd. It owed its unsavoury reputation to the accounts of horror associated with it. Here, political activists had been held without trial under the State of Emergency. In these rooms people had been subjected to torture. Some had been held by their legs, dangled outside the window and sometimes dropped. Those murders had

been covered up with tales of suicide.<sup>83</sup> While the shatter-proofed windows and grilles were still there, the days of overt political repression have receded. John Vorster Square, a terrible symbol of that awful past, had taken its place in the historiography of apartheid and its demise, and made way for its milder name "Johannesburg Central".

This did not mean, however, that violence and the illegal use of force had equally disappeared. One morning during my fieldwork I showed Captain du Preez, one of the senior officers at the station, a newspaper clipping about police assaulting a young black man (Sunday Independent 16/02/2002). He told me:

Well, it is very unnecessary, but it happens. It is when police are frustrated, then they can't stay cool. People can be very cocky, and this guy [referring to the young black man in the clipping] must have been giving them a hard time. There is this idea of the reasonable man, and that police can take these things in, that they can handle any situation like that, but police snap. I tell you, they are frustrated and so they give it to the suspect. It is difficult for some; it depends on how they cope with the change.

Then he thought for a moment, as if reconsidering what he had just said:

But then what change? I am not saying that it has to do with change. I mean what change anyway? Maybe there have been political changes, but the system has not changed; the rules we had then, they are still the same. I always say, for someone who did his work well, there is no change.

And he thought and reconsidered again:

But I tell you when somebody tries to push the Constitution down my throat; that can get me hot as well. Then I can't keep cool any more ... they better don't push this Constitution down my throat.

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<sup>83</sup> The recently published book on Ahmed Timol (Cajee 2005) is one of the most chilling accounts of exactly this kind of practice.

Captain du Preez's response clearly pointed towards a prevalence of the use of violence. However, there was a remarkable ambiguity in his comment, which simultaneously excused and disapproved of the use of violence. He also made a defiant claim to legal and regulatory continuity, redeeming the police from those charges which implied that police officers had to learn a totally new way of carrying out their work to fit into the new era. At the same time the Constitution – *the* symbol and epitome of democratic change – was evoked as potentially having a hugely unsettling effect on police practice. In fact, the Constitution and what it stands for was seen as the ultimate trigger for using violence, at least when it was "forced down their throats", meaning when police officers were not given much of a choice in adhering to it or not.

What occupies me in this chapter is how such contradictory remarks about the use of force, and about continuity and rupture can exist side by side. I will argue that these contradictory statements point to a proximity of two different realms of police practice, using Goffman's (1959) idea of "front stage" and "backstage" as an analytical device. By looking at the large number of nostalgic accounts by police officers, as well as different moments of police practice, I argue that there are different forms of authority which mark the different realms of police practice. One such form is derived from legalistic practice (Goffman's front stage), and the other from the practice of physical violence of a particular kind (backstage). For the police in their practice, these two independent spheres of authority co-exist in a tense but necessary dependence on each other. The existence of a front stage allows for the continuity of whatever is taking place on the backstage. Meanwhile, because of most police officers' inability to comfortably occupy the legalistic front stage, any attempt to collapse the differentiation or blur the boundary between the two spheres in favour of the front stage is met with great anguish and a resort to violence. Much of the violence of police officers can be seen as a defence of the discreteness of these two spheres.

## 4.2. The prevalence of violence

During my fieldwork it became clear that a mundane, everyday but violent use of force was prevalent.<sup>84</sup> Sergeant Moletse, a detective from the General Investigation Unit, whom I had shown the newspaper clipping referred to above (police assaulting a young black man), commented in a matter of fact way: "They mess around with you and you give him a beating." He had looked at me with an expression that said, "Don't be naïve; that's normal." On other occasions I had witnessed the roughing up of a dagga (marijuana) smoker, and the assault of a man who had been arrested and who, as he was being pushed into the front seat of the police car, had turned his head to catch a glimpse of the person seated in the back. Another time a police officer banged the head of a suspect against the metal plate of the bullet-proof vest he was wearing.<sup>85</sup> It was an abuse of force which could be categorised as common assault. Researchers from Technikon SA, who systematically studied the dockets of the police's Internal Investigation Unit, found that most cases opened against the police involved charges of common assault (Mistry *et al.* 2001).<sup>86</sup> Generally, however, it is impossible to get a coherent quantitative picture of the prevalence of police brutality in general and of common assault in particular, due to the insufficiency of statistics, reporting and investigation procedures. Furthermore, many such

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<sup>84</sup> In the following sections I shall speak of the "use of violence". By this I mean a use of force which is not warranted by legal provisions. The other possibility would be to use the expression "abuse of force", which is slightly more biased towards the idea of the legitimate use of force by police, because it assumes a different starting point. By speaking about violence, I would like to highlight that the use of force is always violent, and that it is an ultimately contingent act to legalise certain forms of violence and turn them into law and through this into the seemingly more benign form of "use of force". In cases where I refer to a form of violence which is indeed authorised by the law, I shall say so explicitly.

<sup>85</sup> This was a form of abuse of force by the police which had not so much to do with the horrible cruelties with which the old South African Police were associated, such as torture. Nor was it an over-reaction to the high crime rates, such as shooting a suspect right away because of the high probability that he has a weapon and might shoot first (Uildriks and van Mastrigt 1991). This does not mean that this kind of use of force cannot be found within the ranks of the police, but the daily routine of which I was part and which has been the focus of this research did not reveal such forms of police violence to me.

<sup>86</sup> The statistics of the Independent Complaints Department (ICD) only tentatively capture those assaults, since police stations are not obliged to report those cases to the ICD. However, they do have to report assault with grievous bodily harm (GBH). There are as many as 365 cases of assault GBH for the period 2000/01 (ICD 2001). I would speculate that the number of common assault cases are at least three times as high.

cases are never reported to the police or the Independent Complaints Directorate (ICD).<sup>87</sup> Nevertheless, the fact that I was able to observe common assault – meaning that police were not constrained by the presence of an outsider – suggests that it was part of everyday practice. In conversations with police officers, common assault – and sometimes more serious assault – would be something they would easily admit to and talk about. In contrast, they never admitted that they had physically tortured someone or that they were employing corrupt practices. Police officers justified the practice of common assault by indicating that the need for such use of violence was self-evident and therefore to be expected. All this pointed to the fact that the use of violence in the form of common assault represented a kind of obvious but casual defiance of the legal limitations of the use of force.

Still, as much as this violence appeared to be part of everyday policing, its existence was not without ambiguity, contradictions or denial. Not everybody would equally bluntly admit to the prevalence of violent practice. Inspector Pruis, for example, insisted with full conviction that:

No, no. These days, we don't use such violence any more; it is far too dangerous. If you don't want to risk your future, you don't do that kind of stuff. These days, we don't take risks anymore.

And indeed, in many situations police officers acted, as they would say, according to the book.

Captain Van der Walt from the General Investigation Unit also reacted with hesitation when I confronted him with the same newspaper clipping. He read the article – with his ruler helping him to stick to the lines – and then commented:

You see, it is more the people from Crime Prevention who are doing this, and it is more the blacks. You see, we used violence when we had a case

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<sup>87</sup> For a more detailed account of the problems of defining and quantifying police brutality on the basis of available statistics and press reports, see Bruce (2002).

where we had very clear information that this person knew where the gun was; to make him show us. This was when I was working for the Murder and Robbery Unit in Soweto, but we would not use force just like this. It is much more the blacks – you can read it in the article – and then the whites joined in.<sup>88</sup>

While not denying the existence of the use of violence, he clearly attempted to distance himself from it. He did so by locating it in the past or with another unit or with another racial group. In addition, he attributed a conclusive instrumentality to the violence of the past in order to distinguish it from the seemingly more arbitrary appliance of violence today.

Then there were the different euphemistic ways police officers talked about the use of violence. Legal formulations were avoided. Instead vulgar slang or vague and non-incriminating expressions such as “ways and means” were used, which nevertheless spoke unequivocally about the use of violence. Then sometimes, when some use of force was indeed clearly warranted by the law, such as with a suspect resisting arrest, detectives would sarcastically, almost mockingly, use more formal terms such as “I needed to restrain the suspect”.

The underlying ambiguity and the contradictory statements with regard to the use of violence suggest a proximity of two different realms of police practice, and of a diversity in standards leading to such practice. It is in Goffman's (1959) *Presentation of Self in Everyday Life* that we come across the idea of a contradictory front stage and backstage performance. Goffman (1959:4) states that “individuals inevitably have a variety of interests in attempting to control the impression others receive of their actions in social situations”. In the front stage act, individuals perform in order to create a certain presentation of themselves. The metaphor of the stage, as performance and acting also implies an audience (the social situation) which has to be impressed. It also suggests the idea that behind the front stage there is a different world, one

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<sup>88</sup> The article didn't actually say anything which would have led to this conclusion, “that the whites *only* joined in”.

which is concealed by the front stage and which is not directly visible to the audience.

Performance often depends upon the segregation of social space into 'front region' and 'back region'. The front region is the place where the performance is given and standards maintained. The back region is the place where [the] impression fostered by the performance is knowingly contradicted as a matter of course (Goffman 1959:112).

The concept of two different stages also resonates with a study on policing in London carried out by the UK Policy Studies Institute. The study describes police work as governed by three different sets of rules – working rules, inhibitory rules, and presentational rules (Reiner 1997). While inhibitory rules penetrate police work at all times, in the sense of successfully sanctioning police behaviour, it is the difference between presentational rules and working rules in which I am interested here. Working rules can be said to derive from the informal culture of police work; they stand in a problematic if not contradictory relationship to the official rules. In contrast, representational rules are those official rules towards which police work is geared but often only in an *a posteriori* or in a representational form (Smith *et al.* 1983 in Reiner 1997:1014). This makes it possible to describe the ambiguous cases where a police officer does one thing and says another.

However the concept of backstage and front stage is more all-encompassing. The ideas of the stage and of acting imply that different rules create different realms in which different meanings and different practices are produced, and in which the police officer has to take on a specific role. The idea of performance on a stage also allows for the idea that an act has to be convincing and not just superficial, that policemen have to live up to it to make it seem real. It also implies an audience that judges the quality and credibility of the performance.

Taken together, these approaches can serve as helpful analytical devices in capturing and conceptualising the ambiguity between the expressed need for

adherence to regulations and the prevalence of violence. It can also help us to understand how these two realms are related to each other.

The conceptual division of front stage and backstage can also be useful in understanding police officers' claims to continuity, and defiance of the idea of radical change. This was expressed, for instance, by Captain du Preez in his assertion that for "someone who did his work well, there is no change". Inspector Marais insisted in a similar vein that "not much has changed. Our investigation is just the same as it has always been ...." What they possibly base their assertions on is that not all legislation has been totally rewritten since 1994. While a new Police Act has been introduced, only minor changes in the form of amendments have been made to the Criminal Procedures Act. In support of the idea of continuity, police officers also make reference to the fact that even under apartheid, detectives had to present their work with reference to the law. As discussed in Chapter Two, apartheid was not simply a lawless regime. The National Party (NP) government was concerned with safeguarding its legitimacy in the eyes of its constituency, by obsessively evoking the law to pass certain measures and to present policies. The judiciary also took care to hold up an appearance of independence, and to allow certain challenges to the system through the medium of law. Also, police officers could be discharged and disciplined under the law, and cases at times would follow the appearance of a proper trial. What was characteristic of everyday policing under apartheid was rather the readiness with which the law could be evoked and how easily this was done in a purely representational manner. Apartheid itself, in fact, supported and was dependent on a representational front stage and a corresponding backstage reality. Thus a focus on the purely regulatory realm (the front stage), which serves to divert attention from the concurrent violent backstage practice, makes it possible for police officers to present the changes brought about by the advent of constitutional democracy as not particularly radical and maybe even negligible.

### **4.3 Nostalgia**

Despite these claims of continuity, there was something about the change towards liberal democracy which clearly deeply enraged the police. At least that is how it reads in Captain du Preez's comment on "pushing the Constitution down the throat". There was also a prevalence of nostalgic discourse among the police officers, which was exclusively concerned with *how much* things had changed and what a loss it was.

Nostalgic talk is not a very reliable oral source, since by nature it provides an impassioned account of events or of change, and tends to glorify the past. However, nostalgia constructs the past in direct reaction to the present, in the sense that the poverty of the present is presented as the richness of the past. It is in this way that nostalgia provides us with a sense of how the present is experienced.

The nostalgic talk of the police officers dealt very much with what the use of force had meant for them in the past. It is thus in nostalgia that I could find some entrance into understanding how policing was taking shape in the apparent absence of the use of violence.

In their nostalgic commentary police officers continuously deliberated on what it meant to be effective crime fighters and what it meant to be respected. Inspector Mabatha spoke of the past with enthusiasm:

At this time we were interrogating, and we were solving a lot of cases; we were doing a lot of inside jobs. We were doing the perfect job! All of the cases were convictions. When we interrogated we would get our friends, we would take shifts, two-two, and we would get the information. But they wouldn't question us about where we got the information from; we would just say informers gave us the information. We were strong officers! We would follow up on the information, and we would recover guns and ... yes, just everything.

There was a moment of silence, and I could feel how he wandered off into past memories. When he returned from his reverie, he recalled with excitement, as if we were in the middle of a thriller:

Yes, we would get some information, and then how would we do it ... we would cordon off the place, two from this side, two from that side, and we get some back-up from the riot people. And then we enter the place, all at once, and we would always find what we were looking for.

Inspector Mbatha was invoking a picture of a powerful past. He was known to me as one of the members in the Serious Crimes Unit who had been part of the black police union, who had fought for the rights of black police officers and had even spoken out about the treatment of the black population by the police. But here, there was no holding back or hesitation in speaking about the past in such glorified terms. There was no sense of embarrassment in relation to the fact that "interrogation"; "taking shifts, two-two" stood for the brutal treatment of a suspect. I got the impression that Inspector Mbatha's words were not particularly directed towards me, but that he was talking to himself, bathing in memories of a time in which policemen could employ their full potential of being "real" policemen, relentless and most of all, successful. He remembered a period in which all cases were solved, where no one escaped the powerful net of the investigating units. They were "strong officers", perturbed by no one, doing their work, since they were the ones who knew best how it was done. No questions were asked about their methods. The results spoke for themselves.

Almost every detective I spoke to, no matter whether white or black, had some nostalgic memories about their potency and efficiency in fighting crime in the past. High conviction rates were constantly heralded, and in each of these accounts violence figured as the prime medium through which this was achieved. The use of violence was the main method through which investigations were carried out and crimes solved. It was used to get people to confess, to reveal where weapons had been hidden, and to point out accomplices. This was presented with a sense of infallibility and conclusiveness.

They knew when somebody was guilty, and violence was seen as a means to elicit that truth. Their idea of professionalism comprised the achievements derived from this method.

Then there was the aspect of respect as part of the nostalgic account. Inspector Chetty put it like this:

To be a policeman was a calling. To be a policeman would mean to be a policeman around the clock, even when you were sleeping, 365 days a year. Today it is just a job; it has become a nine-to-five job. To be a policeman meant to be in a certain way, to speak rude, to not care what other people think. You did not have to care what other people thought. It was a sense of superiority, and you would get respect. It might not always have been respect, but between policemen we agreed that this was respect.

Inspector Chetty praised the sense of identification with the job that had existed in the past, and the strong commitment a police officer would bring to the job. Though he admitted that the notion of respect was based on fear, he still heralded the sense of superiority and control which could be derived from it. He was talking about an authority which commanded deference and compliance, which could be imagined as respect. In his and other police officers' accounts, all kind of attributes were attached to this notion of respect – it enabled them to create order, to “clean up” the city or to hold back the tide of crime. It was a “respect” which did not know challenge and resistance. It was seen as the main source of affirmation which could confirm and strengthen a work identity.

I would like to argue that these expressions of a glorious past, and indirectly of a poor present, cannot just be reduced to police officer's impression management – presenting a non-violent front stage which hides a violent backstage in just the same way as had been the case during apartheid. I would doubt such a purely instrumental interpretation of the nostalgic talk, especially because it is so widespread and so loaded with emotion and sentiment. Rather, I would like to argue that nostalgia here does in fact speak of change, at least

some form of change, and that this change has affected police officers' use of violence; and that this has transformed the nature of policing.

On the other hand, nostalgia *does* comprise hyperbolic rhetoric, and police officers do occasionally admit to the continued use of violence. We do not have to take too seriously the nostalgic claim that no violence whatsoever is being acted out by police officers any more. What the prevalence of nostalgia indicates is that there has been more change than the narrative of continuity suggests – it is ultimately the narrative of a shifting 'split performance'. By this I mean that while many legal regulations have stayed the same, those regulations which have changed impact on police practice more than police officers would like to admit. It also could mean that the degree to which police officers are held to laws and regulations has increased. The establishment of the Independent Complaints Directorate, although, as Palmer (2004:280) has stated, highly understaffed, and lacking control of the police disciplinary system – at least symbolically or through the publication of its annual report, contributes to the idea that the use of violence will not simply be excused. The possibility of using laws and regulations as merely representational has decreased, and a more real and authentic adherence to the rules is expected of police officers. As such, the non-violent use of force has been refined and has become more of a priority for police officers. Regulations and restrictions and institutional changes have encroached on the old ways of doing things. Expectations with regard to accountability in relation to the law have increased. The interface between the law and the police has been intensified. In the conceptual language introduced above, this means an encroachment of representational rules on working rules, compelling working rules to become partly inhibitory – an extension of the front stage at the expense of the backstage. Change with regard to the use of violence can thus be imagined as a shifting of the line between front stage and backstage, highlighting the fact that each of these realms is historically contingent and can alter the meaning and practice by which it is circumscribed.

The exasperation and the sense of loss expressed in nostalgia shows that such a shift forms a real threat to police officers. The nostalgic talk gives us an

indication of what it is, in the expansion of the front stage that forms such a threat. For example, the comments quoted above indirectly suggest that what has replaced the respect and identification with the job is a more bureaucratic kind of policing. It is not characterised by a sense of calling, commitment and dedication but instead seems to be a simple carrying out of tasks as symbolised in the nine-to-five description of the job. This has robbed police officers of a sense of belonging. Moreover, "efficiency" is seen as being absent from policing on the front stage. The front stage does not allow for any of the work identity and work authority which was invested in the use of violence and, with that largely removed, the sense of being able to effectively fight crime has disappeared. In the narrative of the nostalgic talk, the front stage represents a context of powerlessness, a sense that police officers have been "castrated" in relation to their "real ability".

However at the same time nostalgia ceases to be a source from which to extract meanings attached to adherence to rules and a more regulated practice with regard to the use of violence. After all, the way police officers lay claim to strength and potency in their nostalgic talk is about redeeming them from responsibility for the increase of crime and the informalisation of the country as experienced in the inner city. Anything which could possibly point towards personal failure on the part of police officers, or which would implicate them with the burgeoning crime rate is avoided. As such, nostalgia always remains a kind of image management. To get a better sense of the tension between backstage and front stage, and the kind of threat that the expansion of the front stage produces, we have to engage with material which relies less on general self-representation of police officers and more on observation of embodied and everyday police practice and police officers' more situated comments.

#### **4.4. Backstage – front stage: the meaning of violence**

##### 4.4.1 Nightly performance: out for arrest – scene one

The effectiveness and infallibility of investigation loomed large when I went at night into the inner city of Johannesburg with the detectives of the Serious Crime Unit of Johannesburg Central Police Station. One night, it was particularly palpable:

It was on a normal mid-week working day that Sergeant Legodi had set up a plan to go out at night with a few men to make an arrest. He presented the plan as impeccable and that it would deliver at least six arrests. He had received the case, a murder case, the day before. He had gone straight to the murder scene where he had spoken to the mother of the victim. A man had been killed in a fight which took place in one of the densely populated and dilapidated inner-city buildings. According to the distraught mother, the fight had broken out between her son and a group of men who called themselves the house committee. She also had told Sergeant Legodi that a man by the name of Happy had tried to keep them apart; he had called the men from the house committee by their names. The mother had given Sergeant Legodi Happy's room and floor number, and so Happy became key to the arrest.

During the day Sergeant Legodi proudly presented his plan to me. He explained that he would first get hold of Happy so Happy could point out the men from the committee, whereupon he and his colleagues could arrest them. He added that if Happy were in any way to resist "co-operating", there were "means and ways" and a threat of arrest to make him reconsider. Thus there was even a contingency plan in place and nothing, so he insisted, stood in the way of a successful night.

As I returned to the station in the evening, some of the detectives were already assembled and were shouting up and down the corridors of the empty station in a hyped-up way. Inspector Nyathi was rubbing his hands in excitement and boasted that "today we are not out to shake hands....". Sergeant Legodi was bragging that he did not bother to wear the rear metal plate of his bullet-proof vest; he did not need it, so he said, since he would never run away from a fight. I could not help noticing that he must have had a drink or two. Finally, the ten officers piled into four cars and veered off into the night.

As they arrived at the multi-storey flat where the murder had taken place and got out of the cars, they were prancing and shouting not to forget the torches, for, so Sergeant Nkosi readily told me, "handing out *klaps*". They then had to sneak through a small porthole of the gate which secured the entrance of the building. Then, like a small army which was ready for attack, they started sprinting up the staircase. I was quite amazed. I had never seen this group of detectives so motivated and ready for action. However, the magic did not last for long. After the second floor a lack of fitness made itself visible, and the group started to draw out. Some fell back into a slower pace; others stopped running and slowly climbed their way up to the eleventh floor. By the time the last detective arrived, some were already busy banging at some doors.

Sergeant Legodi was still looking for Happy's apartment, but because it took them too long his colleagues just tried randomly. Before long it became clear from people living on that floor, who had been woken up by the police invasion, that Happy had left some time ago. Nevertheless, some police officers kept on banging at doors. But then the last spark of excitement subsided. Nothing much was left of the image they had invented. Even in their own eyes, the image of heroes of the night had dissolved. Disenchanted, as if somebody had pulled their plug, and rather worn out, they shuffled and ambled back down the stairs.

To save embarrassment, some half-hearted attempts were made to find another suspect by browsing through some bars nearby. But by then only a few officers were still getting out of the car. The others just parked outside the bars and waited until their colleagues came out again. Only Inspector Nkosi went on, meticulously documenting every stop with its case number, time and address. The night had turned into a bureaucratic affair, well documented and accountable, doing it by the book but with all the assertion gone. What remained was a sense of the burlesque character of their nightly performance.

I tried to understand what had been going on. It seemed that a carefully planned strategy had within seconds deflated, just like the lungs of the running police officers. Nothing much of the concerted effort remained. The co-ordination and

the cohesive picture were left behind at the bottom of the stairs, never making it to the eleventh floor. The nightly operation had a strange, illusory feeling to it. Everything had hinged on the presence of one witness, but nobody had questioned the operation with regard to this assumption. The plan could have been considered as extremely fragile and fallible, but this aspect was ignored and full concentration went into imagining the success of the operation. The only eventuality which was anticipated was "non-co-operation". The remedy for this, however, was immediately available: threat and violence – and in any case Happy was not even the suspect but simply a witness. In a way, the officers' conception of violence had served to obscure any possible pitfalls. In fact, the belief that any obstacles to the plan of action could be overcome by violence made the plan seem infallible. The power of violence enabled the plan and allowed the police officers to imagine themselves as effective and potent. Initially, as they started to carry out the plan, the willingness to use violence as well as the display of heroic masculinity seemed to be the prerequisites of the plan, allowing the police officers to confirm each other in their potency.

Only when it became clear that the witness was absent did some of the actual weakness of the plan become visible. The falling apart of the squad on the second floor because of their lack of physical fitness, and the uncoordinated banging on doors, suddenly brought to the fore a reality which was far less glamorous and potent than the one imagined in the run-up to the evening. With the sudden collapse of the plan, the illusory quality of the whole operation became apparent. More so, there seemed to be a clear performative element to the operation, a performance to which the police officers themselves were the audience. It was a performance which enacted potency, and it was only with the requisite violent authority that the performance could be acted out.

In this self-referential performance they held up the standards which determined their own self-respect and sense of self. Meanwhile the part which they were trying to obscure and conceal with their performance of potency was a much bleaker, less rewarding and less certain police reality. It was caught up in the unpredictability and unintelligible nature of social life and the provisionality

and makeshift character of their practice. "The plan", and the burlesque acting out of it, had come to stand for everything that everyday policing was not: it created an illusion of the intelligibility of crime, of the police officers' ability to access the mind of the criminal and to be a step ahead. It stood for unchallenged authority which was underwritten by the unrestricted use of violence, which made more laborious investigations unnecessary, and which could make them look like potent police officers.

#### 4.4.2 Nightly performance: out for arrest – scene two

In a very similar way, comments by two detectives from Sophiatown Police Station stressed the enjoyment and thrill of going into Westbury, the most marginal area of the policing district. It confirmed the extent to which their unchallenged and violent authority enabled them to hold onto the illusion of their potency. Here the idea of front stage and backstage receives a spatial meaning, with different policing areas allowing, in different degrees, the acting out of the performance and authority of the backstage.

Sergeant le Roux and Sergeant de Bruin had been out making an arrest in Westbury the night before, while some of their colleagues had been to the mainly white lower-middle-class neighbourhood of Newlands. The next morning Sergeant de Bruin remarked about these colleagues that they were 'quite dead; they rather stick to the rules and don't dare anything'. That was also why, according to him, they hardly ever arrested anyone. He then went on to explain the difference between working in Westbury and working in other places:

'I prefer to go into Westbury, it is faster. In Newlands and these areas there are high gates, and lots of dogs, so you stand outside the gate and you have to ring the bell. And you can't just go into people's houses like we do in Westbury, and you can't just tell someone there to hurry up and to get dressed in the cell. It is much faster in Westbury. I have worked in

Northcliff,<sup>89</sup> but there you stand outside and you have no other option than to press the bell and wait. Sometimes you can't even see the house from the gate. No way that you can just walk into their houses, and then you also have to treat them differently. Therefore, I always prefer to go into Westbury. There you can treat people as you like.

"Westbury, it is faster"- fastness here stands for adrenaline-raising actions which feed police officers' image of their potent, masculine selves, and practical aspects of the night raids such as the lack of insurmountable physical obstacles. The absence of walls, which marked the marginal socio-economic status of Westbury, allowed for the storming of homes – an act which again supported an image of potency. It allowed for the reaffirmation of who they wanted to be, and as such generated exhilaration. It also allowed them to carry out numerous arrests, even if these cases often would not hold up in court. Arrests without warrants made up a substantial part of the nightly performance. In contrast, the high walls of the rich parts of Northcliff, and even the walls of the lower-middle-class area of Newlands, detracted from the police officers' sense of self and their sense of authority, because they undermined any opportunity to enact spectacular action. Instead, they turned police officers into feeble figures who had to appeal for entrance. The high walls made police officers look dead and ultimately emasculated, according to Sergeant de Bruin. Hence, a sense of authority that was unchallenged and invested in violence enabled the officers to uphold a certain image of themselves, and permitted them to act out an imagined efficiency, potency and ability to fight crime. It allowed the police a temporary imaginative escape from a routine and everyday practice of policing, which painfully reminded them of the impossibility of fighting crime.

The difference between nightly policing in Westbury and nightly policing in Newlands is also – as has already become clear above – a strongly gendered one. For instance, on another occasion the Detective Unit went out to

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<sup>89</sup> This is a middle-class to upper-class area of the Sophiatown policing district. Some of the houses are mansions that are surrounded by walls of two-and-a-half or more metres in height and with high-tech security systems.

make nightly arrests and was split up into two groups, one going into Westbury and the other into Newlands. Inspector van Vuuren, one of the female detectives, had been ordered to go with the Newlands group. However, she was burning to find an excuse to swap sides. She normally worked in a close-knit team together with a white male colleague, Inspector Nortje, who was absent that night. Letting me in on her frustration, she told me that "normally Nortje and I are always part of the Westbury team". She was clearly upset about the fact that without her male partner she wasn't allowed to go into Westbury, and attributed it to her colleagues' prejudices against women. On other occasions she had told me that she would not be shy to use force and that she had gained the respect of her colleagues when they saw her ability to climb over walls. She thus clearly felt that she had to prove that her gender did not automatically determine her ability as a police officer, and she saw being sent to Newlands as a serious setback. The meaning of the split between Newlands and Westbury as a gendered one was further reinforced by the fact that the Newlands team was headed by the Unit's second in command, Captain de Villiers, also a female police officer. The Westbury team, on the other hand was under the command of Captain Smit, the long-time male head of the Detective Unit.

Detective Sergeant Gabela was quite an exception, because he preferred to go into Newlands. However, he was a rather studious loner within the unit, who had a very distinct relationship to his job. He had volunteered to be the one responsible for taking dockets to and from court every day, and to be in charge of all the administrative work which was related to the task. He even told me that he would rather spend an extra day doing his office job than have to go out at night. This shows that even aspects such as attitudes to administrative work are linked to the dichotomy between Newlands and Westbury, an aspect I will come back to below.

One could thus argue that there was a whole cosmology underpinning the spatial division between the two areas – dichotomies between female and male, between different policing styles and tasks (as in administrative and court-related tasks versus actual arrests), between the presence and absence of walls

(which symbolised the presence and absence of regulations and marked the divisions of social class), and the possibility for displaying prowess and efficiency. Though meaningful on their own, these aspects were all linked to particular uses of force determined by the location itself, the one in Newlands regulated and restrained, and the other (in Westbury) unchallenged and violent. This cosmology of spatial division can be read as similarly underlying the difference between front stage and backstage. In addition, it becomes clear how the police officers' sense of self was closely interwoven with this cosmology of meaning produced by the use of violence, and how it appeared to be contingent on the spatial division between the marginal area of Westbury and the middle-class area of Newlands.

#### 4.4.3. Acting without a warrant and other administrative short-cuts

Violence got things done for the police officers in the old dispensation also on a more practical level. Inspector Motaung explained:

It was so easy to prove a case. You search him, you arrest him, force made them to co-operate. But these days you drive from A to B to C, you must get a paper here, you must talk to the prosecutor there. It is such a waste of time. Just to get a search warrant can take you a whole day.

This comment makes clear what the regulations preventing the application of a violent authority mean for police officers. Tighter regulations and the constant need for authorisation result in laborious and bureaucratic procedures. Inspector Motaung was less concerned with existential and dramatic issues such as potency and identity, and more with the seemingly more mundane aspects such as effort and time. He was particularly concerned with the issue of warrants in relation to the arrest and search of people, premises and houses.

The Secretariat for Safety and Security (1998), which represents a form of civilian oversight within the police, released a report stating that there is a

greater probability that evidence that has been seized unlawfully will be rejected as inadmissible. The SAPS has also received an increasing number of civil claims “for infringement on the rights of privacy, usually arising from search and seizure being carried out without the required warrant.” (Secretariat for Safety and Security, 1998).<sup>90</sup> In response to this, the legal department of the SAPS had produced and handed out guidelines regarding search and seizure. If a police officer wants to acquire a search warrant, he or she must provide a statement under oath by a witness attesting that the person or object to be seized can be found at a certain place. This is a clear example of how an already-existing regulation has received more attention and thus demanded increased adherence by police officers.

Still, the police I worked with in the areas of Westbury and the Johannesburg inner city did commonly carry out searches and, more so, arrests without a warrant. With regard to search and seizure, they simply entered a house, sometimes quite courteously and sometimes more brutally, while people rushed to open the doors for them so they would not break them. Their entrance was always made confidently as if it was their natural prerogative, and the authority to simply enter and search people’s homes was accepted as a personal power. This had a generative effect, in the sense that people indeed allowed them in without daring to resist or object.

When asked about the legality of their actions, they responded that the law allowed for the lack of a warrant under certain circumstances. One of these was the following:

[If] a member on reasonable grounds believes that a search warrant will be issued to him or her if he or she applies for such warrant, but the delay in obtaining such warrant would defeat the object of the search, [he or she] may search any person, container or premise without a warrant (Section 22 (b), CPA 1977).

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<sup>90</sup> Section 33 of the Constitution (RSA 1996) states that all persons have the right to legal action when any of their rights have been affected or threatened. This has resulted in an increase of civil actions against the police.

Referring to this exception was, however, often a pure mockery since most of the time police officers did not even know what object they were looking for, nor did they have a witness at hand who could pledge for the whereabouts of the object.

Slightly more “persuasive” was the evocation of the provision that a search could be conducted without a warrant if “the person concerned consents to such search for and the seizure of the article in question” (Section 22 (a), CPA 1977). This allowed the police to argue that they were simply interpreting and using their discretion as granted in these provisions.<sup>91</sup> However, it was not primarily this use of front stage authority which got them the consent, as this would have meant that people would have been given, even if grudgingly, a choice by the police officers. Rather it was the violent authority which forbade challenges. When there were challenges, they would be met with a violent reprimand, and any claim of legal rights by those being policed, tended if anything to increase the risk of violent treatment from the police. The ability to demand “consent” in this way enabled the police to carry out investigations with a minimum of time and bureaucratic and administrative effort.

Arrests without a warrant were carried out using similar justification. Police officers, if asked, would evoke the parts of the legislation which allowed them to arrest someone without a warrant, but in most of the cases they did not even bother and just followed their own routine. In Westbury, where in many cases the complainant knew the identity of the suspect, this meant arresting the suspect simply on the basis of the complainant’s statement. The courts would then decide what would happen with the case.

This meant that cases were often thrown out of court or were subject to the delays of the court. The detective would then either be able to close and file the case, or at least avert the immediate pressure to deal with the case in terms of

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<sup>91</sup> The Secretariat of Safety and Security (1998) found that with regard to specialised units (Drugs, Organised Crime, Commercial Crime) there has been an increase in the acquisition of search warrants from magistrates. This is also valid for bigger operations such as the searching of hostel premises. However, on the individual level, in the work of “non special unit detectives”, the opinion prevails that searches can be carried out without warrants.

further statements, investigations, and so on. Delays could be blamed on the court and the case docket could be shuffled to a different pile, where it could be accounted for differently. The arrests also looked good when police touted up how many arrests they had delivered, as the number of arrests was considered independently of the number of actual convictions achieved by a police officer.

This gives a further indication of the level of investment that police officers had in using violence which allowed them to circumvent administrative procedures. Without the ability to employ their commanding authority, they would have had to go through the laborious process of legal authorisation in each case. In many of the cases, this would have resulted in a refusal by the courts, which would have considerably increased the pressure generated by the amount of dockets they had to handle and which could, at times, assume the proportions of an existential threat.

#### 4.4.4 Docket culture

To explain the kind of pressure which is created by the docket load, I take a detour into what I would like to call the "docket culture". Dockets are primarily the administrative and documentary record of a criminal case. However, they take on a peculiar materiality and a symbolically powerful position in the everyday practice of police officers. A docket consists of a brown cardboard file that defies any sense of present-day computerisation. On the outside of the file, on a hand-written label, are the basic details of a case, such as the responsible detective, category of crime, name of complainant, case number, and if necessary court dates. The inside contains the statements of the complainant, witnesses and, in cases of arrest, the suspects. These are also handwritten. The docket further holds the forensic documentation, such as letters from doctors, finger prints, blood tests, post mortem reports and so on. Dockets also include a case diary, recording the investigative steps undertaken by the detective. This diary enables the detective to keep a record of what he has done on the case, and is a control mechanism for seniors. Seniors and prosecutors can

also scribble down in it their instructions of what should be carried out by the detective.

Dockets assume a ubiquitous presence – like sawdust in a workshop. The tattered and greasy nature of many of the brown files speak of their persistent presence in the working life of detectives – either as court dockets, unsolved dockets or dockets waiting to be closed and filed away. The first thing one notes as entering any detective's office are the numerous piles of brown files, sorted into the pigeonholes of old-fashioned office furniture, covering the desks or gathering dust in a corner of the room. In such piles or one by one, dockets are shuffled from police stations to the courts, where from central points resembling administrative conveyer belts the never-decreasing flow of dockets is dispersed to prosecutors. Then they are picked up again, stamped, and returned to each detective. Some dockets get shuffled to the bottom of a pile while others are always taken along on the daily ride, clipped under the windscreen visor or thrown onto the back seat.

These ubiquitous files had become an ominous presence for the detectives that I worked with. The organisational practice of the stations has created its own particular meaning with regard to the receiving, opening, closing and withdrawal of dockets. For instance, on entering the office of a detective at Sophiatown Police Station, and asking the innocent question of "how are you today?" I received the following stressed answer:

Bad, bad, too much work, there is just too much work. Do you see all these dockets? I am supposed to work on all of them. How am I supposed to do that? ... and next week I have to hand them in for inspection again.

Having said this, he grabbed the different piles of dockets, which were dispersed all over the office, and threw them onto each other until they formed a formidable tower that threatened to fall over any moment.

This expression of exasperation about the amount of dockets on hand was certainly not an isolated experience. Docket overload was a daily

phenomenon that had become a kind of obsession, in the sense that there was a fixation with the docket that went beyond its functional purpose. A detective might at a given time have up to 120 dockets on hand. The numbers varied, however, depending on the crime category for which a detective was responsible. At Johannesburg Central Police Station, where there are separate detective units for different categories of crime, detectives from the General Investigation Unit might have an average of 90 dockets on hand at a given time. In the Serious Crime Unit detectives who only investigate murders would have about 20 to 40 dockets. At Sophiatown Police Station, where the system was that all detectives were responsible for investigating all categories of crime, they would have murder dockets as well as trespassing dockets to deal with. Here the piles could vary from 50 dockets to 120 dockets.

While dockets indeed reflect and are a material measurement of the workload, the fixation stems from the fact that dockets are also the site of organisational disciplinary pressure and punishment. During one of the morning parades, the assembled Detective Unit was informed that Sergeant Molefe had been sent back to the uniform branch. Despite several warnings, he had not reduced his pile of dockets. Captain Smit made it clear that this “was to be a lesson to all of them if they did not wish to suffer the humiliation of being demoted”.<sup>92</sup> Thus the pile of dockets can become a source of threat, since it can potentially be the reason for punishment and humiliation.

Inspections of the docket piles were carried out regularly in order to supervise police officers' performance. Seniors would demand that all the dockets of a detective be brought into their offices. Then they checked how many dockets a detective had on hand, how many he or she had managed to close, how many were court dockets, and whether he or she had been working

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<sup>92</sup> The rank of detective is considered to be the highest and most respected within the station. The investigative work, the regular interactions with courts and the broader administrative tasks are considered to require a high level of skill. This has its roots in the apartheid police force, where the detective service was for a long time reserved for whites only. However, this hierarchy is not so clear-cut any more. Considering the workload of detectives, it is often more attractive for police officers to work in the uniform branch, either in the Crime Prevention Unit or the Reactive Unit. There they do their shift, but when they are off they are off. The responsibility of managing a case load is seen as a huge challenge.

properly on the dockets. The morning after the inspection the senior of the unit would openly shame the detective who had closed the least dockets. He or she had to stand up, and it was made known to everybody how few dockets that officer had closed. Then the detectives who had closed more dockets than usual would be mentioned. A list was written on the blackboard and new targets for closing dockets were set. The sense that dockets were a potential source of humiliation and embarrassment was thus reinforced on a regular basis. This anxiety can be consciously manipulated by seniors. In this respect dockets were sometimes used as a means of punishment, for example, by giving a police officer, who had done something wrong, all the dockets which had accumulated over the weekend, instead of distributing them among the detectives of the unit.

The ominous role of the docket becomes more evident through the actual administrative and bureaucratic task that is linked to it. Narratives of complainants, witnesses and suspects are forced into hard-learned "who-what-when" formats, erasing details and emotions. Details of accounts were frequently altered out of lack of understanding or patience. The simple and stiff language used by police officers in writing statements displays the difficulty they have with the task. Spelling and grammatical mistakes and strange formulations speak of weak literacy and low educational standards. This often stands in the way of an easy mastering of the task. Instead it provokes feelings of awkwardness and discomfort for the police officer, and can erupt into confrontation.

Even if done with more ease, the taking of statements often means a lengthy process of listening to the complainant, witnesses and suspects. Then their story must be translated into the administrative form in which policing qualities such as physical potency and mannerisms of superiority have to take a back seat. This reflects a binary opposition of what are considered to be feminine tasks and what are considered masculine tasks; administrative tasks are clearly marked as a part of a female realm within police work. It is not surprising, then, that male detectives often approach their female colleagues for assistance before impending inspections. Ironically this not only supports the

gendered notion of the task, but highlights the point that women in the force are generally better educated than men (see Chapter Two).<sup>93</sup> Doing administrative work was thus imbued with a notion located at the nexus of the feminine and of a higher educational standard than most police officers had access to. Therefore, especially for policemen with an average standard of education, the situation was saturated with a sense of inadequacy and indignity.

This shows that the need to keep the pressure of the docket load at bay is not just an issue of pure convenience. It gains urgency in that an overload of dockets has a hugely eroding effect on police officers, and has the potential of creating a sense of anxiety and inadequacy. The pressure is kept at bay by the "tricks of the trade". Missing dockets are covered up by putting the case number falsely onto a list that indicates which dockets have gone to court. Signatures are faked so that the docket can be closed without the consent of the complainant, and visits to the complainant are falsely noted down in the case diary because it is permissible to close a docket after several unsuccessful visits. And it is here that the importance of circumventing the process of acquiring a warrant comes into play; the importance of closing dockets quickly, or being able to move them to a different pile (such as the court dockets pile) becomes indispensable. Quick investigations, searches and seizures become critical.

According to Sergeant Bothma, most of the detectives use various kinds of "tricks of the trade" to deal with the workload of dockets. He says that the knowledge is passed down from older to younger officers. Such subversion clearly shows the central symbolic and structural role dockets play in the everyday work of detectives. It also shows how the use of violent authority is deeply intertwined with dealing with this docket culture, and with minimising the pain the docket load can inflict on a police officer.

#### 4.4.5 Protection of time out

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<sup>93</sup> This does not mean that female detectives did not subscribe to the same kind of gendered division of tasks.

Finally, less with reference to a particular law but with regard to how police officers organise their work day, the commanding violent authority protected the space which they reserved for their informal activities:

Inspector Engelbrecht and Sergeant Grouws were an experienced team of two female detectives. One afternoon while Inspector Engelbrecht was taking a statement from a witness for one of the cases she was investigating, Sergeant Grouws began decorating the plants in the room with Christmas lights. Her whole attention was dedicated to fixing the Christmas lights when an old black man entered the office. He stood in the door for a while, and finally dared to approach Sergeant Grouws with a question about how the case he had opened a few days back was progressing. He did not even get the chance to state the case number or to explain what the case was about. Sergeant Grouws, with an irritated look on her face, left the Christmas lights and turned to the old man. In an extremely angry voice she shouted at him: "Who do you think you are? I am busy. Can't you see?" She pointed to the pile of brown dockets that were lying on her desk. "I have more than just your docket. I did not have the time to work on it." The man, with an apologetic and intimidated expression on his face, left the office without any further attempt to follow up on his inquiry. Sergeant Grouws, without any further comment, turned around to continue with the arrangement of the Christmas lights. Later she went with Inspector Engelbrecht to one of the nearby bulk retail stores to do some Christmas shopping for her children.

While decorating the office for Christmas seemed a rather prosaic activity (though turning her gesture of rebuke into an even more violent one), it shows that police officers in practice defy the strict boundary between public and private activities. In some cases they use state resources such as paid time, cars and petrol, and telephones for personal business. As I will show in more detail in Chapter Six, this makes up a substantial part of everyday policing and is a highly guarded space by police officers. The unchallenged authority underpinned by fear and violence – what they call respect – enables them to refute demands from the public, even if it is just a simple inquiry into the status

of a case. Violence here was expressed through words, but with this they can steal precious time to do private things during work hours.

#### **4.5 The comfort zone**

In relation to the policing powers of the past, Inspector Chabedi made a comment that showed clearly a sense of self-reflective awareness of what police officers were doing in holding on to their nostalgia. He called it the “comfort zone”.

“Well you know, all these new laws and things, they might be right, but they limit our powers. And we are in a comfort zone, so we don't want to change this. It would be too hard for us. So we insist that certain changes are not for the better, because we don't want our comfort zone to be intruded [upon].

The idea of a “comfort zone” as a description for the backstage seemed acute here, since it emphasised that the investment in the authority of the backstage tended to be one of practical convenience. It also shows that, to a certain extent, police officers consciously preferred the backstage to the front stage, because a change would mean more effort and an erosion of time spent on private matters. However, the idea of the comfort zone should not be taken simply at face value. While the nostalgic commentary dramatises the front stage as fatalistically and inevitably leading to failure (which obviously absolves officers from the responsibility for this failure), the remark about the comfort zone suggests that police officers *do* have a choice about which stage they will occupy. It serves to imply that police officers did have the means and the capability of acting on the front stage, even if it might be hard. It downplays the difficulty police officers have in occupying the front stage, and the discomfort – to be faithful to the metaphor – which the front stage provokes.

The limitation of such choice becomes very visible in the detectives' direct confrontation with the realm of the law epitomised by the courts and its personnel.

Inspector Pretorius, the head of a special unit and thus an officer with considerable responsibility, confided that each time she had to testify about one of her cases in court she would get physically sick. She told me how she would try everything to avoid having to go to court. She would even at times call in sick or try to send somebody else in her place. Such an expression of discomfort also showed in the transformation detectives underwent when they took cases to the prosecutor. They would become timid figures, with no resemblance to the prancing bodies of the night shift. They showed docile deference to the educated and legally skilled figure of the prosecutor. They would submissively accept reprimands from prosecutors for not having carried out certain investigations in a certain way.

Physical discomfort becomes telling in terms of the discrepancy between the "comfort zone" and the authority and habitus expected of them in order to perform adequately on the front stage where the legal authority reigns. As such on a more substantial level, a comfort zone can also relate to identity, and the possibility of acting out and confirming that identity. The need to be someone else can mean significant discomfort. While some aspects of it might be choice, there is an interlocking of practices and meanings which does not allow the police officers to move freely between front stage and backstage.

The inability to perform on the front stage has to be understood as much more deterministic than police officers would like to believe, but also as less fatalistic than they may believe. Violent authority does less to contribute to actual effectiveness than effective performance, meaning the appearance, albeit illusory, of effectiveness. Legal authority often translates into bureaucratic processes of authorisation, regulated and pacified forms of violence which are seen as non-masculine, and which translate into lengthy forms of investigation, into an encroachment on the time of police officers and a deferral of their success. This tends to have a humiliating effect on police officers as they attempt to deal with their sense of inadequacy; it erodes their identity without offering a viable alternative.

#### **4.6. The "Wiseman"**

The lack of ease with which police officers are able to perform on the front stage and their investment in the backstage explains why remarks or attitudes by suspects and members of the public, who have an exclusive claim to the front stage, form such a challenge for police officers. It has been noted by Chevigny (1969, 1972) and by many others (Reiss 1973, Bittner 1990, Reiner 1997) that a threat to a police officer's sense of authority in the form of the "wiseman" or the "asshole" who tries to outsmart the police officer easily provokes violence. The police officers I worked with admitted using violence against people with "an attitude". Asked to specify what they meant by "somebody with an attitude", they responded that it was "someone who pretends to know what his human rights are" and "who *suddenly* wants to tell me how to do my work".

It became clear that such "attitude" was a threat and therefore a provocation to the authority of the backstage. It threatened to erase the performance and to bring together the backstage and the front stage. This would make it impossible for police officers to deal with the bleak reality of policing. To be held to the front stage meant a confrontation with an incomplete and therefore humiliating identity and great discomfort.

Violence in the form of common assault, as I have witnessed it, and which has a commonplace prevalence in everyday policing, was often a way of averting, if not avenging, such humiliation and restoring the discreteness of the two realms of authority. It seemed that with the assertion of the front stage, which aimed at a reduction of violence in police practice, the kind of backstage violence I have discussed here began to hold even more urgency for police officers.

#### **4.7. Different lives – different actors**

#### 4.7.1 Introduction to different lives

Of course, not all police officers are barred from the front stage, and not all of them are merely invested with the authority rooted in the unchallenged employment of violence. Sergeant Gabela, who took care of the court dockets, is an example of this. He personifies a police identity which at least partly embraces the more bureaucratic, administrative front stage where legal authority reigns. I shall therefore sketch how different police officers negotiated their way between the two stages: how invested they are in either the back or the front stage in relation to aspects such as the acting out of potency, the uninhibited use of authority and quick turn-over of dockets, making immediate arrests and having unhindered entrance to people's houses, or protecting free time within working hours. I also consider how much they associate themselves with the legal authority that attests to being a part of contemporary liberated South Africa; which reflects the detached and less specific and upwardly mobile middle-class culture of the legal profession; which champions proficiency in communicative and other non-violent professional skills, and which promises a mutually respectful and co-operative relationship with the courts and court personnel.

This sketch of how different police officers navigate differently between the two realms will show that while none of them could totally deny the necessity of a front stage act, none of them was able to (or interested in) fully giving up violent authority and what it was able to generate. Instead, different ways of arranging the relationship between the front stage and the backstage reflected the different career and life trajectories of individual police officers.

#### 4.7.2 Inspector de Villiers

Inspector de Villiers was a police officer in his early thirties. His wife was also a police officer; she was the head of his unit and therefore his senior. While

he was the first in his family to join the police force,<sup>94</sup> she came from a long family tradition of police officers, although she was the first woman of her family to join the police force. His own and his wife's idea of career was very much one of making it through the police ranks to the top. To become a higher-ranking officer within the police force carried respect among his family and friends, and was also a means to financial security. He told me:

My friend told me I should join the police. And then I counted, and I thought, well two years of constable, and then I become sergeant .... I thought of the money I would earn, and I thought great! I will have my own income soon, and a policeman is a respected person. I could have studied for something else, but I did not want to wait any longer to earn my own money, and I did not feel like studying. I thought I would make a really good choice.

While it seemed to work out for his wife, who was well educated and who benefited from the SAPS's equity policies, Inspector de Villiers was desperately waiting for his promotion. Still, he considered himself young enough not to give up on it yet.

He was exceptionally eager to learn about human rights. However, he emphasised, this was not because he was particularly convinced about it, but because he wanted to make sure that nothing would get in the way of his promotion. He did not want to risk being disciplined, which would inevitably set him back. He felt that he needed to strengthen his knowledge of human rights so he would know what he was doing; he could then choose when to play it safe and when to play out a more violent authority. He also wanted the knowledge so he could always be ahead of the people he was dealing with; if a suspect were to

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<sup>94</sup> . . . To become a policeman seemed to be an attractive option. The state would pay for their education, which many young people or their parents who were from poor farming or working-class backgrounds could not afford. The prospect of climbing the ranks, as it was then envisaged for white people, promised a fast rise in salary and status. At this time, having a matric certificate was not yet an entrance requirement, nor was it a requirement for getting promoted. In addition, the police force offered housing benefits and other civil service grants. Furthermore, it was fixed employment, which ensured great security. All that must have looked like an attractive option for someone who had seen his parents struggle or who came from a white working-class background.

make claims about human rights, he would not have to be insecure about it but would be able to intimidate the suspect by showing him that he knew exactly what he could and could not do. It was a way to defuse or at least tame the threat posed by the human rights concept. Basically, he tried to turn the possession of human rights knowledge into a shield to defend himself from people in relation to whom he had formerly been able to play out his authority but who since had become versed in legal ways.

The proximity to his wife gave him privileged access to the front stage, despite being less well educated than she was. He had learned to deal with the fact that his wife held a superior position. This made him more accepting of the feminisation of police work, which, as argued earlier, was one way in which human rights was being experienced. Moreover, through his proximity to his wife's policing style – she was well versed in legal ways and was holding up a very correct image as a manager – he was well-advised and could learn the ways of the front stage. At the same time, his wife was reliant on him and his male colleagues to carry out work on the backstage, without which she would neither have received the respect of the unit nor been able to keep up the appearance of delivering the expected number of arrests. Through this arrangement they could hold up a certain purity of the front stage without diminishing the pressure of the backstage authority.

#### 4.7.3 Sergeant Khoza

Sergeant Khoza was one of the oldest black investigating officers in the Serious Crime Unit. Whenever he interacted with suspects, he would make sure that fear was installed in them right from the beginning. He would threaten them by insinuating that the police still used torture. I also had first-hand information that he had used a hammer during an interrogation; the suspect's screams could be heard along the passage. However, nobody intervened, neither his colleagues nor the head of the unit. He was respected in his own way, even if most of his colleagues would themselves be much more moderate or cautious. Some of his

white or Indian colleagues asked for his assistance when they were interrogating a black suspect and felt that they needed someone to speak to the suspect in an African language. At such times he would first utter a whole range of threats before he even started talking about the case. References to the past always featured strongly in this diatribe, as if there was still an open credit of fear. On night raids he tended to bang the heads of people against the metal plate of his bullet-proof vest, even if they had already been arrested.

Sergeant Khoza entered the service in 1977. He joined the police force out of the necessity to have a pass (the apartheid-era internal passport that black South Africans needed to legitimise their presence in towns or cities) and the absence of any other opportunities:

I was in the bus; everybody was running into the bus. Then the police were following the bus, then they stopped the bus, and they were asking for the pass. If you couldn't produce a pass or a work permit you were arrested by the police. I was arrested too often, and I realised I couldn't be in Johannesburg without a permit. This forced me to take the police job. I wanted to work and I wanted a job, so I went to see my uncle who was working in Johannesburg Central at that time, and I said, don't you know how I can become a policeman? And he showed me where the registration office was.

When I met him, he knew that he had no prospects of being promoted any further. For him to become a detective was already the principal advancement. He had a very strong sense that history had passed him by. He said that he had spent the better part of his police career on special duties, such as service at the national borders. This had made it impossible for him to study. Now that these academic skills were suddenly required, he was left out.

This view was reflected in his view about human rights. He simply told me: "I don't want to hear any more about these human rights". He obstinately added that he had refused to go to any of the human rights training courses. He said this in a very irritated way. It was as if just the phrase "human rights" hurt his ears, as if it was an ugly noise to which he did not want to be exposed any longer.

In a more formal interview, which I had carried out with him at an earlier stage, and in which I had been writing down things in front of him, he had made sure that whatever he said gave nothing away about whether or not he followed the rules. He consistently tried to create the impression that in the new dispensation he did everything differently, that he did not use force any more; that he had “given up on the old ways”. However, he clearly loathed the bureaucratic procedures for which he had none of the necessary skills, and it was impossible for him to deal with suspects in a non-intimidating way. He was hardly able to perform on the front stage, and his identity was fully invested in the backstage performance. For him, the front stage meant a present and future of which he was not part and which he would never be able to become a part of. The front stage and his own area of operation represented two incompatible spheres, with the front stage eroding everything he was to himself, his colleagues, and to the police.

#### 4.7.4 Inspector Chetty

Inspector Chetty liked to invest his time and effort to enact the concept of human rights so that it would become a reality for inner city dwellers. (I will discuss this in detail in Chapter Six.) He dreamed of a middle-class life. While he knew that he would have little chance to succeed outside the police force, since he had no education other than his police training, he longed for recognition as a professional. He made a point of how he had come from a small town and how apolitical, *weltfremd* and naïve he had been then. Coming to the city had opened his eyes, and he felt he had come a long way by learning the ways of the city and realising how many different life trajectories there were. However, he felt that by being in the police force he was missing out on the opportunities of a middle-class life.

We are not seen as professionals. If I go to the bank, I can't get a loan as a lawyer does or a doctor does. They think we are all stupid. There is no

respect for the police. Doctors are so overrated. I also have people's life in my hands and I even risk my own life; a doctor doesn't. At the bank they don't even ask which rank; there you are just a stupid policeman.

He hoped to acquire some skills that were not specific to the police, such as computer skills, which would allow him to be promoted to one of the special services within the police service, such as the IT department. This would take him off the street and allow him at least to live the semblance of a middle-class life. In his current position it was the human rights precept which allowed him some approximation to the middle-class world of lawyers and other professionals. He tried to carry out a form of policing which, according to him, did justice to the idea of human rights. This for him meant enacting a sense of being part of post-apartheid South Africa, which offered seemingly ample opportunity for those who had been disadvantaged under apartheid. And on top of this he had the advantage of having had a relatively better education than many black people in the country.

However, this enactment was not as lasting and sustainable as he wished. A more mundane everyday police practice caught up with him. He had to face the on-the-ground realities such that, for example, city dwellers did not allow him to come up with spectacular cases and legal victories but instead pulled him into their marginal world, which was even further removed from the courts and membership of the front stage policing world than ever before. With this a soap bubble seemed to burst. He then became very sentimental and nostalgic about policing being a calling, invoking vividly the performed imaginary of the backstage. However, some of the violent roughness of that world disturbed his sensitivities, and he ended up feeling that neither the rough backstage nor the middle-class front stage had anything to offer to him.

In many ways, he found refuge in his private life. He hoped that he could have an approximation of a middle-class life through the purchase of consumer goods and living in a racially mixed area. He had white neighbours with whom he got along very well, and who did not even know that he was a police officer.

This also meant that he felt entitled to reserve considerable space and time during his working day for doing private things, even if it was only to take his wife shopping for clothes.

#### 4.7.5 Sergeant Legodi

Before Sergeant Legodi joined the police force, he had been part of the urban township youth who rioted in opposition to the apartheid regime. At one point he had even been on the run from the police, and had relocated to a different city. He struggled to make ends meet. When he got a chance to join the police as a *kitskonstable*, he took it. His relative sophistication, the result of growing up in an urban township, had given him some advantage over those recruited from the rural areas. He even made it into the detective service. There his urban savvy and a very idiosyncratic policing style, which combined a willingness to use force with intricate personal investigative methods, brought him some fame and respect from his colleagues.

His method was characterised by being highly reliant on his personal contacts, of which he had many, and which he was maintaining all over the city. To maintain and usefully employ many of these contacts, it was crucial that his policing powers were perceived to be personalised powers. From the use of the car to the employment of violence, he needed to be able to mobilise his powers whenever he needed them in local transactions of give and take.

He expected little from the official police organisation in terms of a career. Lack of formal education would not allow him to move much further through the ranks. However, he was not very ambitious in this regard. Instead, he expected a lot from employing police powers in the city, and wanted to earn a reputation among those who informally had influence in the city, such as well-off traders and other entrepreneurial contacts. That was where he saw the possibilities of advancing his life. Therefore, he had a deep investment in the backstage, because in that context policing methods were unrestricted and flexible, allowing him to wield a form of authority which was respected in the

inner city. He knew that human rights talk carried little purchase among city dwellers, and that a more tangible sense of justice was required.

However, this form of authority also needed tempering. Simple arbitrary violence would soon have closed doors for him in the city. The more people trusted him and gave him information, the more he would be able to operate effectively in the city. This he could only do by ignoring many of the petty crimes committed by people he knew, sometimes even helping them in these pursuits, and applying violence and policing powers such as arrest only where absolutely necessary. He managed to actualise some of the basic principles of "community policing". His acceptance within communities gave him access to information and useful leads which enabled him to solve cases with less violence (in contrast to the extraction of a confession, for example). However, this was achieved without recourse to the front stage.

At the same time, in order to operate autonomously and idiosyncratically, he needed to be free from too much supervisory attention. Thus at times he would strategically play the role of the dutiful and motivated police officer, while hoping that his poor arrest rates would exempt him from promotion. However, it was not always an easy balance to strike. Having to deal with cases to which he could not find a personal angle, even on a purely bureaucratic level, totally dissatisfied him. In addition, his social contacts could become too demanding in the sense that they expected him to do things he could not do, because he was bound to maintain an impeccable official image. For example, he could not intervene in an arrest at a station where he did not have contacts.

#### 4.7.6 Inspector Kekana

Finally there is Inspector Kekana, whose comment about human rights I used in the Introduction. He was one of the younger members of the unit. He was also an active and enthusiastic member of the police union. On various occasions he called upon his colleagues in the unit to stand together to push through certain matters, mainly with regard to organisational perks and the

rights of police officers. Inspector Kekana ascribed huge importance to the changes in the country, and through his union activism he was exposed to (and himself employed) the discourse of human rights and liberation:

Since this is now a democratic government, lots of things have been happening. The disadvantaged, they were not exposed ... they did have their rights, but those in power did not like to show them that they had such rights. Those in power must change to a new system. The disadvantaged should be advantaged now. There were some people who were sitting on top of our rights; it wasn't that we did not have those rights.

I was quite struck by this comment because it echoed exactly the way that the idea of the inalienability of human rights was meant to be taught in the human rights training course (see Chapter Three). The point was made that everybody had always had human rights, but that they had not been recognised. Inspector Kekana confirmed that he had taken the human rights training programme and that he had enjoyed it and considered it important. He said that it was important to recognise that

... a suspect is still a human being; you can't know if he is really responsible.  
For you to be safe, you better treat him like a human being.

He thus genuinely identified with the values purported by the front stage. He also had fewer problems with the culture of the front stage, since his union activism offered him a slightly different matrix through which to appropriate those values. He was able to avoid some of its legalistic middle-class exclusivity in favour of a more politicised and activist working-class image. He did not perceive the front stage as purely representational and covering up strategically what was acted out on the backstage. Yet, at the same time, he did feel the need for and the pressure of the backstage. For him it was particularly aggravating when people used human rights against him, or when they obstructed his work, because he hated to see human rights abused and because he considered his

work to be a contribution to the betterment of the country. He was also someone who was known to “snap”, and who used violence with “cocky” and “cheeky” suspects, or “suspects with an attitude”, in the words of Captain du Preez.

Still, he tried to reconcile such officially diverging practice:

I must convince them to co-operate ... 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 and your rights. You must know your limits; you can't take my right. It is quite disturbing that 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.

Inspector Kekana tried to reconcile the two stages by reinterpreting human rights. He used the concept of being human to justify his means. He gave people a chance to be “human”, but if they refused to be reasonable then he felt justified in deviating. The idea of rights was thus made conditional. People and suspects had to submit, though not so much to him but to a cause bigger than him, which was related to human rights and the “new” South Africa. He viewed the conflict between himself and a suspect who did not want to follow orders or be submissive as a conflict of rights, while using violence was a means to bring about those rights. He therefore was able to see his own violent practice as righteous, since it was being done in the cause of his human rights work.

#### **4.8 Conclusion**

In this chapter I consider the dynamics surrounding the accountability of police officers towards the national law and institutions such as the courts which evoke the national law to keep police in check. The case study of this chapter focuses on the use of violence. I argue that the use of violence in the context of the increased accountability towards the national law leads to a split performance of backstage and front stage policing.

Backstage and front stage are each marked by a complex interlocking of practice and meaning centred around a particular identity derived from a particular sense of authority. The shift between the back and front stages is thus not merely practical, but is also substantial. The authority of the backstage is pivotal in various ways of sustaining the appearance of effective policing, while the practice necessary for the front stage is only possible through acquiring legalistic authority, which for police officers is only partly accessible.

The backstage authority, invested as it is in an unbridled use of violence, enables the police to perform in a way which allows for the illusion of efficiency and potency in crime fighting. It allows them to act out performances of masculine prowess based on quick arrests, disregarding people's privacy and dignity. Such performances conceal, or at least temporarily overshadow, a more bleak reality of the unintelligibility of crime, and the daily grind of administrative tasks. Violent authority commands and generates the compliance of people, enabling the police to avoid otherwise laborious procedures and lengthy bureaucratic efforts. This partly feeds into the performance of potency – as in the cases of arrests and searches without warrants – but it also responds to what might appear as structural necessity: considering the case load, many cases would not even be touched if police officers were to follow correct procedure; police officers would either not know of any authorised means of collecting evidence successfully in a case, or there would be too little time or manpower to deal with cases.

The sense of unbridled violent authority also allows for comfort and convenience. It allows officers to avoid contact with the courts as far as possible, thus avoiding the sense of failure and inadequacy which the court often brings upon them. Finally, it allows them to preserve the space which police officers keep for doing private things, and, within that space, to put their policing powers to work as personal powers for their own interest.

The front stage, on the other hand, can offer a sense of belonging to the new South Africa and a certain professional appeal; the amendment and tightening of rules de-legitimise the past and herald the present. However, this

sense of belonging is only accessible through the command of very different abilities, such as comprehensive legal knowledge and ease with bureaucratic procedures. It also demands access to a certain cosmopolitan, or at least middle-class, cultural capital, as discussed in the previous chapter. For some police officers the sense of belonging is indeed the attraction of the front stage, but very few are able to access the front stage in a way that would confirm such an identity for them. Structural conditions, such as a high work load, did little to support their entrance into that realm. A high work load was not just represented by the actual numbers of dockets a police officer carried on hand, but it had assumed the form of a docket "culture" – a whole matrix of meaning, practices, and most important, dangers, related to the failure of working off the docket load. This situation sometimes leads to police officers feeling stranded, if not let down, by having to face a sense of inaccessibility and the erosion of their identity.

This sense of inadequacy can turn into humiliation in cases where the front stage becomes the exclusive setting. It impacts significantly on their sense of authority. Reference to the front stage has the power to evoke the humiliation and inadequacy of the front stage. If experienced as such, it can trigger the wish to refute the entire context of the front stage by taking recourse to the authority of the backstage, and ultimately by restoring the backstage authority.

Different investments in the policing career, different backgrounds, gender, age, and education, shape the ability to access the front stage. If a police officer could not find a personal reference point in the realm of the front stage, there was little which compelled him to do more than the minimum to stay out of trouble. However middle- class aspiration on a societal and material level could to an extent animate a performance on the front stage. Similarly a sense of an investment in the political changes of the country and the kind of advancement it brought to black people could motivate a front stage performance. This however, as in the case of Inspector Kekana, could be reduced to a sense of entitlement in the sense that the police officer appropriates the power to define the terms of who and how somebody is permitted to behave

in order to be called human and therefore to 'deserve' being treated in a "front stage" manner. To act strategically on the front stage could also be a pure investment in one's career, or in keeping at bay supervisory criticism and intervention. Finally an inclination towards a more feminine identity, for example by virtue of one's gender, education or socialisation, allowed space for feeling less inadequate, and gave easier access to the front stage.

Most police officers, however, had a far greater investment in the backstage, either in the form of their explicit identity – that is, how they wanted to see themselves – or as a way of furthering private interests. The backstage allowed them to get respect from colleagues, even superiors, at least in relation to the kind of results they could present; and last but not least it allowed greater respect in the form of self-respect. Especially where the formal educational standards were missing, where promotions had come to a halt, where challenges to masculine identity were seen as threatening, where the difference between middle-class values and police officers' bias towards lower and working-class values played themselves out as an insurmountable distance, the image of potency allowed by the backstage helped police officers to remain motivated and avoid feelings of humiliation and inadequacy. But it also allowed them to use their position as police officers to advance their non-work life in a material as well as bodily and mental sense. It gave them an outlet to keep work pressure at bay, to avoid stress, to reserve time within working hours for private pursuits and to have time to apply police authority to non-police work. It is the investment in the backstage authority and the inability to translate it to a front stage authority, that accountability towards the law gets compromised.

# 5

## ***My Police - Your Police***

### ***The Informal Privatisation***

*To Alsana's mind the real difference between people was not colour. Nor did it lie in the gender or faith.... The real difference was much more fundamental. ... You could divide the whole of humanity into two distinct camps, as far as she was concerned, simply by asking them to complete a very simple questionnaire: ... Is the ground you walk on likely to tremble or split? ...Because if the answer is yes, then the life you lead is a midnight thing, always a hair's breadth from the witching hour; it is volatile, it is threadbare; it is carefree in the true sense of that term; it is light, losable like a keyring or a hairclip. (Smith 2000)*

#### **5.1 Introduction: Down Bree Street with the police**

It was a few days before Christmas and the urge to work seemed to be at an annual low among the detectives of the General Investigation Unit at Johannesburg Central Police Station. Some of them silently expressed their contempt, doing their work extremely slowly, knowing that they had to be working over the festive season. Most were "winding down" since their holidays were close, and thinking that what had not yet been finished could as well wait for the next year. Others had already locked up their offices and left for vacations or family visits.

Sergeant Kloppers had only recently been transferred from the station's Serious Crime Unit to the General Investigation Unit. We had planned for her to show me one of the "worst places" in the inner city – the Old Drill Hall – in which people were squatting under the most horrible conditions. She had warned me the day before, gazing with pity at my dainty summer sandals, that we could only enter such a den of iniquity if I wore gum-boots. We never got that far, however. Nor did I get to see the

Drill Hall before it burned down a couple of weeks later after a woman allegedly threw petrol at her lover during a domestic fight. Our plan changed when a former colleague from the Serious Crime Unit came to see Sergeant Kloppers. His name was Inspector Swanepoel, and he had left the police station to join a special police unit in Pretoria. He and Sergeant Kloppers had worked closely together in the past and a strong bond of friendship between them was immediately apparent. They had agreed that she could use his police car while he was on leave and so she needed to drop him off at his home, which of course took priority over showing me the dark underbelly of the city.

Sergeant Kloppers went off to talk to the unit commander. As I sat sipping coffee and chatting with Inspector Swanepoel about his move to Pretoria, a black woman passed by the office with her baby on her back. She returned and asked shyly if we knew where she could find Detective Marais. I had to disappoint her with the news that he was on leave and would only return in mid-January. She was already turning around to leave when Inspector Swanepoel asked if he could help her. The woman, named Peggy, explained that she had a "pointing out note" for a man who was living in her flat, a man against whom she had opened a case after he had threatened her with a firearm.<sup>95</sup> This man was now in her flat and she was hoping that Sergeant Marais would finally arrest him. Somewhat to my surprise, Inspector Swanepoel decided that he and Sergeant Kloppers would pursue the case and arrest the man. When Sergeant Kloppers returned, Inspector Swanepoel proposed that they should help Peggy and arrest the suspect. Sergeant Kloppers was also surprised but instantly agreed, seemingly wanting to show him that she was still a dedicated police officer even though she did not work for the Serious Crime Unit any more. Soon thereafter Peggy was sitting in the back of an unmarked police car giving directions to her flat on Bree Street, where the most densely populated section of the inner city began. The high-rise apartment building we entered was untended and dilapidated. Since the lift did not work, we had to climb the stairs up to the tenth floor.

Upon our breathless arrival, we found ourselves in a two-roomed apartment which had been turned into a number of sleeping and living quarters, partly hidden from view by large pieces of cloth subdividing the rooms. We were interrupting the morning routines of several women and children who were getting dressed and cleaning up.

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<sup>95</sup> A pointing out note is a paper of authorisation that a complainant can receive from the investigating officer. In principal this note can be shown to any police officer, and should prompt and authorise him or her to go and arrest the suspect pointed out by the complainant.

Peggy, full of determination, led the two detectives straight to the alleged suspect, Sam Dhlamini, whom they found still in bed. Inspector Swanepoel arrested him in a straightforward and authoritative manner, reading him his rights while handcuffing him and leaving the suspect no room for negotiation. Once Sam had been pulled out of bed to change into his trousers, Sergeant Kloppers lifted the mattress and found a loaded gun underneath. The detectives directed a host of questions at Sam: Why did he have a loaded gun lying around? Didn't he know that he should keep his gun in a safe place, especially when children were around? Didn't he know this was enough to send him to jail and to cancel his firearm license, if he even had one?

While this exchange demanded the detectives' full attention, I noticed a different scene playing itself out in the background between Peggy and the suspect's girlfriend. More outraged than intimidated by the police arresting Sam, the girlfriend started a fight with Peggy, whom she identified as the main culprit for the arrest. She began in an indigenous African language and then suddenly switched to English. I heard her shout at Peggy:

"Fine so, you damn bitch, you called *your police* to help you to throw us out of this house, but this is our place and you will regret this, because I will now call *my police*! You will see what comes from this. Don't you think that we don't have our *own police*."

Peggy kept quiet, lifted her shoulders in a gesture of dismissal and tried to ignore the girlfriend. It appeared that she felt no need to defend herself since she had two determined police officers helping her. They were doing exactly what she had hoped for when she went to the police station. She seemed to consider it wiser to keep quiet, shrug off the insults and let the police do their work. My attention switched back to Inspector Swanepoel and Sergeant Kloppers who were pushing the handcuffed suspect ahead of them. We left the satisfied Peggy and the shouting girlfriend behind. The latter's reference to "your police – my police" was still ringing in my ears, leaving me curious as to its meaning.

## 5.2 Inner city imaginary

An exploration of what the girlfriend meant by “your police – my police” is the aim of the remainder of this chapter. I will argue that it represents a particular imaginary of people living in the inner city of Johannesburg, one that allows them to make sense of their everyday experience of the police. By the term “imaginary”, I understand an enabling and generating symbolic matrix through which people make sense of and create the world around them and which shapes their practice. The symbolic matrix does not need to be fully explicable or articulated; it is located somewhere between basic practical knowledge and explicit ideology.<sup>96</sup> In this case the imaginary of “your police – my police” serves as a matrix of ideas that directs and enables people’s relationship with the inner city’s police service.

Through this imaginary, a particular policeman or policewoman (“your police”) is used by someone else—the someone else can be either hypothetical or concrete. This imaginary is especially evident when the police intervention works against one’s own advantage or when the police officer appears as a threat – as is often the case for people whose socioeconomic situation compels them to the margins of society. If a person happens to successfully “capture” a police officer through some relationship of familiarity, friendship or indebtedness, or the concurrence of particular interests, then that officer can become “my police” – a private police officer providing protection for the particular individual through what is considered to be a personalised relationship.

The term “your police – my police” must not be understood as a fixed expression in common use by inner-city police or residents. Police officers would probably vehemently refute the notion of being owned, even if one should hint at their particular relationship with certain individuals. Rather, the utterance reveals a particular approach towards the police from the side of the policed. The meaning associated with the utterance and the symbolic realm to which the imaginary belongs is therefore used in this chapter as an analytical device. The expression, originally drawn from a concrete situation, is used as a metaphor and an analytical category capturing particular practices

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<sup>96</sup> The imaginary definitely reflects wider historical processes, but only as far as it is relevant for the imagining actors in their experience of everyday life. This understanding of the concept of imaginaries has been inspired by Gaonkar’s (2002) “Towards new imaginaries: An introduction.” However, the concern in Gaonkar’s article is with social imaginaries, which are more encompassing, shared by large groups of people or whole societies. In contrast, my interest lies rather with a microscopic imaginary which is specific to the interaction with the particular institution of the police in a specific place, and with people who live under specific conditions.

of, attitudes towards, and ideas about the police. It presents the crystallisation of a certain practice, and is used here as a starting point from which to explore the particular relationship between police and inner-city residents. If it emerges to the advantage of a particular person, it can be marked by possessive qualities, and that can ultimately be described as an informal privatisation of the police.

“Your police – my police” evokes an image of the state police as private police. It ignores the normative claim that the police force should be a public, modern institution with an unemotional and unbiased relationship with the public. The international policy consensus about the transformation of the police asserts that democracy relies on the development of a modern police force. As discussed in the Introduction, this will emerge through forms of accountability which will allow the people to impress their will and needs onto the police, which in turn will grant the police legitimacy with the people. Providing equal access to the police – access to security being a basic human right – is considered as one of the obvious outcomes of accountability mechanisms and key for gaining broad legitimacy.

The South African government and the top echelons of the South African Police Service (SAPS) maintain that they are working towards a coherent and unified public institution. The goal is a police force that is transparent, accessible and responsible for effective crime reduction. They claim that they are making good progress. In these assertions and proclamations the idea of the police as a modern, public institution is often invoked through a normative process, through a conflation of what is with what ought to be. Even in frequent commentary on the incompleteness of the transformation project, critics, including the media, evoke a reified notion of the police as part of the modern state.

A dominant language has emerged which aims to describe the relationship between police and citizen; this language only knows the ideal and its inverse form. As such, it leaves no space for the complexity of the state-citizen encounter, which takes place in a moment of radical contemporaneity and in the context of marginalisation. Here the imagined, idealised future – a vision of social engineering and so-called institutional change of the state which has yet to be realised – becomes meaningless. “Your police – my police” is a poignant expression of the negotiation of the state (in the

form of the police) going on at its boundary with society. It challenges the idea of the dichotomy of the ideal and its aberration, and in fact provides a new image of the state as it is transformed and emerges at this boundary.

The precarious conditions that have developed under the radical reconfiguration of the post-apartheid inner city,<sup>97</sup> together with the incoherence of police intervention, provide the particular conditions for the emergence of an imaginary of the state police as "private police." The following discussion of inner-city housing in predominantly dilapidated high-rise flats lays out how the particular living environment of the inner city contributes to the expediency of the imaginary of "your police – my police." This will be followed by an extensive discussion of inner-city dwellers' experience of the police as decisively fragmented, unpredictable and always potentially threatening. This partly refers to the previous chapter, where the police practice – which is based on the continuous application of violent authority and the re-inscription of a marginal status onto people – was discussed. It also foreshadows the following chapter, which deals with the practice of corruption and extortion.

Both sections will be interlaced and elaborated on the basis of the ethnographic material on the unfolding of the case between Peggy, Sam and Sergeant Kloppers. From this I will draw some conceptual conclusion about the nature of the encounter between police and city dwellers. This allows us to understand how the state makes its presence felt in a realm which seems to be rather removed from formal governance.

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<sup>97</sup> I am not trying to argue that this imaginary can only develop in inner-city conditions. However, it is the conditions which are conducive to the imaginary that are coming together in the inner city – flexibility, insecurity, opportunity, industriousness, flux, danger, informality, lack of official governance, etc.. I am also not arguing that this imaginary is exclusive to post-apartheid times. Nevertheless, it is the juxtaposition of (a) the post-apartheid government's attempt to gain legitimacy through the transformation of its police into a democratic police, with (b) the imaginary of the state police as private police, that gives it special relevance.

Thus this chapter tries to capture a form of encounter between police and marginal subjects which takes place very much against the background of a police force which maintains its investment in and employment of backstage authority. It also highlights the context of marginality, which produces its own notions of expediency in the light of the shortage and informality of survival resources. This chapter develops a conceptual background for Chapters Six and Seven, in which I will discuss how human rights are being renegotiated in police-citizen encounters which take place under similar conditions of context and temporality as the one being discussed here. As such this chapter begins to sketch out the kind of dynamics which take place at – and shape – the level of accountability towards the population.

### **5.3 Johannesburg's inner city: Place of dreams and dangers**

Johannesburg's inner city underwent a radical reconfiguration in the late 1980s and early 1990s. In a few short years it became the global African city, drawing immigrants from all over the continent and beyond, who now make up the majority of inner-city inhabitants (Leggett 2003). Transformed from a "whites only" area to an almost exclusively black one, the inner city's economic make-up has changed as well (Bremner 2000, Simone 2002). Major businesses associated with white capital have moved out, and there has been a proliferation of informal market culture overflowing from shops onto the city's pavements. A major centre for retail, small business,

narcotics and informal trading, the inner city is characterised by a degree of invisibility for illegal and informal living as well as for entrepreneurship (Simone and Gotz 2003). There has been a great flux of people coming and going, from different origins and with different destinations, some just passing through, others remaining for much longer than they envisaged.

This has created a “vacuum of belonging” as Gotz and Simone (2003:129) call it. There is no appreciable history of settlement of the new inner city inhabitants, and there is an absence of stable social institutions and sense of social cohesion (Gotz and Simone 2003). Where there is co-operation, it is with a great sense of competition and insecurity, and the “very act of counting upon others becomes a practice that leaves individuals vulnerable for further difficulties” (Gotz and Simone 2003:130). Because of its crime rate and the informal trade, the inner city has become a no-go zone for many of the (lower) middle-class whites and (lower) middle-class blacks (see below) who used to occupy its space (Leggett 2003). For the new city dwellers, notwithstanding the high level of insecurity and danger, and the unpredictable living and trading conditions, it remains the destination for realising dreams of a better, freer, more modern life. The abundance of commodities and a vibrant, constantly expanding nightlife are just two of the aspects which have made the inner city attractive. The resulting influx from the rest of the country and continent, combined with danger and the scramble for economic opportunity, has dominated social relations. Because of the economic possibilities, no matter how precarious they are, housing space in Johannesburg is a highly sought-after and limited commodity. The subtext of the conflict between Sam and Peggy is about housing and living space.

#### **5.4 Whose space is it? Housing in the inner city**

The history of the high-rise apartments of the inner city is one of gradual decay and constant contestation. The deterioration that opened the door to informalisation had set in long before the official end of apartheid, the result of the desire of many inner-city landlords and property owners for short-term profits. Morris (1996) describes how this process began and the cost it now exacts. Owners deliberately neglected the maintenance of their properties in order to force out white tenants living under rent-control legislation. Once these tenants were gone, it became economically attractive to lease accommodation to black, coloured or Indian tenants. Apartheid laws were still in place, but people moved in anyway.<sup>98</sup> Black people were so desperate for centrally located housing that they were willing to pay prices that most whites would have refused or reported to the authorities.

**The first black people who came to live in the inner city were social pioneers who took a risk by circumventing racial segregation. Service jobs in the centre of the city, however, allowed them to pay the high rents. Their social and economic profile was not unlike that of the white people living in the area, but many white tenants or individual flat owners saw the influx**

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<sup>98</sup> The inner city was demarcated as a "whites only" area under the Group Areas Act. However, through special arrangements – for example, if a white person signed the lease for a black person – landlords were more than willing to let black people rent their property.

of black people as a reason to move out. It was interpreted as decline of the area, seen as the advent of crime and disorder. In short, there was a racist reaction to the unfamiliarity of the contact. Many white landowners sold their property or followed the trend of providing the bare minimum of maintenance. With the end of apartheid, inner-city decay accelerated, and even those in the black middle class moved to better suburbs, as white residents had done before them. This exacerbated the downward trend of property prices and increased property owners' eagerness to maximise their rental income. They allowed as many people as possible to move into the flats. In addition, abandoned office buildings were offered as housing space by so-called slumlords, although with a total lack of adequate sanitary provisions. Many of the new tenants were foreign or rural immigrants who did not feel at home in the townships and who were looking for any economic possibilities that informal trade might offer.

Increasingly, flats were rented out, sub-rented, sub-sub-rented and sub-rented again, until the responsibility for payment of rent, electricity and water was intelligible only to serious insiders, certainly not to the landlords. With accumulated water and electricity debts higher than the value of the buildings, many apartment buildings were left to their own fate.<sup>99</sup> In addition, banks refused to issue mortgages for the buildings,

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<sup>99</sup> The amount of money owed to the city council for water and electricity soon exceeded the income that could be extracted from rent. In the face of such accumulating debts, giving up and abandoning the apartment building was often seen as the only viable option for property owners.

**which made it impossible to sell them or to invest in maintenance. According to an architect on the city council, many flats were totally abandoned by their owners, some of whom had left the country.<sup>100</sup> Other apartment blocks were run by ruthless caretakers who extorted rent, often violently. Still others were taken over by residents. The city council and the Johannesburg Development Agency (JDA) are constantly trying to reverse this development, but with only partial and often unsustainable success. Politically unpopular and problematic evictions compound the problems. In addition, alternative accommodation must by law be provided, and that is not always a readily available or affordable option for local government. The city council and the JDA have resorted to the tedious politics of dialogue between landlords and tenants, with little success or, at best, long delays.**

**Another issue facing developers who are trying to turn the tide of inner-city informalisation is the issue of crime.<sup>101</sup> According to the plans of the JDA, a “safer city environment” will be created by means of private security efforts, camera surveillance, the Johannesburg Metropolitan Police (JMP)<sup>102</sup> and**

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<sup>100</sup>This interview took place during a city walk organised by the city council, which served to identify areas of high concern and high priority for council intervention.

<sup>101</sup> Under the heading of “getting the basics right”, the Johannesburg Development Agency (JDA 2001:20) states that “ensuring a safer Inner City is a priority for urban regeneration.” The fear of being hijacked while driving to and from work, the possibility of being mugged while walking the streets and because of this, the urge to leave the inner city before night falls – all this has convinced many businesses to leave the inner city and to look for greener pastures for their personnel and their clients in the city’s second economic centre of Sandton. For many of the lower-middle-class white and black residents, who made up the population of the inner city in the early transition period (Morris 1999), the perceived and real danger of increasing crime was one of the reason residents left and moved to “safer” suburbs.

<sup>102</sup> Established in 2001, the Johannesburg Metropolitan Police are responsible for the enforcement of traffic laws and council by-laws as well as crime prevention ([http://www.joburg.org.za/metro\\_police/index.stm](http://www.joburg.org.za/metro_police/index.stm)).

**the SAPS. These security efforts, however, have “a strong economic bent” (De Bruyn 2002:97). They concentrate on making the streets safer for shopping, banking and public services in the inner city. Closed-circuit television (CCTV) cameras provide surveillance of the open streets, the JMP concentrates on traffic and council by-laws attempting to organise the pavements and hawker business, and private security guards, only accountable to private enterprises, stand outside businesses that can afford them. These are not the instruments which reach beyond the obvious public space of the street.<sup>103</sup> They fall short where life moves on into the dense and closed, often informal and private spaces of the inner city. As Leggett (2003:21-22) states, “in the inner city context in particular, preventing crime through street surveillance would be limited in its potential, as most of the population at any given time is situated vertically in high-rise apartments and office blocks.” Not even the SAPS uniformed patrols move regularly into the vertical spaces, since they patrol in their cars. However, it is in those closed spaces, hidden from the public eye – the private homes, the passages and staircases of the high-rise apartments, the bars and nightclubs, and, more importantly, between people who know each other – that a lot of the violence**

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<sup>103</sup> I am using public space here in a quite uproblematised form. I am, of course, aware that public space is a rare commodity in South Africa, and that it is highly racialised and gendered. Partly it can be said that public space in the sense of broad accessibility has been lost, or perhaps was never available in South Africa. The efforts of the JDA and the city council are in fact directly aimed at (re)creating public space. Having said that, the reader should be aware that I am using public space – existing or planned – in contrast to the clearly non-public spaces which are houses, bars, shops and apartments.

**of the inner city takes place (Leggett 2003:80).<sup>104</sup> It is this that makes the city a place of danger, insecurity and unpredictability for those who dwell in it and who try to make a living from it.**

Consequently, spaces have emerged in the inner city where few reliable formal rules remain to govern its social life in general, and the distribution and regulation of renting and sub-renting in particular. The impotence of the urban government and private landlords in regulating such spaces seems to position the space outside the state domain. People living there are to a great extent left to their own devices to create their own rules about renting and paying. Conditions inside these spaces are, moreover, unstable and erratic. Few residents have a regular income; most survive on meagre and informal earnings and so payment for occupied space is inconsistent. Residents are under constant threat of losing their housing space. If that happens they have to move on and find new space. Together with the constant influx of new national and international migrants, this establishes housing as a prime context for conflict, and such conflict is often violent.

The conflict between Peggy and Sam emerges out of this housing situation. Peggy migrated from Zimbabwe to Johannesburg. She began to work as a hawker, and succeeded in renting an apartment in the inner city, sub-letting rooms to two other women. When it became clear that her daily income was insufficient to pay her rent, she moved out of her room in the apartment and sub-let it to Sam Dhlamini. When her financial situation improved, she wanted to move back again. She urged Sam Dhlamini to relinquish the room. He insisted, however, that she had lost her claim to the apartment, as she had been unable to pay for it for a few months. He tried to persuade the floor committee and other apartment tenants to take his side. When that failed he allegedly threatened her with a gun to stop her from making any further claims on the apartment.

## **5.5 Redirecting state power**

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<sup>104</sup> In 53% of all cases of assault in the inner city the perpetrator was known to the victim prior to the assault (Leggett 2003:80). However, the survey does not make clear how many of these assaults do not take place on the street. Nevertheless, it can be said that it is at least 32% (Leggett 2003:79). The number of assaults recorded in the survey is described as high compared to national and regional statistics. It is even mentioned that the number excludes less violent assaults and that therefore it has to be assumed that the cases of violence and threat far exceed the numbers given in the survey.

Housing can thus be described on the one hand as isolated, invisible and excluded from formal and official regulation and, on the other hand, as a scarce and highly contested resource. Simone and Hecht (1994) use concepts such as “invisible governance”, “micro governance” and even “art of micro politics” to describe the particular endurance and production of everyday life in the post-colonial African state. What they mean by these terms becomes clear through evocative writing rather than definition.

Outside the walls of government, the sprawling shanties manufacture hope with the raw material of irony. Here both the horror and creativity of contemporary African life is most apparent. Markets, buses, compounds, offices, and roadways are full of arguments, challenges, bickering. Of course, people protect their interest, strive to gain advantage and pull the wool over another's eyes. But the incessant conflict of words and material, obligations and privileges often creates a provisional equanimity – a default that forms the informal framework for justice, morality and social balance. In this way, an urban life which acts as if it is veering out of control uses the impending chaos as a last ditch stand against it. Herein lies an invisible governance, a frame of elliptical efforts, that maintains competing agendas and aspirations in some kind of functional and parallel existence ... (Simone and Hecht 1994:13).

Through terms such as “governance” and “politics”, Simone and Hecht make conceptual sense of what might seem from the outside to be only “chaos”, “out of bounds”, or the “ungovernability of the informal.” The urban situation has its own rationale that is meaningful in the context of scarcity, conflict over limited resources and the absence of official regulatory mechanisms. “Functionality”, “provisional equanimity” and productive improvisations can be perceived within those conditions.

One can argue that the imaginary of “your police – my police” is a form of micro-governance. The police are drawn into a conflict in order for the actor to gain an advantage, an instance of the strategic use of whatever is available to improve a bargaining position when contesting valuable resources. This strategy can take various forms: the special relations that Sam Dhlamini maintained with the police (as will be

discussed in Chapter Six), or calling for assistance by opening a case (as Peggy did) in order to intimidate or remove him from the accommodation. The case Peggy opened, or the way her story had been classified, was a charge of intimidation based mainly on the threat with the firearm. Meanwhile, her interest was at least partly, if not primarily, in reclaiming her apartment. Officially and formally this would have required a civil process – a procedure highly inaccessible, unintelligible and unaffordable (in terms of sustaining the costs of a lawyer) from the realm which Peggy inhabited. The criminal charge therefore comes to serve as a pretext with which to mobilise the police to intervene in a case in which they would otherwise refuse to intervene.

The imaginary of “your police – my police” precisely expressed such possibilities for appropriation. Police intervention is seen in a particular light and given a particular meaning that makes sense from the perspective of the marginal realm of flexible, improvised and contested rules. This is a realm where formal dichotomies of criminal and lawful, or private and public, have blurred and no longer hold. Instead multiple and competing moralities are applied. The police are just one form of strengthening and backing up one’s claims, the gun is another, and so is the house committee. Police are imagined as a source of power that can remove and arrest, and use or threaten to use force. Police officers are imagined as brokers who can provide the access to these means of power, who can be captured through special relations, and who can be employed to determine a momentary outcome in the ever-shifting hierarchies of competing (moral) claims. A competition emerges to gain the best access to this source of power. City dwellers try to pull in the police on their terms and to shape the outcome of police involvement in any particular conflict.

The imaginary of “your police – my police” then becomes an entitling and mobilising matrix that determines the appropriating attitude and action towards the police. What this also means is that spaces which are considered to be “outside the walls of government” – that is, those which are only informally governed and which are considered marginal in relation to the state – nevertheless show a form of state presence. Through a particular re-imagining of state intervention, state power is redirected into a realm which would otherwise be neglected by the state. The state is reread and transformed in order to fit the social manoeuvring at the margin. It finds its presence in the persona of the “privatised”

police officer. This is not so much a less complete articulation of the state, as it is an articulation of the state which is made momentarily tangible, useful and accessible.

## 5.6 Inner city police intervention

Given that police generally prefer not to get mixed up in housing disputes,<sup>105</sup> one could have expected Sergeant Kloppers to abandon the case or to hand it back to Sergeant Marais. Yet she continued to play along, even after it became clear that Peggy wanted to get rid of Sam primarily to reoccupy her apartment. In fact, Sergeant Kloppers became even more vigilant about the case and would not let it rest. However, this had less to do with her compassion for Peggy or with her sense of professionalism in handling the intimidation case than with what happened once she began interrogating Sam at the police station.

Back in her office, Sergeant Kloppers searched Sam's wallet and found three gun licences. Only two were in his name and only one corresponded to the gun that had been found under the mattress. Sergeant Kloppers suddenly became interested in solving a possible murder case. She hoped to find Sam's second gun and possibly link it to an open murder case through ballistic analysis. It seemed that Sergeant Kloppers felt nostalgic about having once worked in the Serious Crime Unit which was responsible for the investigation of murder cases, and that she was much more excited by the prospect of hunting down a murderer than dealing with the hundreds of petty crime cases she dealt with as a detective of the General Investigation Unit. While the interrogation was taking place, Sam's girlfriend arrived at the police station and stormed into the office, shouting that she wanted to open a case against Peggy. With sarcasm in her voice, Sergeant Kloppers referred her to the charge office downstairs.

As Sergeant Kloppers and Inspector Swanepoel left the office to look for the docket that contained Sam's case, one of the other detectives of the General Investigation Unit,

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<sup>105</sup> Chapter 4 discusses how police despise getting drawn into what they call "petty cases" which play themselves out within families or among neighbours. Their sense was that it was frequently impossible to find out who was guilty and who was innocent, since such conflicts often had a long history of mutual infliction of harm by both parties. They felt that their intervention inevitably was seen as biased and unjust. Trying to understand the conflict also meant getting mixed up in very close family affairs, and meant a transgression of a boundary which was held up to guarantee social distance.

Sergeant Radebe, passed by and glanced into the office. Sam recognised him immediately and called out to him, but Sergeant Radebe only grudgingly acknowledged knowing him. While Sam was pleading with him to do something to release him from the clutches of the two determined detectives, Sergeant Radebe remained in the doorway, said he could not do anything for him, and then turned around to go to his own office. I was surprised that they knew each other. Later it appeared that Sergeant Radebe had a few cases that had been opened against Sam Dhlamini, but had never arrested him for them. Further, after promising that he would hand over these dockets to Sergeant Kloppers, Sergeant Radebe avoided doing so by evading her and claiming the dockets were already in court. Sergeant Kloppers did not pursue the matter further, clearly wanting to avoid interfering in the work of someone else from the same unit.

Sergeant Kloppers' interest was aroused when she and Inspector Swanepoel found the docket for Peggy's case against Sam in a pile of closed dockets in Sergeant Marais' office. They pulled a face, and said more to each other than to me: "... now we dig into shit ...!" The docket had been closed as unsolved, implying that Sam Dhlamini could not be found by Sergeant Marais. To Sergeant Kloppers and Inspector Swanepoel, it was immediately clear that the Sergeant Marais had never made any serious attempt to look for the suspect, since they had just found him living at the exact address that Peggy had given. Scrutinising the docket further, it appeared that the head of the unit had noted down orders for Sergeant Marais to apprehend the suspect and at least to get statements from witnesses.<sup>106</sup> Sergeant Marais had carried out none of these orders, issuing a pointing-out note instead. Sergeant Kloppers and Inspector Swanepoel concluded that Sergeant Marais must have approached Captain Ndlovu who had willingly closed the docket for him.<sup>107</sup>

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<sup>106</sup> Cases are normally opened at the charge office. From there they passed to the head of a detective unit, who then distributes them to the various detectives of his unit. Normally there is a 24-hour inspection, which means that the docket of the case is handed back after one day to the head of the unit; he or she looks at the investigative steps that the detective has undertaken (noted down in the docket diary, which is part of the docket). If the unit head is not satisfied, he adds his instructions about how the detective should proceed. There are other docket inspections at a later stage, where again the head of the unit writes down his instructions and checks to see if the earlier instructions have been carried out.

<sup>107</sup> Captain Ndlovu had originally served in the uniform branch, but under the pressure of affirmative action and a great shortage of black senior officers in the detective branch he had been selected to take over one of the detective units. In accordance with the policy, he was to be fast-tracked. That is, he would get an intensive introduction to the work of the detectives, to prepare him for his new position. In practice, this meant that he was to go from unit to unit over a period of some months to assist and get an insight into the tasks and routines of each of the detective units. At the time of the arrest, he was assisting the captain of the

A day later I heard that on the day of the interrogation Sergeant Kloppers and one of her white colleagues had instructed Sam to show them where he was hiding his second gun. They returned empty-handed since Sam led them around the countryside on a wild goose chase. They returned home at two o'clock in the morning without having gotten a step further. Sergeant Kloppers was deeply provoked and angered by Sam's ability to trick them. In addition, Sam managed to get out on bail the next day, paying R1000. Sergeant Kloppers told me what happened after he was released from custody.

"Him and his girlfriend, they went straight ahead and intimidated Peggy again. And then, as Peggy told me, the girlfriend even came with two or three uniform policemen to arrest her on the case that the girlfriend had opened against Peggy. But Peggy told them that she had opened a case in the first place, and then those policemen asked her who the investigating officer was, and she mentioned me, and they decided that they would rather not arrest her and they just left. Now I am also in charge of the case that has been opened by the girlfriend against Peggy."

The satisfaction in Sergeant Kloppers' voice indicated clearly that she saw the uniform policemen's backing down as a proof of her status at the station. Rather than showing indignation at her colleagues lending their service to her suspect, she seemed to take such activity for granted. In fact, it seemed that she considered such antagonistic activities among staff of the same police station part of the process. She had not yet finished her story, however.

"And then there was another thing that happened which I think I will tell you. I went with Kobus (another white police officer with whom she works closely) to re-arrest the Dhlamini guy for again intimidating Peggy. When we arrived at the apartment this time, the girlfriend said she would call her lawyer. But I think she called a policeman from the uniform branch, because when we came down with them, one uniform police officer was on his way up the stairs to see them. When he saw me, he turned around and it seemed as if he could not get away fast enough, but I still saw him. You know, you wonder what was he doing there? I am pretty sure that this is one of the guys they have their own connection with."

Then she went off to get Sam Dhlamini from the station's cells. Back in the office she asked him if he knew the policeman who had been on his way upstairs and then ran

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General Investigation Unit. Inspector Swanepoel, in a cynical comment about affirmative action, suggested that it was easy for Sergeant Marais to make Captain Ndlovu sign the docket as closed, since the Captain did not have much idea of how things worked at the detective unit.

away. Sam responded, trying now to deny any association with the policeman: "He hangs out there a lot!" He finally admitted, however, that he knew him when Sergeant Kloppers confronted him with the fact that the policeman's telephone number was on his cell phone. Sam came up with the following story: "I went to talk to him much before I was arrested. I told him about the troubles we had in the flats, just to put it on record with him, so he can testify when something happens, and I tell you" – he said aggressively – "I want him to appear in court to testify for me as a witness."

Unmoved by this defence, Sergeant Kloppers continued: "But why did you have his cell phone number?" He said: "For when I forget his name ...." Before he could finish, she completed the sentence for him in a half-questioning, half-stating tone: "... So he gave you his cell phone number so you could call him when they would come and arrest you, and when there are problems!?" He was silent for a moment, sulking, but then began trying to defend himself again. He seemed distressed that he had been rearrested after he had managed to avoid arrest on other charges. Until then, it seemed, he had succeeded well in playing the police to his own advantage. He said: "What is it that you have against me, that you are doing all this work?" He clearly suspected some other motive behind Sergeant Kloppers' determination to solve the case. The belief that he could only imagine a police officer going to such lengths on his or her own behalf, or for someone else's interest, but not out of a sense of impersonal duty clearly reverberated in this statement.

Meanwhile, Sergeant Kloppers was determined to find the gun, which had already cost her a whole night and some loss of respect. Now it was not simply a matter of solving a possible murder case anymore, but also about setting things straight with Sam, who had managed to mislead her so badly. To save face, she needed to recover the gun by whatever means necessary.

She arranged with a former colleague of the Serious Crime Unit to take Sam for another ride. I was explicitly excluded from the trip because, as she said, "there are ways and means to get this gun, but maybe it is better if you don't witness them." As vague as this sounded, the explicit refusal to take me along led me to suspect that they were considering using force, or at least the threat of it, to make sure that Sam did not dare to mislead them again. "Ways and means" was a popular euphemism among those police officers I had talked to when they wanted to denote unequivocally, but cryptically, the use of illegal force.

The gun was recovered and the second bail application was turned down. Sam Dhlamini had to remain in custody, at least until the days of his trial, while Peggy could move back into her flat.

As the case unfolded it became clear how the imaginary of “your police – my police” informed the practice and experience of Sam and his girlfriend. Given the other case against Sam, for which he had never been arrested and which had been closed as unsolved, it becomes obvious why he had thought of himself as having an operational “my police”: he had established some sort of relationship with Sergeant Radebe, or else Sergeant Radebe was connected to policemen at the uniform branch who intervened on behalf of Sam and his girlfriend. However, the police officers who Peggy managed to mobilise to her advantage – “her police” – suddenly seemed to be more powerful than “his police.” The girlfriend, in turn, attempted to re-mobilise “their police.” Since “their police” were not doing enough, she tried to mobilise a uniformed police officer to arrest Peggy by opening a counter-charge, giving them additional grounds on which to intervene. However, when “her police” came to the flat to arrest Peggy on the counter-charge and heard who Peggy’s police were, they refrained from arresting her.

## **5.7 Disjunction and concurrence: making sense of the incoherence of the police intervention**

### 5.7.1 Distortion or interpretation

Through the imaginary of “your police – my police”, local actors proactively appropriate and try to determine the terms of intervention of the police. The question is: are we dealing with a naïve distortion by local people of how police operate, or is the imaginary of “your police – my police” actually a faithful interpretation of the realities of policing as they present themselves to people removed from the realm of formal governance? Is it not the unequal and incoherent intervention of the police that forms city dwellers’ everyday experience of policing?

Examining the various police officers' actions in the case above, we see a variety of police interventions based on friction and disunity within the organisation itself – various racial fault lines, differences in interest, loyalties, and organisational and individual rationales. It is this extreme disunity and the divided, often antagonistic and contradictory involvement of the police, that allows the various social actors in the conflict to develop and assume alliances with various police officers. In addition, although alliances are formed between police and civilian actors, some represent the product of default and coincidental concurrence rather than an overlap of interest. From the perspectives of Peggy and Sam and the girlfriend, Peggy's police can be seen as powerful agents in the conflict over entitlement to housing space. Sergeant Kloppers, by contrast, is not particularly interested in helping Peggy to get access to her apartment or in protecting Peggy; she has become Peggy's ally and power broker unintentionally. Meanwhile, her own interest developed in quite a different direction: finding the firearm and setting things straight with the suspect for his "cheekiness." Nevertheless, the suspect was scrutinised and the case investigated with a vigour that worked to Peggy's advantage.

### 5.7.2 Sergeant Kloppers' sense of mission

One might be tempted to see nothing exceptional in Sergeant Kloppers' fervour with regard to the case. In a way, she did what is generally accepted as being part of "police culture", as it has been described in the canonical sociological literature on policing, mainly focused on Britain and the United States.<sup>108</sup> She simply followed a strong personal sense of her mission (Reiner 1985:88-91) and the urge to confirm her authority (Skolnick 1975:54-58), which are both part and parcel of police culture and without which, so the literature argues, policing could not take place. However, I am arguing here that she greatly personalises this sense of mission. She went to such an

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<sup>108</sup> The literature mentions that vigilance as well as the need to reinforce authority lead to the breaking of rules. The subject of the tension between what police officers should be doing according to the law and what certain police realities 'demand' from them underlies most of those studies (see for example Skolnick and Fyfe 1993; 23-42; 89-98). However, as I argue at the end of this section, the impact of the 'breaking of rules' with regard to damaging the image of the police as a public institution very much depends on the overall credibility of such an image.

extent to reconfirm her authority, partly by making use of backstage authority, that it cannot simply be absorbed into the bigger picture of a unified, unbiased police force.

Sergeant Kloppers' sense of mission was closely connected to the idea of fighting "real crime" rather than solving a minor intimidation case, or an even less prestigious petty feud between two neighbours. She saw her transfer from the Serious Crime Unit to the General Investigation Unit more as a personal defeat than a career advancement. Her personal situation as a single mother with two children had made it difficult to endure the emotional and work pressures of the serious crime unit. The move to the General Investigation Unit offered her some organisational advancement in the sense that she would be assisting the head of the unit in his administrative tasks, and the desk tasks would allow her some more control over her life. However, it barred her from the respect of her former colleagues and the prestige connected to solving "real crime." The opportunity offered by Sam's case to deal with a murder case, despite being in the General Investigation Unit, provided her with a way to show that she was still very much part of the Serious Crime Unit.

Her holding on to and reinforcing her relationship with the Serious Crime Unit must also be seen in the historical context of the role of detective units within the South African police force and the trajectories of transformation. As discussed in Chapter One, the South African police force's history is one in which the detective units, especially those that dealt with serious property crimes, robbery and murder, were seen as elite units. For many years, it was the privilege of whites (and a very few black police officers) to become part of these detective units. Because of the generally low educational standard among white police officers (see Chapter Two), this meant that there was a marked differentiation between those who made it into the detective units and those in other units. It produced a strong consciousness of supremacy among those who made it into the detective service (Redpath 2002). Today there is still a disproportionate percentage of white staff within the detective units. Even as new special investigative units are set up, they recruit many white detectives, despite transformation policies. This is reflective of a dynamic where rare outstanding skills and experience can override the disadvantage of being white in terms of promotions to senior positions. Inspector Swanepoel, who had just been recruited to a special unit in Pretoria, and Sergeant Kloppers' current boyfriend,

who was employed in another special investigative unit, were examples of such career advancements that defied the general sense that equity employment policies were making promotion for white males impossible. All three of them were part of a network, helping each other with information received from informers and enabling access to records necessary for investigations. This network of white investigating officers tended to occupy detective positions in crime intelligence or serious crime units stretched across stations. I witnessed how this network worked when they tried to solve a case in which a white Serious Crime Unit detective had been shot in what they suspected to be a set-up. The trust and the willingness to share confidential information were indicative of the sense of an insider group.

This co-operation enabled them to share a sense that they still kept a hold over the organisation. This was based less on being part of the police force as a whole and of its role within the new South Africa, and more on being part of the police that carried out, in a stalwart fashion, the “real” and “significant” investigative work. This sectarian sense was further strengthened by the members of this “group” setting themselves apart from and ignoring the rest of the station, such as less-qualified detectives and especially the uniform branch, which was composed of mainly black police officers. The latter were often considered as not well-qualified.

These selective attitudes demonstrated themselves to me when Sergeant Kloppers continuously spoke about Area Commissioner du Ploy – clearly an Afrikaner male – and how she would get special permission from him for certain investigative stunts since he “highly valued” her, and “we have come a long way.” Initially, this confused me, since I knew that at that time the Area Commissioner was a man of Indian descent with an Indian name. When I asked her about this, she insisted that I must have gotten it wrong. Later, I realised that Commissioner du Ploy was the Deputy Area Commissioner; however, in Sergeant Kloppers’ pantheon of police chiefs, he occupied the area’s top position. She clearly had a mental map of organisational hierarchies which put certain (white) individuals into the picture and excluded others. This must have been based on the people with whom she usually interacted and her sense of who carried the decisive authority.

Belonging to this network was vital for Kloppers' self-respect. Although she had Inspector Swanepoel and her boyfriend on her side on a personal level, she clearly felt, especially after her move away from the "significant work" at the Serious Crime Unit, that she needed to prove herself as part of the network in order to safeguard her identification with the "real" police. This sectarian qualification of her personal mission stresses its personal aspect. She simply ignored Sergeant Radebe's involvement in the case and spoke about the involvement of the uniformed police officer who appeared at Peggy's flat as if they were from a different company and not from the same police station.

Furthermore, Sergeant Kloppers' authority was seriously challenged by the recalcitrant and deceptive behaviour of the suspect, and could only be reaffirmed by solving the case and impressing on the suspect a hierarchy in which he was at her mercy. For this, she had to remind the suspect that police authority is built upon and backed by the potential use of force. Thus, the second incident of intimidation was a welcome excuse for Sergeant Kloppers to get Sam back into the station's cells, her territory, and to solve matters with recourse to the backstage authority rooted in a more unbridled use of violence. From there she could take him on a journey to locate his gun and to re-inscribe her authority onto their relationship. The possibility that she and her colleague resorted to brutality confirms that her motivation was no longer to solve the conflict between Peggy and Sam, or to protect Peggy, since for a mere intimidation case it would hardly be worth her while taking the risk of applying force in the course of investigation. Something more urgent, and in which she was more personally invested, was needed to go to such lengths.

Thus, what might appear at first as the action of a dutiful police officer is enmeshed in particular interests and personal agendas, and can only be understood by taking these factors into consideration. In a context in which the myth of the impersonal police has some currency, such as in the context from which the sociological literature empirically emerged (see above), the sense of the personalised mission might be easily outbalanced by the prevalence of that myth. However, this presupposes that the divergence between the personal mission and the idea of a coherent institution does not reach the point where they would appear incongruous. Meanwhile, in a context in which the myth of a coherent and unbiased police service has never meant much, and is more

proclamation than collectively shared experiences, such mystification is unlikely to happen. In contrast, it is the context of unintelligibility of the police, as it is coming to the fore here, that demystifies the normative proclamations. It emphasises and makes central the personal interest and motivation of the police officer, and accentuates the power of the police as a private power.

### 5.7.3 Non-intervention as intervention

The story also illustrates how the rationale of the “docket culture” (see Chapter Four) plays itself out. It contributes to even greater inconsistency in people’s experiences of inner city policing. Peggy’s initial case was closed because Sergeant Marais, who was in charge of the case before Sergeant Kloppers, wanted to reduce his docket pile. To manage his workload and to avoid work, he simply closed the docket as unsolved, and to cover himself he issued a “pointing out note.” This fits neatly into what other detectives had explained to me as the “tricks of the trade” – the range of tactics applied to reduce the insurmountable pile of dockets by cutting short the effort of investigation. One example would be to pretend to be looking for the suspect, falsely noting so in the docket diary, and then closing it after a while as unsolved. The pointing out note was officially meant as a tool of last resort in the investigation process. In cases where the suspect could not be found, it would allow the complainant, who suddenly found out about the whereabouts of the suspect, to approach any police officer for arrest. The onus was shifted back to the complainant, or at best to some other police officer.

From the perspective of suspects, this had the unintended effect of encouraging them to believe that they had nothing to fear in terms of prosecution. For Sam Dhlamini, it added to his sense of entitlement to the apartment and of his ability to defend his claim (through threatening Peggy). It could even be read as if his relationship with certain police officers was working to his advantage.

As discussed before, many detectives struggled to manage the case load they carried. In the General Investigation Unit a detective would carry an average of 80 dockets, a situation which breeds its own work economics. This substantially contributed to a situation in which many cases that were opened remained unattended, were treated

with a minimum of investigative effort, or were closed by fabricating an investigation record. In a survey carried out among victims of crime in the inner city, "it does appear that reporting crime does not guarantee that an investigation will follow" (Leggett 2003:69). With regard to robbery, respondents said detectives made contact with them in only 33% of the cases where the crime was reported (Leggett 2003: 69). This kind of experience serves as a general backdrop in which, at worst, the non-intervention of detectives after a case is reported is simply normal or, at best, an intervention is seen as arbitrary or even warrants a special explanation.

#### 5.7.4 Corrupt relationships

Finally there was the relationship between Sam Dhlamini, Sergeant Radebe and some police officers from the uniform branch. Sam had access to the phone number of a uniformed police officer who would come upon his call. He also managed to get uniformed police officers to intervene promptly on the case that the girlfriend had opened. Finally, he seemed to be under the impression that Sergeant Radebe could act on his behalf. It is such personalised relationships which allowed Sam and his girlfriend to consider themselves protected by "their police." In this particular case, however, I did not have the chance to get a better understanding of what had led to these relationships and what their nature was.

It would be tempting to abridge the analysis of this case and simply label it as corruption. However, as I will develop in the next chapter, this would miss the point of the complexity of such "corrupt" relationships between city dwellers and police officers, especially where they know each other. In Chapter Six, I will use other cases to show how easily the line between police work and private work becomes blurred in the inner city.

While the accusation of police corruption is a common complaint among city dwellers, it often serves to strengthen their respective claims against police intervention and is indicative of the arbitrary threat posed by police. More important, it does not morally prevent or inhibit them from forming a personal relationship with a police officer if the opportunity presents itself. It would be described as "knowing a police officer" or –

if we apply the analytical device of “your police – my police” – as “my police.” However, the limitations of even those relationships were eventually revealed when the police officers involved were forced to acknowledge their own limits in terms of influence – again pointing to some rationales internal to the police – along with the desire to guard their own interests, both probably unknown to the inner city dweller. Thus while the fashioning of private bonds between police and city dwellers is a common practice, it is clearly a practice which is equally ridden by uncertainty, insecurity and at times unintelligibility.

This parallel existence of different realms of interest and practices shows the disjuncture between actual policing practice and a form of normatively prescribed official policing. However, these different trajectories of practice and interest also highlight the disjuncture between the different actors – both among police officers and between police officers and their clients/friends/connections. The official, formal world of policing must appear as a mere fiction, a distant noise, to local residents. What we have seen are police officers who entertain particularistic relationships, police officers who try to manage their workload, and police officers whose actions are led by an overriding, deeply imbedded individualised, even racialised, sense of what police work is about. Moreover, in their everyday practice, it becomes obvious that police officers do not always imagine themselves to be operating from the same organisation, not even the same station in this case, with a shared organisational rationale. These diverging interests and practices of the police come together in this case. The internal rationales are most often unintelligible to the outside, but are nevertheless determinant and central to whether they intervene.

Thus, there is no official, unbiased, coherent policing to be reinterpreted and made sense of by the city dwellers. They see only the immediate practice of local police officers – the already distorted forms of official policing and the trajectories of the internal working rationales. Because of this disunity and incoherence, there is a great deal of unpredictability related to police intervention. This can translate into danger and threat as police act on their own behalf or on behalf of someone else in the city. The police become seen as inherently and fundamentally divided and threatening, and police intervention as largely unintelligible. This view is partly absorbed and made sense of by the competing demands for police interventions along the lines of “your police – my

police.” For it is only by appropriating a police officer, turning him or her into a private police officer, that some of the unpredictability and unintelligibility of such a divided and threatening police service can be reduced, and that one is able to gain some protection. The imaginary of “your police – my police” provides a way to make sense of this volatile inconsistency and to enable some kind of meaningful and efficacious action.

In this context, Simone and Hecht’s (1994) notion of micro-governance may be misleading, as it implies too much functionality within the “chaos.” In an effort to demonstrate the rationale of the informal, it implies that ambiguity and unpredictability can be erased in certain situations. While micro-governance might be enabling, it conceals the fact that it is not always possible to transcend the circumstances of the inner city. In fact, only by incorporating the conditions of insecurity and unpredictability can an expedient imaginary be established. Mbembe and Roitman (1995:332) have argued that in everyday life “the crisis”, as characterised by a situation of existential insecurity and unpredictability, “loses its exceptional character and as a normal, ordinary and banal phenomenon becomes imperative to consciousness.” In this way the unintelligibility and the unpredictability of the condition of crisis become part of the imaginary itself. From there flows “the attempt to articulate new forms of rationality based on the emergent understanding of efficacious action which often issue from ambiguous and contradictory situations” (Mbembe and Roitman 1995:339). It is this notion of efficacious action in the context of unpredictability and insecurity that is taken seriously in the understanding of the working of the imaginary of “your police – my police.” Instead of capitulation in the face of insecurity and incoherence, the imaginary makes provisional sense of the situation and allows some possible horizon for action.

Living on the margin is not just an external circumstance which is wrapped around the person or which can be transcended. Rather, it is a sense of being in the world, which, in this case, alters and influences the meaning of interaction with and the appearance of the police. As much as the normative needs the certainty of the future, we can find a different sense of temporality, a sense of radical contemporaneousness, in the imaginary of “my police – your police.” The police officer can only be meaningfully understood as a person who has the ability to represent the state, but is at the same time

recognised for the ability to move beyond the state and to apply state force in a particularistic, personalised fashion.

## 5.8 Conclusion

In this chapter I begin to discuss the issue of police accountability towards the population. A vital determinant here is the nature of the interface between police and people and what is happening at this interface. My starting point is that the basic principle of increased police accountability towards the population is premised on the existence of a permeable interface between police and people, in which the police are more exposed and dependent on the involvement of people than they were in the past. At the same time the people have more scope to impress their idea of policing onto the police than before. The standard rationale underlying this form of accountability is that it will provide the channel through which the population can impress their demand for a form of policing which respects human rights.

This chapter delineates other conceptual perspectives through which to read the police-citizen encounter as it takes place in the context of the social margin. The social margin limits the possibility for police accountability towards the population, because in that context an accountability that pushes policing towards human rights is foremost a normative ideal. Such an ideal must compete with long-ingrained, structurally reproduced patterns of interaction and perception between police and people. In the context of the margin, there is a shortage of the basic means of survival, such as housing and protection. In this context formal governance seems to have been removed; the state, in the form of the normative ideal of police providing unbiased protection, is absent. This means that the rules governing this space are primarily informal, and are constantly challenged as marginal groups of people make use of the few resources that are available and which can provide an advantage in the struggle for living and security.

If the police appear, it is mainly as a threat, or else the reason for their presence is fundamentally unintelligible. This is caused by, as described in the previous chapter, a reality in which the police continue to apply an authority based on inscribing a marginal

status onto people, while assuming state power as a form of violent personal power, through which they can achieve their aims without official authorisation. Adding to this operational context, this chapter further differentiates the social picture of the police force by suggesting that police divisions along broad societal fault lines such as race, or along the lines of particular policing task divisions (for example, serious crime investigation) reflect into the margins. Furthermore, the motivations that drive police officers to pursue a case can translate into a level of vigilance which leaves the mission of the organisation behind and becomes a self-appointed or sectarian mission. The chapter also foreshadows the degree of susceptibility of police officers to corruption, which adds a further dimension of threat and unpredictability for people who occupy marginal spaces.

Nevertheless, despite the high degree of insecurity and intelligibility to which the police contribute, this does not mean that people have totally surrendered themselves to such insecurity. Rather, the reading of the police by those on the societal margin, and the making of the police at the margin, happens within a different space/time reality. This reality of temporality disentangles and demystifies the conflation of "what should be" with "what is", which places the normative proclamation of the formal state – which depends on the idea of a teleological future - at a different explanatory level. Instead it allows for taking cognisance of the turmoil and tribulation within a particular space without losing the ability to create meaning, even if this meaning means incorporating the insecurities.

Meaning is created by people through an understanding of police powers as a potential (if sometimes dangerous) resource which can be applied in informal situations of micro-governance in the inner city. This use of the police happens without regard for the formal delimitation of police tasks. Formal observance of police tasks would require that clarity of role delimitation is part of everyday life. In these forms of micro-governance, by contrast, the state power represented by the police officer is recognised as being administered in a particular and private form. The police officer who becomes engaged in these forms of micro-governance is seen simultaneously as part of the state and beyond the state. Through this re-inscription of state power into the informal realm, new social manoeuvres within an otherwise shaky, under-resourced and insecure realm are being created.

Meaning within this marginal space is also created by accepting that security is not a service which is publicly available, but that people need some form of personal connection to the police to gain protection from them. The idea of “your police” or “their police” allows people to explain why the police don’t intervene, or seem to work against them, or seem to be protecting or creating an advantage for others rather than for them. Within a context where such explanations prevail, the rationale for building up personal relationships with police officers if such an opportunity offers itself, is clear. If one gains access to a relationship with a police officer, through whatever means, it is more realistic to consider them as personal police – “our police” – instead of public servants. It remains specific and non-conferrable as general experience. As such, “your police – my police” provides a working conceptualisation which does not erase the unintelligibility of the police, but which does away with the deceptive claims of an unbiased police. It adjusts people’s practice and approach towards police officers in the context of the margin, with its experience of tribulations and crisis. This of course also implies that some people are better equipped than others to forge such bonds with police officers – something which will be discussed in the next chapter.

Although the notion of the crisis as developed by Mbembe and Roitman (1995) provides useful understandings for the context of the margin, I would like to add that the notion is not fully able to describe the intervention of the police in Johannesburg’s inner-city environment. Their use of the term ‘crisis’ refers to a situation of acute economic depression, a chain of upheavals and tribulations, instabilities, fluctuations and ruptures of all sorts – “wars, genocides, large scale movements of people ... coercion and constraints” (Mbembe and Roitman 1995:338). In the case of Cameroon, which provided the empirical backdrop for their article, this meant a total collapse of both post-colonial prosperity and any possibility of imagining the future in terms of progress. It meant decay of the urban environment and the erosion of formerly secure realities such a pay cheque at the end of the month. This kind of crisis inscribed itself into the urban structure as well as into social interactions, and created a “society knocked about and mistreated by a succession of instabilities, shortages, constraints, and blockages” (Mbembe and Roitman 1995:338).

By contrast, Johannesburg's inner city has become a destination for immigrants, both national and international, to escape exactly such situations of crisis and to seek better opportunities. As such, the inner city is still being treated by its inhabitants as a place of opportunity and of speculative but better futures. Also, in this particular historic moment in South Africa the police take seriously, at least on the partial and representational level, and with reference to human rights, the requirements of a non-racial and non-partisan police. And we have to take seriously the reality that close encounters with the police might not fully account for the imagining of the state. Different state institutions, or the state at a spatial or temporal (normative, future) distance, might be considered as more impartial (see, for example, Gupta 1995) and as more true to certain humanising attempts.

Therefore, having made the conceptual shift with regard to the interface between the police and people away from the idealised nature of this interface as it is underlying the idea of human rights accountability, I now would like to return in the next chapter to the issue of human rights. I will look at the kind of human rights talk that is produced in the process of accountability at the interface between police and people and how, in turn, human rights talk alters the encounter between police and people living in the margins. I will also deal with the notion of the "corrupt relationship", which has only been dealt with here on a superficial level. Thus, while I will extend the horizon of imagining the state towards the future and human rights, I will also go deeper into the micro-politics and social manoeuvring of the police-citizen encounter.

# 6

## “Ons gaan ry”

### On sociability and entanglement in the city

#### 6.1 Introduction: up and down in town

“*Ons gaan ry!*” [We’re on the road!] – It resounded through the corridors of the detective offices on the fifth floor of Johannesburg Central Police Station. Called out about an hour after the morning parade, it was the daily sign that detectives had grabbed some of their dockets, locked their offices and were leaving the police station. They travelled in pairs or in groups of three or four in one of the unmarked City Golfs, 1985 Toyotas or, if lucky, one of the newly acquired Opel Cadets. The call always carried a slight tone of relief and exhilaration, giving away the detectives’ urge to get away from the station.

I found myself once more with Sergeant Legodi (see Chapter Two) in “his” rickety red City Golf. He was usually not the most talkative person in the morning, and so he left it up to me to figure out where we were going and what we were going to do. We were driving towards the eastern part of the city, and I assumed that he was on his way to carry out some investigation work. I was not aware that a car was following us, but as we stopped at a panel beater’s place – what seemed to be our destination – another car with a

grave dent on its right side stopped just behind us. Sergeant Legodi introduced the two men who got out as his friends. I asked myself if this encounter had anything to do with any of the dockets that were part of Sergeant Legodi's workload, which he had earlier thrown casually onto the car's back seat. It then appeared that Sergeant Legodi was well-acquainted with the panel beater and functioned as middleman between the panel beater and his friends. While Legodi's friends stood aside, he bargained for a good deal on the repairs and repainting of their car.

For the rest of that day and the following days, the panel beater affair determined the greater part of Sergeant Legodi's routine. Meanwhile the dockets remained untouched on the back seat until they were carried up again to his office at the end of each day. At least twice a day Sergeant Legodi drove back and forth between the panel beater and his friend's house, which was in the opposite direction, to the west of the inner city. It was either for spare parts, some keys his friend had left in the car, or for some advance payment to the panel beater so he could buy the matching paint, that he made this repeated journey. Even if there was no specific task to see to, Sergeant Legodi still felt it was necessary to check on the car's progress in order to keep up the pressure on the panel beater to do his job properly. Finally, three days later, he picked up one of the friends and chauffeured him to the east again where the fixed and painted car was waiting for him. The friend thanked him ebulliently and promised to help him out any time he needed him.

One of the most pervasive experiences of my fieldwork was how much time policemen spent pursuing private affairs during working hours. These activities varied from pastime activities, to making contact with social networks, including family and friends, to matters contributing to the maintenance and improvement of their livelihoods. They could be anything from visiting friends and family during working hours, to getting a cell phone repaired, to getting a good business deal, to asking a favour of a friend, to getting spare parts from scrap yards for their private car, to finding a place to get cheap bricks to extend a home or build a house in a home village. Lots of activities were about money – lending money, paying money back or trying to get loans paid back. Some

activities were mundane, such as window shopping and considering which gas *braai*-stand to buy for the next camping holiday.

At first I saw it simply as a convenient way to make use of occasional opportunities that cropped up, or as exceptional deviance – as some of the police officers defensively mentioned, “instead of taking our lunch break we go sporting.” But as my fieldwork progressed the extent of it became more and more apparent. I came to think of it not as an exception to the rule, but rather as a constitutive element of police work, in the sense that pursuing private affairs was structuring and transforming the everyday work of police officers. For example, the question of who would accompany whom in the car was largely structured by the sociability among the detectives of a unit. Those who shared similar interests and had similar private needs during working hours tended to work together and often shared a car, especially during the day. At night it was more the specific policing qualities which accounted for who teamed up with whom.

In doing private things at work, the police officers shifted the public-private boundary towards the private and personal. The personal, in fact, became part of the public. Pursuing private affairs during working hours revealed the police officers' interests and needs – both material and social – as much as their affinity, sociality and family backgrounds. Even in my interaction with them, I found that it was during shopping sprees, family visits and networking calls that I got to know most about the police officers I worked with. The different encounters, as well as the things they intended to purchase, offered manifold occasions to talk about their families, where they came from and what they wished for. It made them visible as private persons rather than the uniform professionals they were supposed to be.

Their search for opportunities compelled them to be open up towards people who were not police officers, which meant that at times they had to discard their authority to act unilaterally. These interactions indebted them socially, and sometimes materially, to people who could later make use of the affinity and familiarity built up through give and take. Such exchanges of favours and obligations transformed the policing powers embodied by the individual police officers into products of exchange and circulation. It provided city dwellers with multiple opportunities to make claims on “their police” (see Chapter Five).

The dividing line between private and public becomes blurred not only because the private appropriates the public, as in the cases discussed above, but also in a reverse sense. The private is appropriated by public officials for official tasks such as investigations. Investigations bring detectives into close and continued contact with people of the inner city, which allows for the building up of familiarity. More importantly, investigative work relies heavily on informers. Investigation through informers, universally part of policing, is of special importance to South African policing practice. In general, most people have neither the wish nor the level of trust to want to freely provide information to the police, unless there is a particular incentive provided. Personalised relationships, which, though they at times involve payment, are mainly maintained over time through friendly relationships, are often the sole sources available to detectives for leads and tip-offs. Thus, even activities that are considered official work contribute to a view of police officers as specific individuals who embody police powers, with personalised agendas that are part of their sociability, rather than uniform public agents. This aspect of policing contributes to a reality where – outside of the personalised relationships with specific police officers – police appear as inaccessible and are experienced as a threat or as harassment of the public. The other side of the coin is that personalised relationships allow for access to policing and the framing of a sense of security. The police officer becomes a broker, without whom there is no access to policing powers at all. The role of the broker becomes an enabling one in an environment of official blockages, in which access to policing services often seems unattainable. It is through the idea of the broker, or the imaginary of “your police – my police”, that access to policing powers and police protection is imagined.

In this chapter I provide the contextual explanation of issues that came to the fore in the case of Sam Dhlamini (see Chapter Five), who had originally considered himself to be well-protected by “his police” and what could be described as corruption. Corruption – the misuse of public office for private ends – is a highly charged normative concept, closely related to the ideal of the modern nation state (Gupta 1995). It presupposes a reality in which the boundary between the public and the private is precise and definite, and where the breaching of this boundary unequivocally appears deviant, if not criminal. Rather than taking a socially produced and contested concept like corruption with its

rigid definition of private and public as my analytical vantage point, I argue that it is precisely the boundary between public and private that is at stake here. By taking the everyday practice of policing in the inner city as a starting point we can examine how this practice both straddles and produces the line between public and private. I am not arguing that this amounts to a reality in which the discursive category of corruption is itself absent, but what moves into the foreground is what *de facto* happens outside of the rigid normative concept of corruption. Such a starting point allows for an understanding of the working of the state and its police force from the perspective of the margin, which is – as argued in the previous chapter – removed from the ideal and instead shaped by a radical contemporaneity.

However, in order not to wholly disregard the pervasive sense of outright corruption in the case of Sam Dhlamini, it might be helpful to draw from other approaches to transgression (de Sardan 1999; Blundo and de Sardan 2001). These approaches attempt to break down the morally over-extended category of corruption into smaller categories, in accordance with more *emic* categories of the social practice of transgression, which are closely linked to an understanding of how state bureaucracies are “managed” in the context of scarcity and blockages. Along these lines, the police pursuing their personal affairs at work can be understood as the use and appropriation of government property (de Sardan 1999; Blundo and de Sardan 2001). As I will show, this leads to forms of corruption which can be described as “parochial”, since it does not concern an impersonal exchange of money but rather an exchange within the context of interpersonal relationships, familiarity and affection (Scott 1979). It has been argued that such moral economies override the ideal logic of corruption by virtue of their social propinquity (Anders 2005:209-212).<sup>109</sup>

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<sup>109</sup> Nevertheless, the morally stark judgment about corruption and more flexible everyday practices are always on each other's horizons and do intersect. Obviously police officers are not unaware of the sweeping claims of corruption against them. In newspapers and other media, there is no shortage of complaints about corruption by the police (*Special Assignment SABCTV 7/09/05; Special Assignment 13/09/05; Mail & Guardian 27/11/1998; Mail & Guardian 29/06/1999; Mail & Guardian 16/07/1999; Mail & Guardian 23/06/2000; Mail & Guardian 13/07/2001; Mail & Guardian 17/08/2001*). Internal investigations and new anti-corruption units also indicate that the issue of corruption is always hovering, and that in fact the danger of being accused of corruption has increased. Also one of the major issues in South Africa is grappling with corruption and enrichment in the aftermath of the euphoria of its democratic revolution – issues such as the Tony Yengeni affair, black economic empowerment, the Arms Deal, Jacob Zuma, Shabir Shaik and Hansie Cronje. However, what these public debates, court cases, inquiries, and the

In this chapter I explore how human rights policing is perceived from the prevailing perspective of the moral logic of “your police – my police”, or of police officers as brokers. I address the interface between police and human rights as produced by the police’s accountability towards the population. In the South African context this level of accountability has been given form through the Service Delivery Programme – *Batho Pele*, which means “People First” – which aims to realise the idea of equal access to the police, as well as all other public services (Ministry for Public Service and Administration 1997).<sup>110</sup> In Chapter Three Captain Ngwenya referred to the *Batho Pele* programme when I asked him why explicit human rights talk had disappeared from the Annual Police Plans. *Batho Pele* is thus seen to be a South African translation and vernacularisation of explicit international human rights language into a language of national public service administration. It is formulated in a market- and business-oriented language (which the architects of the programme obviously considered to be quite compelling) reflected for example in pitching the encounter between people and the state as one between “customer and a business” (Ministry for Public Service and Administration 1997). Thus, issues of rights were translated into issues of customer satisfaction. This of course smuggles in all kinds of new assumptions and erases others specific to international human right discourse. To further specify this shift would, however, go beyond the scope of the thesis. I shall limit myself here to saying that *Batho Pele* represents yet another level of translation of human rights. It, however, remains the medium through which accountability towards the population is articulated and through which in turn certain human rights are supposed to be implemented. In the language of international human rights, rights to security and non discrimination in particular, as well as universal justice in general are meant to be implemented; in the language of “service delivery” it is accessibility, responsiveness, and openness.

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contestations around these court cases and inquiries show is that the issue of corruption is far from clear-cut. Instead, political loyalties and issues of the legitimacy of various claims of entitlement are at stake in these accusations of corruption (*Mail & Guardian* 01/01/2002; *Mail & Guardian* 17/11/05; *Mail & Guardian* 18/10/05; *Mail & Guardian* 03/10/05). It is in fact the category of corruption and its meaning that is being contested in the public battles in which Africanist notions of sociability are mobilised and played out against liberal notions of separation of public and private. This also means that there is always space for interpretation and justification, for practices to be exempted from the accusation of deviance, especially when it concerns embedded everyday strategies and practices.

I will show that the imaginary of “your police – my police” produces a *continuum* of meaning and practice ranging from the police officer who maintains personal relationships with city dwellers to the police officer who enacts human rights and community policing. I argue that what both these approaches to policing have in common is an openness and willingness to engage on a levelled playing field. As such, both approaches allow for the appropriation and redirection of state power. It is through the imaginary of “your police – my police” that human rights policing is dislodged from its appeal to universal justice, and is taken for what it offers in terms of advantages within the logic of personalised policing. We have to understand the appearance of human rights policing in the inner city environment as a translated one – translated from the universal pretence to the rationale of expediency as it acquires meaning and currency in the inner city. This translation becomes necessary, since embarking on human rights policing and its promise of equal access to security in its original (dominant) form \ would be counter-productive. Such an approach would be highly risky for inner-city dwellers, since – based on their experiences – it would set them up for abuse by other police officers. The translation of human rights policing, however, also becomes expedient, since its enactment offers personalised access. It is in this way that human rights policing contributes to an imaginary of personalised policing.

I then discuss the shifting boundary between private and public activities through the appropriation of the private for/by the public and the public for/by the private. I elaborate on the kind of entanglements that such a shifting boundary produces and how it leads to the assertion of the social qualities of the police officer. I introduce a case that documents both the reality of the police as a danger and threat, and as an opportunity for personal involvement. This case will examine how the concept of human rights is prone to being translated and used for appropriating personalised police power.

## **6.2 Porous boundaries – the public and the private**

### **6.2.1 The real meaning of cars**

**It was especially the importance that the detectives I worked with attached to their unmarked police cars that led me to think about the significance of their doing private things as a constitutive element of their work. The scarcity of cars available to them, and the consequence of being stranded at the police station, had been one of the most common and continuous lamentations of the detectives I worked with. Not everybody always had a car available. There were fixed groups that held a claim to certain cars. A particular car would not be passed on lightly to someone outside the group, because of the fear that if that person crashed or damaged it, they would all be stranded at the police station. They complained that they could not carry out their work without transport, since they had to see witnesses and complainants for investigations. However, detectives had organised a great part of their work in such a way that it could be done at their offices or over the telephone. They preferred complainants and witnesses coming to their offices so that they could take the statements in comfort and with the territorial home advantage of their office, instead of, as they would say, "sitting on someone's flea-ridden bed in an overcrowded flat." Although there were certain activities that could only be done outside the office, such as going to various forensic institutes,**

**the mortuary and the courts, it was clear that the complaints regarding too few cars were not merely related to the fact that lack of transport might hamper their investigative tasks.**

**The importance given to the car derived from the fact that it allowed officers to get away from the station. This, in turn, meant getting away both from the gaze of senior officials and the demands of people coming to see them without appointments to ask (or complain) about the progress of a case.<sup>111</sup> More importantly, however, it was only away from the office that their discretion over their own time could be fully realised. Only away from the office could they pursue their private activities. It was also important to have a car with “free” (state-paid) petrol at one’s disposal. This was seen as an unofficial perk derived from working for the state; it was described as a sort of allowance and rhetorically justified as compensation for the low pay and other disadvantages of the job.**

**While for some, going on a shopping spree or playing sports was a way to make work hours more agreeable and pleasant, there was a prevailing sense that the cars provided some extra advantages in the daily struggle of getting things done in their private lives. It made it possible, for example, to save time and money which otherwise would tax their private**

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<sup>111</sup> There is a difference between people coming to see a detective in his/her office when the detective has prompted them to do so and people who come on their own initiative to inquire about a case. It is especially the latter situation which the police officers prefer to avoid, since they detest the pressure and they most likely would have to concede that not much has been done on the case.

**resources. Any attempt by the management to limit the possibility of accessing such resources would elicit immediate opposition, as, for example, happened when a motion was passed to allow only detectives who were on stand-by duty to take police cars home with them. Of course, they would not defend their access to free transport by referring to the private time and activities it afforded them; instead they evoked issues of stress, burn-out and excruciating workload to defend the private space that transport allowed them within their police work.<sup>112</sup>**

#### 6.2.2 Nurturing the contacts

It was during moments of crisis that the way in which the work space was manipulated for private purposes was accentuated. When Sergeant Legodi had to organise the bail money for his closest colleague and friend Sergeant Nkoka, he probably spent more time than ever doing private things. In addition, these non-work activities revealed the network of loyalties on which he could fall back. It also revealed how he went about accessing and maintaining the network. This brought to light the depth of his entanglement with the city.

Sergeant Nkoka had been arrested and was to stand trial on criminal charges. For Sergeant Legodi it was a matter of honour to insist on the innocence of his partner. In the meantime money for bail, which had been set at a very high level because of the seriousness of the charges, had to be organised. He approached a range of people.

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<sup>112</sup> As mentioned in Chapter Three, many newspaper articles and research reports have been written about issues such as stress and burn-out of police officers, especially in relation to the many incidences of suicide or murder by police officers (i.e. Storm and Rotmann 2003). As real as this problem is, I have realised that talk about stress and burn-out comes back in a reified way, for example during the morning parade in which the senior is trying to introduce something new. Police officers have been quick to pick up and use the empathetic writing about them.

Some of these people were Sergeant Nkoka's contacts, but many of them were from a network that they shared simply because the two had been working together for many years. It was a *tour de force* up and down the town, visiting the same people repeatedly, calling them, making appointments, subtly pressurising them by asking over and over again when they would have the money ready. The pressure of suddenly having to conjure up a large amount of cash revealed a dependency on others which was normally more concealed. It clearly exposed the "social neediness" of the police officer, which was channelled into and contained by his network. Whether Sergeant Legodi was asking the people he approached to lend him money, or whether the money was owed to Sergeant Nkoka or Legodi himself was not always clear to me. I got the idea that the particular financial circumstances did not matter much. It appeared to be part of a "generalised exchange." Lending money and returning money was not a once-off act, but a continuous interaction, which could always be renewed and extended based on a "general obligation of mutual assistance" (Sardan 1999:256).

Sergeant Legodi seemed to have a vast network of people who were connected to him and whom we mostly but not exclusively found in the inner city. These people did special jobs for him, while he did all kind of favours for them. He was always glued to his cell phone, which would ring constantly during the trips and in the office. Back in the office, he would use the office telephone to make and return calls. Once, on one of our trips through the inner city, the battery of his cell phone went flat. This was a real problem for him. He constantly switched the phone on and off to see if there was some battery life left, but of course each time he tried to make or receive a call, it would be cut off by the dying battery. I realised that Sergeant Legodi's network of friends and acquaintances were somehow his lifeblood. It was a form of social capital which helped him to advance his livelihood and get things done. However, in order to have his network working for him, he constantly needed to attend to it and invest in it. To be out of reach meant to interrupt the sociability, and could mean neglecting and potentially losing some of his contacts.

It was not an easy existence, because the demands which were made on him in return were not always easy to satisfy. These demands often required the appliance of his powers and use of perks derived from being a police officer. Once he had to check on

somebody who was a friend of a female friend of his, who had been arrested and was being held at a neighbouring police station. The friend clearly expected Sergeant Legodi to be able to make sure that the person was released, or at least to speed up the process of getting after-hours bail. However, when Sergeant Legodi arrived at the neighbouring police station he did not find anyone there whom he knew and was rather at a loss to explain his pursuit. He called the female friend but refrained from stating clearly that he had failed in the task, instead keeping her in limbo. To me he expressed an explicit irritation with being so caught up in expectations towards him. There was clearly a sense of moral duty connected to such services. He could not refuse the request, and non-fulfilment created great stress.

It was also during this time that I realised that many of the people Sergeant Legodi and his friend knew were not of South African origin. There was the Zimbabwean who virtually owned a whole street-corner with a bar, a shop and a little hotel. Then there was a Kenyan who was selling tourist curios at a permanent flea-market, and who traded in other items such as cars and faked certificates. On another occasion, Sergeant Legodi told me about his Malawian friend who was the owner of one of the high-rise apartment buildings in the inner city, whom he had approached to help him in a murder case that had taken place in the building. The xenophobic attitude which was said to prevail among police officers vis-à-vis foreign immigrants did not seem to apply in the case of Sergeant Legodi (Masuku 2006). In contrast, I realised that it was often the industriousness and sense of entrepreneurship of those immigrants who lived or worked in the inner city that made them attractive friends and connections.<sup>113</sup>

### 6.2.3 Working with informers

While Sergeant Legodi used working hours to conduct private business, it also worked the other way around, as he sometimes used his free time to gather

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<sup>113</sup> These relationships had been developed over the years. When Sergeant Legodi and Sergeant Nkoka had worked in the police's tourist protection programme, they had been stationed at the Carlton Hotel; this was one of the main addresses for overnight stays at a time when the inner city still attracted white tourists and business people. Sergeant Legodi and his colleague had the task of looking after the safety of those tourists. This meant that they had already been working in the inner city at a time when its transformation had just begun. They had not left the inner city since then, and therefore had a long history of local contacts.

information about a case. He would hang out in the bars and join the nightlife of the inner city. Then, after a weekend, he would come to the station and relate to me that he had been out in the evenings to follow up on some hints and information, and that he had spoken to the witnesses of one of his cases. He was living in a part of town that bordered on the police district of the inner city police station. He knew all the bars and had many friends and contacts there. He was a young and attractive man who could claim the acquaintance of many female city dwellers. The inner city was his territory for living and entertainment as much as for work. He would hang out there, meet old and new acquaintances, engage in conversation and listen to people. People would approach him, even (or especially) when he was not on duty to pass on information to him. In this way, he could claim access to a vast array of informal informers. Very much like his colleague and friend, Sergeant Nkoka, he had a reputation among the detectives of his unit for being able to solve many cases because of his approach and access to the inner city.

In contrast, white detectives felt that they lacked such advantages. They often complained that it was not possible for them to work successfully in the inner city because everybody would immediately identify them as police officers. However, it was not so much his ability to move anonymously that created Sergeant Legodi's advantage, but the fact that he was willing, even keen and socially able, to let himself become – note the passive – part of the networks of sociability. In fact, being a police officer only served to compound his attractiveness for inner-city dwellers. So in the case of the white detectives, it was rather the lack of a certain sociality, the lack of interest, the unwillingness to pursue sociability and to engage on a personal level with inner-city dwellers that barred them from having a network of informal informers.<sup>114</sup> The attitude of the white officers and the alienated situation they found themselves in was similar to that of the more conservative black police officers. These black officers bemoaned the loss of order, despised the informalisation, and regarded the liberty and looseness of the inner city as a noxious environment; they would hardly ever venture into the inner city on personal grounds.

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<sup>114</sup> I am using the term "sociality" here to describe a more abstract propensity or tendency to form a social group, or to be able to connect with certain people on the basis of certain aspects of affinity. Sociability, in contrast, is the actual activity of engaging with each other on a personal and informal level.

The police relationship with informers – people who are explicitly rewarded for passing on information – has to be seen against the background of one of the biggest problems the SAPS is facing, namely the unwillingness of a great part of the population to come forward with information. It has been mentioned that police work, crime prevention as much as crime detection, is dependent on the willingness of the population to freely co-operate and provide information. However, in South Africa there is hardly a tradition of such free co-operation, which is compensated by reliance on a network of informers. During apartheid, the informer system formed the backbone of policing, since the majority of the black population either saw the police as traitors, or were afraid to be seen co-operating with the police, or feared the vengeance of those about whom they would leak information (Cawthra 1994). An additional factor in relation to people's reluctance to provide information is that the criminal act of a member of a household or a neighbourhood might be ignored, excused or tolerated since it might contribute to the income of the household or benefit the neighbourhood (Altbeker 2001). It is often the case that, where the information is available, it is in the self-interest of the families or neighbours not to give it away. The diffidence and reticence of the population reinforces reliance on informers, even in post-apartheid South Africa.

Meanwhile police management has introduced policy changes in an attempt to regulate the informer system and make it more transparent, so that it is less prone to be a source of misappropriation of funds. Many of the police officers felt that, as a consequence of these changes, the official system for getting money to pay informers had been tightened to such an extent and needed so much documentation – often risking the confidentiality of the relationship – that it had become very difficult to recruit or maintain informers. While working with informers generally demands a level of closeness and trust between the police officers and the informers, it was the possibility of accessing official money which allowed for some regulation of the terms of exchange. Ironically, therefore, the tighter regulations had the effect of promoting a system of informers that tended to be grounded in relationships of personal sociability, embedded in an economy of generalised exchange, instead of clear-cut officially sanctioned transactions with a beginning and an end. Sergeant Legodi's informers

were mainly unpaid informers who gave him information, not in exchange for direct payment, but because they knew him and considered it to their benefit to be somehow engaged with him.

Sergeant Legodi took pride in carrying out investigations the way he did. The availability of informal informers also determined which case he would work on. The satisfaction when his networks in the inner city bore fruit stimulated him to pursue a case, and he would be persistent far beyond regular work hours. However, this also meant that he would simply ignore the case if his network could offer no leads or advantages. He would shuffle the docket to the bottom of the pile or even pile it up next to his desk where it gathered dust until the next inspection.<sup>115</sup>

The mode of sociability that marked his private affairs was also evident in the way he carried out his official duties. It propelled and allowed for the usurpation of the public by the private, with the boundary between the two becoming blurred if not indistinguishable. Moral duty, mutual support and generalised exchange became the fabric of his sociability. It was within this particular context that the social persona of the police officer and the personalised embodiment of police powers emerged. This sociability also structured the particular form of social "neediness" on the part of the police officer – that is, the police officer's need for other people to buy into his networks for it to function. For him to further his livelihood and to advance his investigation, he could not just rely on unilateral powers, but had to descend onto more levelled playing fields, and this created a practice of interdependency and entanglement. The entrepreneurship and industriousness of migrants in the inner city further accelerated the productivity and attractiveness of such networks for the police officer. Simultaneously, its informality entrenched the reliance on personalised access to resources.

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<sup>115</sup> He once told me that he did not like to work on dockets on which someone else had already worked – which would happen, for example, when a detective left the unit. To look into the investigation diary to reconstruct the steps which the former detective had taken, and to reconstruct the insights into the case that had already been established, appalled him. This was because he could not put his own personal stamp on the investigation, and because it was mainly an administrative activity. In a way, the method and the touch of the former detective had polluted it for him. Such dockets would not even be granted a place on his desk, but would end up in a pile in the corner of the office.

Most of the literature on corruption tends to look from the perspective of non-state actors at the gatekeepers of the state. Mostly such literature examines the rationale of non-state actors and their reasons for participating in the practice of corruption, even if they denounce it. The police officer generally appears as the man at the roadblock or on patrol, who, through the threatened misuse of his powers, manages to extract money or services from others (Jeganathan 2004). His access to state power lends him a comparatively strong position and leeway in the deal.

Sergeant Legodi's kind of manoeuvring, however, shows that the police officer is primarily involved and deeply entangled in networks of sociability which do not function on the principle of extraction or the mere receiving of services, but which actually demand regular delivery of services, favours and support. The police officer's social neediness and reliance on others means that he too must offer his services, and engage on levelled playing field with those who have something to offer to him.

With this particular mode of sociability as the underlying rationale for the exchange of services and mutual assistance, and with the merging of the officer's social and official personae, it is not just official services that get exchanged, but also those which can be attributed to his social persona. Thus a blurring occurs between official, private and illegal services which the police officer is able to offer.

In the next case the police officer becomes susceptible to being appropriated not so much because of his private interest but because of his wish to perform his duty within a particular interpretation of human rights policing. It appears that the human rights perspective and the pursuit of private interests, as acted out above, have a fundamental aspect in common, namely dependency on others and the resultant need to get the other's buy-in.

### **6.3 Enacting human rights**

#### 6.3.1 Getting absorbed into the world of Bangladeshi immigrants

Inspector Chetty (see Chapter Four, section 4.7.4) was sitting at his desk and was once again telling me that one day he would be promoted to the IT department of the SAPS. He was convinced that this would counteract what he considered to be the undervalued social standing of police officers, and that it would allow him to live like any other professional in an office or service job. He was rudely distracted from setting out his future of a middle-class life when two Asian-looking men entered the office. Inspector Chetty appeared to be familiar with one of them. They introduced themselves as brothers and as immigrants from Bangladesh. One brother pointed out that he had found Inspector Chetty to be a sympathetic police officer, and so they had come back to him. This time he had come to ask for help in what appeared to be a case of unbridled, predatory police corruption.

Bangladeshi immigrants represent a large part of the immigrant population of Johannesburg (Landau 2005b). They came to South Africa in search of better economic opportunities, and had, quite successfully, found a footing in the import and small retail business – trading mainly in cell phones, airtime vouchers, phone accessories and other cheap import products “made in Asia.” In the inner city their shops and stands occupied entire passages, and they inhabited three high-rise apartment buildings situated close to each other. Their often temporary immigration status, in combination with their considerable earnings, made them attractive targets for extortion.

The two men told Inspector Chetty that a police officer, whom they knew by the name of Junaid, along with two accomplices, had raided an entire high-rise apartment building occupied by Bangladeshi immigrants. The pretext was looking for an unlicensed firearm and checking people’s immigration papers.

They were there for three hours; they took passports and lots of money, R6000 here, R2000 there. I don't know how much they took in the end. And they are crazy for cell phones. They ask for the papers of the cell phone, and when you don't have the papers they take the cell phones. Then they took airtime vouchers. Then they cut open pillows and bags, which served as storage for money. You see, we don't put money in the bank because we send it back to Bangladesh or we keep it to buy new goods. They even ate our food. We are fasting around this time of the year, and we had cooked for breaking the fast, but they ate so much of the food.

Inspector Chetty remarked that he had heard of Junaid and about other cases against him. However, he said, because of the withdrawal of witnesses (among other reasons), none of those cases had yet led to a conviction. Apparently seeing a chance to further the case against Junaid, Inspector Chetty showed some interest in the brothers' story. He told the two brothers that all the victims needed to come to the police station to open a case. The two brothers hesitated. They eventually explained that even though the two of them had the courage to come to the police station, it would be impossible to sway their fellow countrymen into doing the same thing. The other traders would not risk coming to the police station. "They are afraid; they think coming to the police station is a risk. They rather stay invisible to the police." Also, so the brothers explained, the traders hated to leave their businesses unattended. However, they suggested, it would make a real difference if Inspector Chetty could personally come to Small Street and speak to them. "You could tell them yourself and convince them."

Now it was Inspector Chetty who hesitated. He was probably weighing the extra effort and the actual workload that such an undertaking would produce against the elusive

possibilities of success. Testing his escape route, he evasively said that he might pass the case on to one of his colleagues. This caused the two brothers to protest vehemently. They reiterated that it was *him* they trusted and that it was *him* who could persuade the other traders into opening cases, alluding to his being Indian as a decisive factor. To the great delight of the two brothers, Inspector Chetty finally agreed to meet them and the other traders later in Small Street. Wanting to convey that he saw their interaction as concluded for the moment, Inspector Chetty got up from behind his desk and turned around to look out of the window. However, the two brothers insisted on expressing their gratefulness and stretched out their hands for a handshake with such cordiality that he could hardly avoid being drawn into their assumptive familiarity.

About two hours later Inspector Chetty, accompanied by his colleague Inspector Xhumalo and me, arrived at Small Street. The brothers were nowhere to be seen. We found an air filled with suspicion and fear by the other traders. Inspector Chetty finally convinced one of them to call one of the brothers. When the two brothers arrived, and the traders could witness the amicability between them and the police officers, the traders started to open up. Before Inspector Chetty and Inspector Xhumalo knew what was happening to them, they found themselves increasingly crowded in by all the traders. All of them had a dire story to tell about how they had been harassed by both Junaid and other police officers who had come to Small Street to enrich themselves. With threats of violence, arrest and deportation, or by blocking the entrances to the shops, these policemen had extorted thousands of Rand from the various traders.

Inspector Chetty soon lost his initial inhibition to get too involved in the case. As the traders told their stories one by one, he chimed in and addressed them:

Me, as a policeman, I can't do my job if you don't open a case. You have to co-operate, otherwise I can't do anything for you. And you must not be scared of this guy. You must stick together. It is your right to be protected like every other citizen in this country as well. The police is there to protect you. He can ask you for your papers but he is not allowed to take them from you. He is not allowed to take anything from you. Do you understand? You have your human rights like everybody else in this country. Don't be scared off by him. Don't be so afraid. You must stand up and you must assert your rights.

The men surrounding Inspector Chetty were hanging on his words as if they had never imagined having a police officer on their side. I was also amazed, since I had never seen Inspector Chetty so fired up and inspired. There was an inciting and quasi-revolutionary undertone in the way he encouraged them to empower themselves and to stand up against the intimidation. He then generously handed out his cell phone number and emphatically ensured them that they could always come to meet him in his office.

The two brothers then pulled the two police officers away from the crowd, clearly keen to take them to the site of crime, the high-rise-apartment that had been raided. Here a similar scene repeated itself in a café on the ground floor of the building. The café was lit by neon lamps and furnished with the universal white plastic chairs and tables; a few pieces of religious paraphernalia decorated the nearly empty walls. Another group of Bangladeshi men gathered and told their stories about the theft and harassment of the previous night. And again Inspector Chetty rose to speak and addressed them in his still spirited and animated way:

You have human rights as every other citizen in the country. No matter if you are an immigrant with a temporary permit or if you are a national South African. And when he wants to raid your flat, ask him for his pass. Take down his employment number. It is your right to do this. It is his duty to show the number. Don't be so afraid. You must do something about this man, but I can only help you when you open cases at the police station. That is what we are there for, to protect people: to protect and serve. Here is my cell phone number, call me when you have opened a case and then I'll make sure that Inspector Xhumalo and I will get the case.

And again he freely handed out his cell phone number.

An older man stepped forward. He had been listening quietly, but now assumed the role of a community leader. He respectfully thanked Inspector Chetty, and said they would follow his advice. He then insisted on inviting the three of us for tea. Sitting down with us at a table he related to us:

We have come here because we wanted to escape the corruption in our country. Now we come here and we meet corruption again. But the other day, when this lady, a journalist from the BBC, came and she wanted to know from us about corruption, I did not say anything. I don't want to cause problems. This is a good country and we can do good business here. I don't want to blame the country.

This comment was highly suggestive of their perception of the situation in which they found themselves. They did not want to call too much attention to the fact that they were using their pending immigration status to do business, and that they made a reasonably good income. The informality and uncertainty of their situation made them

prone to exploitation by police officers; at the same time, it was also this condition that allowed them to prosper and to stay in the country. They were afraid that if they got too much attention they would add fuel to the prevailing xenophobic sentiments, and would end up with nothing at all.<sup>116</sup> However, this does not mean that they did not seek ways and means *within* this condition of informality to ameliorate and improve their situation and to protect themselves.

Before the police officers could refuse, instead of just tea we were served a whole meal. Partly pure hospitality, it nevertheless represented an attempt to reciprocate, in the sense that they were not simply taking for granted the detectives' efforts. They wanted to initiate a relationship, which, at least in part, would be one of general exchange and mutual indebtedness. When Inspector Chetty tried to refuse the offer, the elder insisted that we need to taste Bangladesh curry and roti. He kept on talking and even offered more:

My name is Mustafa. Everybody in South Africa who is from Bangladesh or Pakistan knows me. If you go to Durban or to Cape Town, and you meet someone from Bangladesh, please tell them you are a friend of Mustafa, and they will treat you as their friends. Be assured of their support.

When we had finally finished the food and tea and got up to leave, the elder said:

... and please join us for our breaking of the fast tonight. It would be such a pleasure to have you there. Please come and join us in our tradition. It would be an honour.

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<sup>116</sup> The widespread distrust which refugees and migrants display towards media has been highlighted by Kabeya-Mwepu and Jacobs (2003:221).

### 6.3.2 In the margins

This case primarily represents the prevalence of “predatory” corruption – the misuse of state power for extortion to the detriment of its “subject” (Sardan 1999:257). It highlights the arbitrariness and lawlessness in the treatment and position of immigrants, asylum seekers and economic refugees. Because of a mixture of xenophobia, pressure to fight crime, lack of legal status of undocumented immigrants, and bureaucratic inefficiencies which bar immigrants from acquiring documented status, immigrants are constantly prone to being abused by the police (Klaaren and Ramji 2001:37; Landau 2004, 2005a). Landau shows how the supposed threat which foreigners pose to South Africa’s sovereignty – especially through the perceived although unsubstantiated link between the influx of immigrants and the increase in crime – has moved the government to tolerate a range of extra-legal measures in order to rid itself of those migrants (Landau 2005a).<sup>117</sup> Here large-scale raids of the inner city, promoted as crime-busting interventions, have to be mentioned. While such raids showcase police prowess and boost arrest statistics, they hardly lead to the capture of criminals, and only result in the deportation of undocumented migrants (Comaroff and Comaroff 2004b). Where immigrants are concerned, police officers run less of a risk of being disciplined, since, in

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<sup>117</sup> Various surveys and research interventions show that a majority of the South African population living in cities identified immigrants as the primary reason for the increase in crime. Immigrants were also believed to pose a threat because they supposedly take away jobs and lower moral standards. Such opinions were also reiterated by some of the most senior government officials (Landau 2005a:10-11).

general, public concern for immigrants is limited. It allows them to apply the powers which have been given to them by the law, without having to adhere to the law's limits.

“Institutionalised mechanisms of ‘illegality’” (Klaaren and Ramji 2001:39) push immigrants further into the grey zone of informality. Most foreigners come into the country under the Refugee Act. While the expected period of adjudication for an asylum claim is limited by law to six months, in reality it takes much longer. To bridge that period they are issued with a Section 22 permit, which attests that their case is pending. This means great inconvenience, prolonged suffering and insecure status for many asylum seekers. However, for those immigrants who stand no chance of being granted asylum, the Section 22 permit can be used as a prolonged visa, temporarily partially legalising their stay in the country. For them, it is preferable to arriving on a tourist visa or applying for immigration. This undermines and de-legitimises the asylum process, and further affirms police in their abuse and disregard for legal documents (Landau 2004:7-9).

The lack of documents, or de-legitimation of documents, bars immigrants from access to a whole range of services and entitlements, such as banking, health care and even the right to work and schooling (Landau 2004). The situation of the immigrants in the inner city is thus one characterised by a high degree of informality, where a right is seldom a right and a valid document is rarely a valid document. Again, as in the context of housing space in the inner city, it is arbitrariness, uncertainty and incoherence that form the constitutive part of the experience with the state, such as Home Affairs and especially the police. However, as much as informality contributes to the precariousness of everyday life in the city, it also enables economic immigrants to stay in the country

and to make a living. For the traders in the above case, the aberrational practice of illegal police behaviour has become the norm. It has even been invested with a certain sense of wanting to maintain the status quo. This explains their willingness to pay off a police officer rather than being arrested and taken to the station. Meanwhile, police officers are always keen on avoiding bureaucratic paper work and do not hesitate to let immigrants go when they are offered money in exchange. It is against this experiential backdrop and the stark realities of inner city life that we need to read the situational micro-politics between the Bangladeshi traders and Inspector Chetty. It should be noted that this is very different from the predatory type of corruption that can take place.

### 6.3.3 Pursuing sociability

The traders' way of reacting to Inspector Chetty's willingness to deal with their complaints suggested that they saw the possibility of protection through the prism of personalised relationships and exchange. They did not take Inspector Chetty's willingness and effort for granted, and believed that it required a gesture of gratefulness and appreciation. Also, if Inspectors Chetty's involvement and their access to him was to be continued, they needed to develop a relationship of reciprocity. This had already manifested itself when the two brothers insisted on the cordial handshake despite Inspector Chetty's attempt to end the conversation in his office on an impersonal note. While he tried to recover some formalism and detachment, which had been breached by his succumbing to their pleading and their appeal to him as a particular person, they, in contrast, aimed at reconfirming the new ground gained through his concession.

An assumption about commonality based on ethnicity partly served to encourage the personal relationship. This became apparent in the brothers' insistence that Inspector Chetty should come to speak to the other traders. It was further confirmed later in a fleeting incident in Small Street when Inspector Chetty happily accepted a donut from Inspector Xhumalo and ate it there. With great surprise and some sense of indignation, the traders looked at him and asked: "So are you not fasting?" Inspector Chetty responded in a slightly amused way: "Don't mistake me too much as being one of you. I might be Indian by decent, but I am not a Muslim, I am Tamil." Thus, although he rectified some of their misreading of him, it nevertheless showed that they were drawing encouragement from their assumption that he was culturally more close to them than, for example, Inspector Xhumalo. While they did not dismiss Inspector Xhumalo, they did not give him the same attention as Inspector Chetty, even though he was also asking questions and listening to their stories. While it might not be a decisive aspect of this case, the transnational connection did contribute to the appropriation of Inspector Chetty into their world. This suggests that an assumed common culture based on race and/or ethnicity can become the fault line along which personal relationships between police and subjects are pursued.

Even more proactive and insistent in seeking a bond was the hospitality offered to the two detectives at the end of the visit to the high-rise apartment building. Although Inspector Chetty did not want to accept the invitation for tea, when food was offered clearly some sociability through the paradigm of hospitality was formed. Moreover, Inspector Chetty and Inspector Xhumalo were invited for the breaking-of-the-fast ceremony. Even if this was meant as an attentive gesture of hospitality, it had the

performative aspect of a persuasive speech act to pull the police officers into the more private realm of the traders. Of the most explicit significance with regard to concluding a relationship of exchange, however, was the elder's act of offering Inspector Chetty access to the extensive (nationwide) network of Bangladeshi people. It appeared that he was attempting to match the police officer's realm of influence and power with something equivalent, and to establish himself as a worthy and worthwhile connection for the police officer. It is interesting that he did not just offer some goods in exchange, but offered an entire network as the commodity for the act of reciprocity. This clearly highlights the centrality of personal networks. The trader, moreover, considered his network a matching commodity to what Chetty had to offer. Finally, it also shows that such exchanges of support and personalised influence are not seen as corruption, but as mutual obligations and mutual benefits.

#### 6.3.4 The meaning of a cell phone number

The idea of a personalised relationship with the police found its expression symbolically and practically in the importance of cell phone numbers. While this might seem like a minor detail, cell phone numbers enable direct personal access and as such were considered a highly valuable resource. Some of that importance became clear in the context of Sergeant Legodi's investment in and constant maintenance of his networks.

Even though cell phones were mainly privately owned, most police officers owned one. While cell phones had become an important means of communication *among*

police officers,<sup>118</sup> the detectives I worked with would not lightly pass on their cell phone number to members of the public. An incident about a newly appointed station commissioner, which a police officer from Sophiatown Police Station related to me with quite a lot of relish, was indicative of the rationale behind this: When the new appointee assumed her post, she had the best intention to “serve and be accountable to the community” and in so doing to turn *Batho Pele* into practice. Ignoring the disdainful looks and whispers of police officers at her station, she had put up a notice in the foyer with her cell phone number on it, so that everybody in the community would be able to contact her directly if necessary. Her subordinates were deeply suspicious of her action, since they saw it as a sign that she was going to privilege the community’s views over their own issues. Moreover, they regarded the public display of a police officer’s private number as outright naivety. And so it was to their great satisfaction when, not long after, the station commissioner took down her number. What had happened was that she had been swamped by phone calls, and not just for matters that were her official responsibility, but for all kinds of affairs. For example, I was told, she had been called in the middle of the night by a man who had gotten lost in town and who wanted her to help him find his way home. In order to recover some of her privacy and to be out of reach of

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<sup>118</sup> It has to be mentioned that the SAPS management had never distributed cell phones to police officers, and as such cell phones were not officially part of police officers’ equipment. However, the reality was that there was hardly any police officer who did not have his or her private cell phone. Unit managers would have a list of all the cell phone numbers of their officers. If they wanted to get hold of someone, they would call the cell phone. Among police officers it was also used as a means of knowing each others’ whereabouts. Cell phones had largely replaced the need for radios, which were scarce and often broken, and mostly available to the Crime Control and Crime Prevention Units who drove around in marked cars. However, as much as cell phones had become a naturalised element of detective work, they remained private tools, and control of police officers by managers through cell phones could be assumed, but not taken for granted. Thus cell phones remained a semiprivate tool which police officers contributed privately to their work. It was very seldom that police officers would use their cell phones to *make* calls for work reasons, since they would then have to carry the costs. Thus it was more in terms of receiving calls that cell phones had become a naturalised part of the police service. Making calls was reserved for private aims, or situations where private and work spheres overlapped – for example, wanting to be picked up by colleagues.

people's unbridled demands, she had to change her number. The selective handing out of private cell phone numbers was thus clearly inspired by the fear of encroachment. When police officers did pass on their cell phone numbers they opened themselves to all the possibilities of abuse that they otherwise tried to avoid – they effectively relinquished some of their discretion over who would call and with what kinds of demands and expectations.

Inspector Chetty had very generously handed out his number to the traders when they had congregated around him at Small Street. The Bangladeshi elder had explicitly asked for the numbers of both Inspector Chetty and Inspector Xhumalo, to which they both promptly agreed. We can read this as meaning that Inspector Chetty was seriously interested in the case, and that he wanted to be there for the people of the "community." He also wanted to motivate them to open cases, and for this he needed to gain their trust. In order to do so, he had to show them his personal commitment. While for Chetty it was a means to an end, for the traders his number was not so much the number of *the* police with a capital "P", or the number of just *some* police officer, but the number of Inspector Chetty, who had gone to great lengths to accommodate them and gain their trust. It would allow them to call for police protection while avoiding the unpredictability of calling just any policeman. It might even become a source of protection against the abuse of other police officers, and as such must have appeared to them to be a valuable resource. For the police officer thus to hand out his cell phone number implied both the forging of bonds through investment in trust, and limited control over what was coming back in. It was an openness that allowed for involvement and appropriation.

### 6.3.5 Enacting human rights

On the face of it, it seemed that Inspector Chetty's mission was a simple matter of getting the traders to open cases, to make them give written statements, and to assure him of their willingness to testify before court so that the case could be processed by the justice system. However, to do this he had to convince them to come forward and enter the realm of the justice system, and to allow the formal system to take root within their informal realm. In a practical as well symbolically meaningful act, he gave them his cell phone number in order to create trust, as well as to protect them on their way to the police station. It has already been indicated that he had to give something of himself in the name of the public police. It is this oscillation between promoting abstract judicial principles and the police as a public institution, and having to embody the principle himself, which characterised Chetty's fervent speech on human rights.

As already mentioned (this chapter, section 6.3.1; Chapter Four, section 4.7.4), I had been quite amazed to hear Inspector Chetty speak to the traders in such an inflamed way about asserting their rights. It spoke volumes about the extent to which police officers have been exposed to the human rights language and to ideas of the correct functioning of the police according to human rights, and how much he had absorbed of it. It showed how easily available all those notions about the modern police force and its ideal functions were. This once again contradicts the assumption of the international human rights realm, discussed in Chapter Three, that one reason why police officers do not realise human rights in their policing practice is because they do not know about it.

Through his fervent talk, Inspector Chetty evoked the existence of the just police and the ideal and fair justice system. He attempted to turn the traders' overwhelming experience of the predatory corruption of the police into an instance that could be isolated and reduced to an exception to the rule. He wanted to make them believe in a different reality. To concretise this reality, he presented himself as an example, even a proof and guarantee for it. He translated human rights into particular practice by his actions. He did so in a way similar to the new station commissioner at Sophiatown Police Station, by trying to put into practice the principles of the *Batho Pele* Service Delivery Programme. In order to do so he made *himself* "responsive to the citizen's need" (Ministry for Public Service and Administration 1997:6): he talked about protecting and serving, and handed out *his private* cell phone number; he talked about universal access to justice, and he made *himself* accessible; he talked about entitlement and rights, and *he* stood in front of them promising that *he* would do something for them; he talked about accountability, and *he* listened to every individual story and *he* offered his openness. He basically enacted personally 'the other', democratic police characterised by openness, accessibility and accountability.

Interestingly, to stand up and speak about human rights and the mission of the police service seemed to appeal to Inspector Chetty and make him feel good about himself. It was as if he was undergoing a momentary transformation, in which he exchanged the role of the gloomy policeman who tended to complain about human rights and the difficulties it created in his job (see Chapter Four, section 4.3), with the model post-apartheid policeman. It was as if he had been struck by a sense of mission and belonging which he normally struggled to find in his work.

As mentioned earlier, Inspector Chetty was strongly infatuated with the idea of being respected as a professional member of society. He felt he was often treated with disdain because of his position as a policeman. While he had not learned anything other than policing, he hoped to attain a position in the police IT department, which carried a stronger resemblance to other people's middle-class occupations. His wife worked for the Metro Police and they had no children. Their combined salaries had allowed them to buy a house in a partly white middle-class area. He had told me on one occasion, and quite proudly, that for a long time his white neighbour did not even know that he was a police officer, and how they casually would chat over the garden wall. Even now that this neighbour knew his profession, they would still regularly exchange pleasant chats. The importance he attached to living in this area and to the kind of social exchange it offered was clearly a claim to belong to middle-class respectability, which in South Africa often coincides with being white.

It was in human rights that he found a similar sense of professionalism and middle-class respectability. It brought him closer to the world of lawyers and judges; a world which he had often evoked as a contrasting example in his complaints about the prevailing disregard for the societal status of police officers. His enactment of a police mission characterised by reference to human rights and universal justice, suited his desired middle-class identity. He momentarily became part of a realm which was marked by high education, sophistication and civility. To some extent his was only an imagined belonging, but in the traders he had found a very eager audience. Through their receptiveness and enthusiasm they confirmed his sense of himself in this particular role, and made it a momentary reality. In their eyes he suddenly became the great benefactor.

However, his openness was not passively received. The realm into which he wanted to bring them was one which demanded a belief that the justice system would work for them. This was ultimately a belief in a not yet realised promise, a normative rendition of the working of the justice system that was postponed to the future. It was also a realm which they knew would at best scrutinise, if not altogether erase, the possibility of their presence in the country. As the elder explained, they did not want to call too much attention to their existence in Johannesburg, through protest or the media, since it might attract jealousy, revenge and xenophobic sentiments. More important, it could lay open parts of their informality that might work against the possibility of absorbing more immigrants through their networks, and could open them up to official scrutiny in matters such as taxation. To buy into the talk of rights and entitlement, which presupposed the realm of formality, would mean risking all that. However, this did not mean that they rejected Inspector Chetty or that they did not look for possibilities to ameliorate their precarious position. After all, he was offering to help them in such a generous and tangible way. Thus, from the perspective of the contemporaneity of the moment, they happily took what they could from Chetty's offer, while knowing it was unrealistic to expect justice in any broad sense from those in public office. What remained was that Chetty was embodying himself as person who was willing to engage personally in order to testify to the police's commitment to *Batho Pele* and human rights. It was the relationship with him that was accepted and appropriated. The meaning given to the interaction was that they would not trust the police but they would trust Inspector Chetty, and that they would not to make use of the police in general but they would make use of Inspector Chetty in particular. This was what made sense from the perspective of

their everyday lived experience of being immigrants to the inner city of Johannesburg. They seemed to buy into the talk of entitlement and rights only as far as it fostered their relationship with Inspector Chetty and afforded them the kind of protection he could offer. He had become *their* policeman. As the same time a form of policing that promotes and adheres to human rights had become the medium through which the personal bond could be established. Human rights became the medium of fostering brokerage. In the process human rights were translated to the level of interpersonal exchange and commodified as a means of exchange, mutual support and obligation.<sup>119</sup>

For Inspector Chetty this meant that instead of propelling the Bangladeshi traders into the formal realm of the criminal justice system, he was being pulled into their everyday world. At best, this would leave him where he already was: frustrated about his job and the societal status it conferred upon on him. If he continued to pursue the case it would pull him into an even less recognised and lower-class realm.

#### 6.4 Generalising the case

Until now, this has been a purely qualitative analysis. The extent to which these findings are applicable to the inner city can only be approximated. With regard to available statistics, Legget (2003:39) states that, an inner-city survey, "an impressive

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<sup>119</sup> In a similar way some immigrants appropriate the willingness of human rights NGOs to help them in their quest for papers and permanence in the country. For the immigrants, getting their papers through human rights NGOs was one of a number of possibilities, including having good relationships with a state officials, paying state officials, or paying migrant power brokers. The quality and morality of those possibilities did not differ much from the perspective of the migrant, apart from the fact that NGOs were the cheapest. The "assertion of rights" through aligning themselves with personnel from an NGO was one way within an immigrant's register of improvisations to ameliorate their precarious position and to attain some protection and advantage. The empirical cases which support this particular perspective were related to me by personnel of two human rights NGOs, even though I doubt they would subscribe to the above interpretation.

22% knew the name of a police member they could approach with a problem." He optimistically interprets that as the realisation of an uncompromised community-oriented policing. However, a few paragraphs later he has to declare that very few people said they understood the Community Police Forum concept. Of those who said they understood it, the most popular response when asked about its purpose was: "to give the police information." In fact, this indicates that they did not recognise the concept as one which would increase their access to the police in the sense of human rights accountability.

This discrepancy between having a personal relationship with a police officer as epitomised in knowing his name, and the ignorance with regard to the institutionalised and formal version of the police's accessibility to people can be resolved if one recognises that policing is only realisable in an encounter which relies on blurring the boundary between the private and the public. The public first has to be rendered private, before it can become public. The statistics mentioned above are indicative of the prevalence of the phenomenon of informal privatisation.

In addition, the relative frequency with which I came across such incidents during my fieldwork probably indicates that it is a phenomenon which has to be reckoned with. I would like to add here one more case in which I put the question of private policing directly to a police officer.

Inspector Mphala, who, like Sergeant Legodi, was in his mid-thirties, black, and city smart, felt a similar sense of ownership and belonging in relation to Johannesburg's inner city. This was in contrast to what he felt regarding, for example, Pretoria "where", as he commented, "it is still white people running the city." He had developed a friendly relationship with a group of Senegalese men, whom he had met when they were the suspects in one of his cases. (Their guilt could never be proven.) The Senegalese men provided him regularly with tickets for African football matches and

international football T-shirts. One of them had even called him from the World Cup in Korea to inform him live about a score.

They would also call him when they were stopped by police officers who tried to extort money by threatening them with deportation. They would call Inspector Mphala and then hand over the phone to the corrupt police officer and tell him that "Inspector Mphala from Johannesburg Police Station would like to talk to you." This would lead the corrupt police officer to reconsider his course of action in light of the apparent connectedness of those foreigners and their personal link with the state. His situation can even be said to become rather unpredictable and precarious. For the Senegalese men the relationship served as a momentary but promptly available form of protection from some of the hazards of inner-city life, while securing their residence in the city. When I asked Inspector Mphala if he possibly represented some kind of private police service for his Senegalese friends, he chuckled a bit and then responded with a smile: "Well I suppose that is the way they see it."

It is this ambiguous expression by Inspector Mphala which shows that it is beyond the individual police officer's direct influence to determine how the people of the inner city look upon them, and how they interpret their interaction with the police. It also confirms that the police are not oblivious to such tactics, and to the translation and appropriation of their actions. However, not every city dweller has the means to draw police officers into a personal relationship of mutual assistance. In the cases of Sergeant Legodi and Sergeant Mphala, the city dwellers offer certain desirable goods as part of the exchange, and as such can claim an advantage in the struggle for survival in the inner city. Others might have far less to offer, not even a network, as the Bangladeshi traders were offering. In the cases discussed here, human rights offered the cheapest route to personalised policing, which in an ironical twist recovers some of the claim of human rights to support the so-called disempowered.

## **6.5 Conclusion**

According to the policy consensus, accountability to people or the community means allowing people to demand human rights and to push the police towards a human rights

based approach to policing. However, this chapter shows that such a simple equation, in an environment which does not provide a clear boundary between the formal and the informal, or the private and public, seems hugely presumptive.

It is from both sides of the police-citizen encounter that the boundary between private and public is blurred. From the side of the police, their everyday practices reveal a constant transgression of the boundary. Public office and its perks are used for private matters, contributing to their livelihoods and to the maintenance of social relations. At the same time, private activities, fomenting personal relationships of give and take, can come to serve a non-private aim, for example, when working with informers. In both instances, policing powers are being personalised and the police officers become visible as particular and social persons.

From the side of the subjects, the imaginary of “my police – your police” is prevalent. It is born from inner-city informality and precariousness, and the accentuation of such conditions in the life of inner city migrants. “My police – your police” also arises from the way in which the police presents itself to the people of the inner city as an institution fragmented into individuals, who only become protective when subjects have a personalised relationship with them. Otherwise police remains a foe, either as someone else’s police, or as unpredictable agents from whom one can expect anything from no help at all to threatening behaviour. The police officers’ practice of blurring the boundaries actually exacerbates, and to a certain extent enables or normalises, the practice of “your police and my police” beyond the simple concurrence of interest by default.

Taken together, these two sides of the police-citizen encounter produce a situation in which a reified dichotomy between state and society is dissolved. It is when police become human, show their social neediness, open up to society, engage with society and show their own societal status, that they become accessible state agents. The private becomes the public. One could also argue, linking it to the concept of backstage

introduced earlier, that it is through the mediation of the police officers' backstage operations that authority can be neutralised and/or channelled in such a way that it plays itself out to individual people's advantage.

It is in such a context that accountability, geared at bringing about human rights by protecting citizens against the abuses of other police officers, produces its own contingent practice. This practice is made up of various stages of translation of the idea of accountability and international human rights in the context of the inner city. In order for Inspector Chetty to follow a human-rights-based approach, and to bring about justice for the people, he brings into being a moment of accountability towards the people. He does so by translating the idea of accountability into openness and accessibility. This reflects the main points of the *Batho Pele* programme, the national rendition of human rights and accountability in the public service. Yet, to succeed, Chetty has to personally enact the part of the human-rights-friendly police in front of people, by making himself personally open and accessible. In the example given, he did this by offering his cell phone, addressing the people in a fervent way, making an effort which went beyond the usual scope of duty, and giving in to their demands, such as the demand that he personally be the officer they deal with. There are thus two stages of translation at play in the actualization of the idea of universal justice in a concrete context. However, it is not the abstract judicial principle and the claim to justice which the inner-city dwellers pick up on; it is Inspector Chetty's personal and idiosyncratic translation and embodiment of accountability. A continuum is produced between a police officer who enacts human rights and one who maintains a personal relationship with the immigrants because he liaises with them through some kind of network of give and take. What these two realities have in common is the openness and the willingness to engage, based on a need for buy-

in and/or reciprocity. Most importantly, they allow for the appropriation and redirection of state power.

The 'coming into being' of accountability is also contingent, in the sense that it depends on the specific police officer's sense of himself (or herself) and his desire to be middle class. It is this sense of himself which enables the officer to put himself on the line in enacting human rights. In comparison to other police officers whom I have mentioned earlier (Chapter Four) Inspector Chetty is not repelled by the idea of human rights, and he does not feel inadequate in relation to human rights, nor does he simply want to use human rights as a shield to protect himself. He is able to become an embodiment of human rights in what he considers a convincing manner.

Nevertheless, because he is drawn into the informal world of the traders, the story ends with an ironic twist. His middle-class aspirations make him vulnerable to being drawn into an even less respected and socially inferior world than his everyday cop world. It is this danger of being drawn into and absorbed by a different realm that can make the demands of accountability towards the population and a human-rights-based approach to policing a hugely disturbing experience for police officers.

# 7

## *Ma-slaan-pa* docket<sup>120</sup>

Mother Courage: "Courage is the name they gave me because I was scared of going broke, sergeant, so I drove me cart right through the bombardment of Riga with fifty loaves of bread aboard. They were going mouldy, it was high time, hadn't any choice really" (Bertolt Brecht, 1980:19).

### 7.1 Introduction: "Defeating the ends of justice"

It was eleven o' clock at night in Johannesburg. Three unmarked police cars from Sophiatown police station were making their way along the bumpy roads of Westbury. The police had been on their monthly night raid since eight o' clock. They had a list of 20 or 30 addresses of suspects whom they wanted to arrest. They stopped in front of a block of flats not far from the police station, close to the main road which divided the former coloured township of Westbury from the former white working-class and lower-middle-class areas of Newlands and Triomf. Police detectives in civilian clothes moved into the dark passages where light bulbs had long ceased to function. The torch rays moved over walls and doors in the search for a flat number.

Finally one detective found the right address. "Bang, bang!" One of the detectives knocked on the door. "*Polisie, maak oop*" [Police, open up]. There was silence, and the detective knocked again. Finally they could hear a voice inside: "*Wag net, ek's besig om oop te maak. Net 'n oomblik.*" [Wait, I am opening. Just a second.] Then we could hear the key turning in the lock, and the door was partially opened. The face of a young woman appeared. Hesitantly she allowed the police officers to enter. While four of the detectives ventured into the room, the woman went

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<sup>120</sup> *Ma-slaan-pa* literally means "mother-beats-father". See section 7.6.2 for a discussion of this phrase.

back to the bed to sit beside another woman. The television was on, and a stove was turned up to heat the room, chilled by its concrete floor.

One of the detectives informed the women that they were looking for Daniel Jacobs<sup>121</sup> in relation with a case of domestic violence. It appeared that the woman who had opened the door was the complainant in the case. The detective asked her if she knew where her boyfriend was. She explained that he sometimes came to her apartment, but insisted that she had not seen him in the last few weeks. The other detectives were already leaving the room when one of them decided to look in the wardrobe. And there the boyfriend was, standing pressed against the back of the cupboard, holding his breath. The detective immediately took him by the arm, pulled him out and pushed him forward to the bed. The detective was angry. He started swearing; however, it was at the young woman that he directed his verbal abuse. He even threatened her with arrest and said he would charge her with defeating the ends of justice. She tried to defend herself, explaining that she could not betray the boyfriend in his presence. But the detective showed no sympathy and, treating both of them as if there were conspiring criminals, told them to get dressed in the bathroom without closing the door.

Outside the block of flats the man was pushed into the back of one police car while the woman ended up sitting next to me in another. She tried to get the police officer's attention to tell him that she regretted that she had opened the case in the first place, and that she wanted to withdraw the case. The detectives responded rudely: "You better should have thought about this before. Now we teach you what happens when you are not serious, and when you think that you can fool us around." At the station, after letting her wait with a sense of uncertainty in the reception area for hours, the detective in charge of the case allowed her to leave, but not before making another disparaging remark.

The next morning the woman returned to the police station and withdrew the case.

The scene provides an example of the "new routine" of the detectives of Sophiatown police station when dealing with cases related to domestic violence. Arrests,

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<sup>121</sup>. All names used in this account are fictional.

taking statements and, poignantly, dealing with the withdrawal of the cases, or the obstruction of arrests by the complainants themselves, were what characterised the detectives' routine with regard to domestic violence cases. On this particular night, the detectives arrested 15 people – one was a suspect in a murder case, three others were arrested for theft and housebreaking, and at least seven were arrested for domestic violence. Four of these seven cases were withdrawn the next day, as were two others, after the suspect's first appearance in court. Altbeker (2005: 10-25; 247-265) in his study of the police in South Africa sketches a similar picture in which domestic violence cases, which rarely end up in court, dominate a lot of police officers' work. While national statistics point to a massive increase in cases opened for domestic violence, they fail to capture the number of withdrawals.<sup>122</sup>

The scene also gives a glimpse into what the police officers' response was towards the withdrawal of the case, or the obstruction of arrest. They reacted with anger and resentment. It even triggered in them the urge to "teach the woman a lesson". The victim of domestic violence ended up being threatened and intimidated even more than the suspect had been.

It is these two aspects, and the wider reality to which they point, that I would like to discuss in this chapter. The introduction of the Domestic Violence Act in January 1999 represented a drastic challenge to police practice, and meant that local police officers were confronted with something quite novel. This is not only because of the public attention and the seriousness with which police management looked on the introduction of the Act, but mainly because of the wide definitions and the special obligations on the police contained in the Act's formulation. Through the Domestic Violence Act, the state expands its powers through a regime of rights in order to create autonomy and freedom for the individual – even as far as in the private sphere. This pertains to that level of human rights intervention, which can be described as horizontal, where the state becomes responsible for implementing human rights legislation that protects citizens against each other. In exploring this level, this chapter aims to address issues of police accountability

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<sup>122</sup> "The increase in assault Gross Bodily Harm and common assault of respectively 4.6% and 9.9% between 1999 and 2000 could be expected, as all indications are there that this was a direct result of the implementation of the Domestic Violence Act at the end of 1999" (Crime Information Analysis Centre 2001).

towards both people and the law; and to look into what kind of practice, informed by human rights, is produced at the confluence of these two interfaces.

Privatisation and the appropriation of police intervention were discussed in the two previous chapters. The practice of the withdrawal of cases is central to yet another form of this appropriation. It once more highlights that the presumed ameliorative nature of state intervention in relation to the enforcement of human rights legislation ends up failing the so-called victims – in this case a victim of domestic violence. However, it also shows that the domestic violence legislation produces spaces of new social manoeuvring – albeit unintended by the legislators.

It allows for the redirection of state power into the private and informal realm, even if – and herein lies the difference from the previous chapters – there is neither a connection between police officer and the civilian (see Sergeant Legodi, Chapter Six), nor a voluntary personal enactment of human rights by the police officer (see Inspector Chatty, Chapter Six), nor an inadvertent concurrence of interest (see Sergeant Kloppers, Chapter Five). What makes domestic violence legislation so prone to being the channel through which state power is redirected, is that it strongly reinforces the commitment of police officers to a proactive human rights agenda and to involvement in issues within the private realm.

The second aspect, – the issue of police abuse of the complainant/victim of domestic violence – points to the fact that the legislation of domestic violence has a significant restructuring effect on everyday policing practice which – to put it colloquially – does not go down very well with most police officers. In fact, police officers' attempts to resist the effect of this restructuring of themselves have the effect of generating violence – physical as well as emotional. In this chapter, it will become clear how the complainants' practice of withdrawing cases, in conjunction with the legislation's rootedness in the international human rights agenda, and its expansionist and interventionist nature into the gendered and private realm, produce a policing practice which leaves police officers hugely challenged. It undermines their gendered and social relationship to the policed subject, and leaves officers beleaguered by bureaucratic efforts that usurp their sense of adequacy for the work.

In addition, it is the particularity of the area of Westbury, with its very own history of state and subject relationship, which exacerbates and therefore highlights some of the restructuring effects of the legislation. The particular habitual relationship between the police and people from Westbury – a relationship more grounded in a *long durée* and less subject to the fluctuation of people's movements – contributes to a relentless and predictable familiarity suffused with unequal power. Deviation from the established norm, in the sense of a new practice and a relocation of state power, becomes brutally visible and often painfully palpable for the police. At the same time, there is a "tradition" in Westbury of people relying on the state. This means that there is a certain readiness to engage with the state, which in this case strongly drives the appropriation and redesign/redirection of police intervention.

Before I begin to discuss the reaction of police officers towards the domestic violence legislation, I will introduce an even more poignant police-citizen encounter, and use this to shed light on how the appropriation and redirection of state power takes place in the case of domestic violence legislation in Westbury. I will try to create an understanding of the meaning behind the increase in the number of domestic violence cases that are opened on the one hand, and the practice of withdrawal and obstruction of arrest on the other. I will explore what happens when a woman allows the involvement of the state (the police) in her domestic matters, by opening a case at the police station and then refuses to deliver the husband (or boyfriend) to the full process of the criminal justice system. To illuminate this contradiction, I discuss in more detail the history and mandatory provisions and scope of the domestic violence legislation, as well as the particular case of Westbury with regards to its relationship with the state and its subjects. This will create an understanding of how the appropriation of the legislation fits into wider practices of local justice.

I then concentrate on the restructuring effect that the legislation (and its new practice) in particular, and human rights in general, have for police officers, discussing the collision of these effects with both the organisational culture and the gendered and social relationship between police and people from Westbury.

## 7.2 Making sense of the withdrawal of cases

The scene described in the Introduction of this chapter makes one wonder why the young woman opened the case in the first place. What is it that the woman wanted from the police when she made the effort to go to the police station to lay a charge against her boyfriend? Did she not know that the police would come to arrest him? Did she make a mistake, or was it a misunderstanding? Most studies on domestic violence (Binney, Herkell and Nixon 1981; Bowker 1983; Pagelow 1981) would probably argue that the young woman *wanted* the boyfriend arrested. She *wanted* to make use of the legislation but she was afraid of retaliation by the boyfriend. Functionalistic rationalisations about economic dependency, cultural coyness and overriding patriarchal family pressure, as well as disabling traumatisation, are standard explanations for women's lack of persistence in pursuing the legal process. But if fear, shame and cultural taboos are so prevalent, why are so many cases of domestic violence being opened in the first place? Opening a case is, after all, not only about making an emergency call to the police.<sup>123</sup> It means physically going to the police station and going through the bureaucratic procedure of giving a statement. And why is it that on my trips through the area I have witnessed women threatening their boyfriends, husbands, and sometimes other family members face-to-face and with little apprehension or restraint "*Wag jy maar, ek sal polisie toe gaan en 'n saak van Domestic Violence teen jou maak!*" [You just wait, I will go to the police and open a case of domestic violence against you!].

Looking at the regularity with which such cases are opened and withdrawn, such functionalistic and deterministic answers seem to miss the point of the women's purposefulness and the agency at play in withdrawing the cases. Permitting purposefulness and agency to enter the picture would allow us to better read the practices of local justice in the field of domestic gendered micro-politics. It will allow for an understanding that, even in an environment in which both men and women are caught up in gendered relationships that are deeply imbued with notions of violence, practices

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<sup>123</sup> Many studies of domestic violence have stressed that calling the police in a moment of violent attack by the partner is often the true cry for help. It is afterwards that other considerations, such as family and economics, quell the sense of wanting to get out of the relationship. However, in Westbury, most cases detectives have to deal with are not cases opened at the scene after an emergency call, but are cases opened by women coming to the police station. Thus one would expect that moments of reconsidering would take place before a case is opened.

persist which seem to be about negotiating the boundary of violence within a local imagining of relationships. While this does not challenge overall patriarchal structures, it does engage the local complexities of mutually constitutive gender roles. The following scene, which took place during the same night-raid, undermines simplistic explanations about both the “empowerment” and “disempowerment” of women – two terms which are used in an apparently self-explanatory way in the advocacy literature about gender violence and the domestic violence legislation.

We arrived at another address, looking for a suspect in yet another case of domestic violence. The same procedure repeated itself: One officer knocked at the door and called, “*Polisie, maak oop...*”, and after a short while a woman opened the door. She immediately knew why the police had come. However, this time the husband in question was not hiding but sitting on the couch watching television. He did not seem to be very surprised to see the police coming into their apartment in the middle of the night. Without any resistance he followed the orders of one detective to get dressed. The only thing he did was to quietly mutter some angry imprecations at his wife – why did she have to do this again? She was standing on the other side of the living room. While she was showing one of the detectives some knife wounds on her back, which her husband had allegedly inflicted on her, she responded to her husband, calmly as to a child, that she had had enough of his brutality and that he needed a lesson. To the detective who asked her if she had received a letter from the doctor so that the stab wounds could be used as evidence in the case, she said that it had not been so bad and that she had not considered it necessary to get such a letter. The detective, clearly annoyed with the answer, turned away from her and made sure that the suspect was getting ready. The woman, unperturbed, kept on talking, telling the detectives that she had had enough and that she wanted her husband to stop behaving like he did. In between, however, she turned to her husband and caringly reminded him to take along a warm jacket since it could become cold in the police cell overnight. A little boy, most probably their son, was clinging to her legs and watching the scene, more in surprise than in fear. Then, asking the husband to accompany them, the detectives left the scene. The woman, obviously satisfied with the procedure, wished him and the detectives farewell.

The next day she came to the station to withdraw the case and to take the husband home with her again.

What struck me that night was the calmness with which the woman handled the situation, clearly on her terms. She had quite serious stab wounds on the back, but she did not want to get a doctor's letter as evidence to strengthen the case. She had opened the case at the police station, she welcomed the detectives when they came in the middle of the night, but she was concerned that her husband might suffer from the cold in the police cells, and she came to the station the next day to withdraw the case. Categories of fear and intimidation or even trauma do not seem to be adequate to explain the process of withdrawal here. Rather, as much as the woman wanted the police to intervene, she also wanted the husband out of the cells the next day so they could resume their relationship. Instead of having the husband prosecuted, sentenced and sent to prison, she only wanted him sent to the police cells for one night. She did not want to end the relationship, but she chose to teach him a lesson – that he could not treat her violently without consequences. In this she displayed a remarkable skill in dealing with the police. She was not distracted by their suggestion about the letter and she knew about the condition of the cells, as if it was familiar ground.

Using the police to intervene in domestic conflict is made possible by engaging the Domestic Violence Act. It is the Act's inclusive definition of what constitutes domestic violence, and the pressure which has been put on the police to intervene, which makes the legislation such an attractive recourse for women involved in domestic disputes. The Act provides a definition of domestic relationship which stretches beyond the traditional matrimonial relationship and includes one-night-stands and relationships with various family members. Cases can be opened that deal with trespassing, stalking, rape or gross bodily harm (GBH). Psychological and economic deprivation, as well as intimidation, were included in the formulation of the legislation. The Act stipulates that police officers are obliged to explain to the complainant her<sup>124</sup> rights, help her find a

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<sup>124</sup>. In principle, the legislation is not only accessible to women, although domestic violence is mostly seen as women suffering from the violence inflicted on them by men. However, as we will see below, the domestic violence legislation can also be used in reverse, or in other possible constellations, such as among two brothers. In terms of the language of this thesis, I use "her" and "she" when summarising the legislation, reflecting the conceptual bias in the legislation.

place of safety, obtain medical treatment and accompany her to collect her belongings. In many ways the Act is meant to enable victims, and actually envisages a break-up of the violent relationship, especially if the violence seems to be endemic. Most importantly, under the Act police officers can be charged with misconduct if they fail to comply with its terms. This further enforces the obligation on police officers to effect an immediate arrest.<sup>125</sup>

The sudden availability of a tool to enable such decisive intervention into the private sphere by the state warrants an explanation. The modern state has played an important role in creating the differentiation between the private and public spheres; for a long time the state was only permitted to intervene in the private sphere to a limited extent. However, through changes in legislation, matters which were restricted to the private and domestic sphere can be brought forward into the public sphere, or can be exposed to intervention by the state. Veena Das (1995) analyses how the state of India asserted a responsibility for the repatriation of women who had been abducted during the violent period of the partition between India and Pakistan and forced into non-Muslim or non-Hindu-relationships. Legal tools had been created for the state to facilitate the break-up of these relationships and the repatriation of the women. Through the legislation, the state could develop its role as *parens patriae*. Das (1995:62) states that in this process “a new kind of disciplinary power over the population” had been played out. The disciplinary power, which of course had been represented in the national discourse as being in the best interest of the abducted women, is critically contested by Das. She argues that “once the problem [of the abducted women] came into the domain of state legislation, it took away the freedom of women to make their own choices” (Das 1995:67). The legislation permitted force in cases where women did not want to be repatriated. Das discusses the realm of “practical kinship” (a concept she takes from Bourdieu), in which women – despite abduction and despite codes of honour of official kinship – had found ways and compromises that made living in an “unpure” marriage possible. However, Das argues that the legal tools had not been developed without

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<sup>125</sup> Many cases are opened only a day or two after the event. In this case, “immediate” means as soon as the case has been opened. In the practice of Sophiatown police officers, this meant “as soon as possible” – for example, during a night raid where high arrest numbers would be positively remarked upon. Those raids were carried out biweekly.

legitimacy. Popular outcries about the suffering of the women forced the state to take action. At a later stage, social workers disqualified the refusal of the women to be repatriated by saying that they had a fear complex; with this, they defused possible criticism.

Das's analysis is instructive in at least three ways. Firstly, it points to practical [kinship] relationships. Even if they come to be dominantly seen by the public as untenable because of their "impure" – and therefore violent and humiliating – nature, they can nonetheless be preferred by those apparently suffering in these relationships. Secondly, it shows that legislation that is supposedly in the interests of the subject can impose and prescribe what women want, the kind of relationship they should live and what the "right" choice should be. Thirdly, it shows how a government can be compelled into action when it feels that its own legitimacy is being undermined by what is happening in the private sphere. The government needs the family, as the classic locus of the private sphere, to reflect the values of the nation state<sup>126</sup>. Distortions or crises in the family are considered to reflect negatively on the nation state and therefore on the government's ability to guarantee the order of the nation state. The "religious and national impurity" of Das's families clearly posed a challenge to the two states of India and Pakistan, because religious nationalism was at the core of their existence as separate states.

While the first two aspects are discussed further below, there is an interesting parallel with the South African situation with regard to the third aspect. The legitimacy of the new ANC government as the achiever of liberation from oppression was threatened by a discourse about the crisis with regard to domestic and sexual violence. This discourse was represented by the constant quoting of statistics such as "one rape in 17 seconds" (Ginwala 1999), broadly reported incidents of child rape (Posel 2005a:21-22), and vivid sketches of the extent of domestic violence. Posel (2005b) argues that while the new government could make moral claims to a sweeping victory in the realm of the political and public spheres, it was taken off guard by the level of private violence, penetrating the inner core – the private and intimate sphere – of the South African family,

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<sup>126</sup> This is of course a reversal of the fact that the nation state has been tailored in many ways in the image of the patriarchal family (Anderson 1991).

and thus the nation. What should have been a complete victory for the new government was overshadowed by a sense of an enemy within, in the form of moral decay and the inability of the government to extend its ability to wield control over violence in the public sphere into the private sphere as well. This threatened to render the victory into a partial one, if not to undo it altogether. In light of this, the government was compelled to find a form of intervention, which would at least make it look competent in overcoming the challenge.

This explains the government's willingness to react to the crisis. But in order to understand why the answer to the crisis took the form of a legal and law-enforcement tool, compelling police officers to protect women's rights, we have to take a broader look at historical national and international developments around the issue of domestic violence.

### 7.3 Gender issues as (human) rights issues

Until 1993 there was no legislation that dealt specifically with domestic violence. The Sexual Offences Act of 1957 and the Child Care Act no. 74 of 1983 were the only legislative tools which could be used to deal with issues of violence in the private sphere. However, as Meintjes (2003:146) explains, "they largely dealt with what were considered unlawful sexual acts between same-sex partners and children". Meanwhile, cases of assault in the private sphere could easily be ignored by the criminal justice system in general and by police officers in particular, without serious consequences for them.

Considering the lacuna which existed under apartheid, the passing of the Prevention of Family Violence Act in 1993 was originally described by activists as a huge step ahead. However, it still only presented an at-long-last aperture after a process of tedious lobbying against the National Party (NP) government which went back to the 1970s. The NP government, through its international isolation and antagonism towards the wider world, had managed to adhere to patriarchal ideas about the inviolability of the marital heterosexual sphere. The definitions of what constituted family violence and the scope – in terms of obligation to intervene – of both magistrates and police officers were

limited in what could be described as a rather diffident Family Violence Act (Meintjes 2003:143-50).

This was subsequently overhauled by new legislation, which came about as a result of the radically different, post-apartheid conditions in conjunction with the sense of crisis, as just described. Ironically, a conservative challenge objecting that the legislation was disadvantaging the male voice, led to a revisiting of the legislation in 1996 by the South Africa Law Commission. This reconsideration offered an opening for a coalition of actors, greatly committed to and drawing from the international human rights agenda, to shape the new legislation. The coalition was based on friendly co-operation between NGO lobbyists making submissions and ministers and parliamentarians who had recently been part of the anti-apartheid movement.

The concept of human rights was the obvious state-of-the-art resource from which to build the intervention. Gender issues had already undergone a national process of being recast in legal terms during the constitution-writing process. This also began the process in which gender issues, which had previously been dealt with by activists at the grassroots level, started to become the prerogative of professionals, particularly those with a legal background (Meintjes 2003). Internationally, gender issues had been established as falling within the ambit of human rights, as confirmed by the world conference on human rights in Vienna in 1993 and the Beijing Declaration of Women in 1995, which had been the “culmination of a period of vigorous international action to promote the rights and interest of women” (Morell 2001:4). Considerable international attention had contributed to the convergence of South African national concerns with international legal standards. For example, a visit in 1996 of a United Nations (UN) Special Rapporteur clearly highlighted the issue of violence against women as a legal matter and as a matter to be dealt with through law enforcement. Also, at a Southern African regional conference, it was reiterated that “violence against women constitutes a serious violation of fundamental human rights ...” (Meintjes, 2003:152).<sup>127</sup>

#### 7.4 From welfare to rights – shifting intervention in the private sphere

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<sup>127</sup> Engle Merry (2003:344) also mentions a decisive shift with regard to the articulation of women's rights as human rights.

Thus, while internationally the domestic violence legislation was widely heralded as an adequate intervention, direct police intervention in the private and intimate personal sphere represented a significant shift, not only from the perspective of the police but also for the people from Westbury.

During the apartheid years, Westbury constituted one of the most disadvantaged areas of the Sophiatown policing district. Disadvantage, however, took a particular form with regard to the coloured population in South Africa, which can best be described as a pervasive, paternalistic subjugation. Westbury had been declared a coloured township under the Group Areas Act of 1950. As Johannesburg grew, the Western Native Township (as Westbury was formerly called) and Sophiatown, situated across the main road, emerged as places of racially mixed lower-class housing. However, forced removals in 1954 (to implement the Group Areas Act), in conjunction with the Population Registration Act of 1950, put an end to this by resettling the African dwellers to areas of Soweto such as Meadowlands and Orlando. On the ruins of Sophiatown a new neighbourhood, arrogantly named Triomf (Triumph), was erected for whites, primarily lower-to-middle-class Afrikaners. Residents who had been registered as coloured were resettled in the Western Native Township, at the time renamed Western Coloured Township, and later to be called Westbury.<sup>128</sup>

While the Group Areas Act and the Population Registration Act lead to brutalising legal apartheid measures (at least in the urban areas) and formed the pillars of the apartheid ideology of separate development, it was the Department of Coloured Affairs (DCA) that was responsible for the everyday administration and governance of the coloured population. This included a whole range of paternalistic state interventions along the lines of social welfare, upliftment programmes and institutionalisation in reformatories and prisons. These interventions were particularly directed at the coloured lower class, which was assumed “to embody the weakness of coloureds caused by their inferiority vis-à-vis white supremacy and African savageness” (Wilcocks Commission

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<sup>128</sup> Westbury was flanked to the south by Bosmont, another coloured area that was somewhat more middle-class. To the east, there was the white working-class area of Claremont, and to the north there were the white working-class (later lower middle-class) areas such as Triomf and Newlands, spatially separated by Ontdekkers Road, one of Johannesburg's main east-west arteries. Westbury (and Bosmont) thus became islands of non-white residency within an exclusive white area.

1937 in Jensen 2001:45). Jensen describes how, although both groups had been disenfranchised, apartheid impacted differently on coloureds than on Africans.

Africans had to bear the brunt of overt apartheid repression. They had significantly less material resources than coloureds, with the consequence that their poverty was and is much more grinding than coloureds. On the other hand apartheid practices penetrated the everyday life of coloureds in more structural ways. Whereas the violence against Africans manifested in the unequal encounter between grotesquely racist police force and activists, the violence against coloureds was located in social welfare offices and prisons (Jensen 2001:82).<sup>129</sup>

Jensen further argues that the range of state interventions did not just validate coloureds as a distinct racial group with distinct problems, but that it split the coloured lower class along gender lines. It did this through a stereotypical construction where the “the burden of ‘colouredness’ fell squarely with the coloured men, weakened physically, indulging in alcohol and always on the brink of falling into crime” (Jensen 2001:62-3). The police, significantly complicit in producing the stereotype, “most often went out looking for a particular coloured disorder which was organized around alcohol” (Jensen 2001:59) as well as gang activities such as theft, assaults and (attempted) murders. Coloured men consequently could be attributed with the highest imprisonment rate in the world and with a South African average of the longest prison stays (Jensen 2001:77). With regard to family life, the stereotypical coloured man was either an absent father because of imprisonment, alcoholism or abandonment, or, if present, a danger to “healthy family life”. “Woman therefore became the state’s most prominent allies in the intervention against the decay of the lower class” (Jensen 2001:78). While coloured women were targeted by a moral machinery of instruction courses and visits by social workers, teaching them to become good mothers and homemakers, they were also the main recipients of state financial assistance through the state’s maintenance grant for

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<sup>129</sup> Jensen’s (2001) study deals mainly with coloured areas as created in Cape Town. Cape Town had been turned into a coloured labour preference area and was the place where the majority of coloured people lived. This meant that apartheid’s governance of coloured people was most pronounced and distinct there, as compared to Johannesburg, where coloured people were a small minority in relation to the African population. Nevertheless, coloured people in Johannesburg were submitted to a similarly discriminatory regime as in Cape Town.

which they qualified because of the absence and “inherent irresponsibility” of the fathers (Jensen 2001:81).

Apartheid state governance of coloureds thus did not just produce a history of close and paternalistic engagement with the state through welfare intervention in the domestic sphere and over-policing of particular crimes, it also contributed to a particular gender landscape. In this landscape, lower-class men appeared as very destabilised and racially emasculated. Women, on the other hand, were ascribed a form of burdensome matriarchy which arose from the moral responsibility to uphold respectability and make a good home. This sort of role emerged from sheer necessity, arising from the periodical if not continued absence of men and strengthened by privileged access to material benefits and social security. While this shift in gender relations did not mean in any way the erasure of violence from relationships, it shows that a simplistic imagination of women as victims does not hold. It reminds us, rather, that violence by men has to be understood within their emasculation and marginalisation (Connel 1995).

It is against this societal and historical background that we have to understand the introduction of the Domestic Violence Act and the complex matrix of continuities and shifts that it produces. The domestic violence legislation introduces a shift in state intervention in the domestic sphere, from a paternalistic welfare-based framework to a rights-based framework. The notion of human rights, as explained in the Introduction, utilises the idea of accountability to limit some of the state's discretion and to subject the state and its apparatus more to the wishes of the populace. Thus the domestic violence legislation, drawing from the human rights agenda, shifts power towards the (female) populace. This is so, even though the legislation is a tool chosen by the state and one which makes the criminal justice system the administrator of issues of the private sphere. Since this power is coupled to and backed up by the powers of law enforcement, it bestows a new discretion on women, giving them the option to call in the police on matters pertaining to the private sphere, and on their own terms. For the police, this translates into a transfer of control, in the sense that they now receive their directions from a new locus – from the private sphere in general and from women in particular. Previously, the discretion to arrest lay more with them, or at least was grounded in the more public sphere and in the idea of non-intimate crimes. Thus, while the police

consider the domestic violence legislation to result in a “welfare-isation” of their work, the population comes to see issues of family as matters of law enforcement and police intervention, with very tangible consequences such as incarceration and the possible use of force. At the more general level, however, the introduction of the domestic violence act in Westbury has simply meant a continuation of the close engagement of the state with the people of Westbury. Now, however, law enforcement fits into the pattern of matriarchal power, while for men it could easily mean represent a further element of emasculation.

Bound to this legislative bestowing of power was, of course, the assumption and the expectancy that women would use the legislation to liberate themselves from violence. To avert domestic violence would mean either getting rid of the husband or forcing the husband to behave in a fundamentally different manner. In either case, dealing with violence was to be achieved by following the envisaged path through the criminal justice institutions.<sup>130</sup> It was this particular expectation which was rejected by women from Westbury when they withdrew their complaints. By withdrawing, they seemed to express a different preference and clear ambivalence towards what was offered to them by the state.

Ludsin and Vetten (2005:17) remark that “abused women do not make decisions about their lives in the abstract or according to fixed rules. Rather, their choices are made within contexts shaped by social beliefs and values, personal circumstances and access to resources. Competing obligations and responsibilities to others may also form part of this context”. The challenge here is to conceptualise and describe such a context in a way which does not downplay the reality that women are caught up in situations which make it difficult, even impossible, for them to move beyond them, while simultaneously allowing for women in such contexts to have room to manoeuvre and to make decisions.

However, more illuminating in understanding women’s practice would be to look at what it entails to engage the law and to live up to its expectations. This is often neglected by activists who rely strongly on a woman “redefine[ing] her problem as an offence that violates her rights rather than a burden of everyday married life” (Engle

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<sup>130</sup> This means that inherent in the idea of accountability through human rights is an expectancy of what the state should be held accountable for by the empowered populace, which in this case means it should help women to exit violent relationships.

Merry 2003:346). Engle Merry (2003:349) argues that to engage the law means to take on “a new subject position, defined in the discourses and social practices of law”. As noted earlier, the recasting of gender issues in terms of human rights has meant that these issues have become the prerogative of legal professionals instead of grassroots activists.<sup>131</sup> This “expert-isation” of gender issues clearly indicates the class shift which is related to such a move. It highlights the fact that the idea of gender issues as human rights is clearly rooted in a more middle-class perspective of society. The material conditions that enable the emergence of skills and the development of a subject position are “shaped by the discourse of autonomy, choice, and reasonable behaviour...” (Engle Merry 2003:350). It also entails an idea of gender relationship which is defined by the authority of men over property, and where women can have more control over their own lives. This type of conjuncture of material conditions, gender relations and subject position is necessary to engage the law, persist with it, envision and enable an alternative life, and allow the man to make the transition to a state where he can dispense with a sense of masculinity where authority is rooted in physical violence. It is this last aspects which means that a break-up of the relationship would not be necessary.

However, such conjuncture and subject position are not simply available. Actually, with regard to autonomy, for example, it can seem frightening and alienating, or even unimaginable, to someone whose subject position and sense of self is grounded in what Engle Merry calls the “relational” realm. With this she indicates a subjectivity that is overwhelmingly rooted in the relationship with and recognition by family and neighbourhood (Merry, 2003:345). To engage with the law means to break with the environment; while it is the site of the abuse, it is also the habitual site of self-esteem, responsibility and protection.

As mentioned earlier, the role of the women in Westbury is quite closely connected with a particular idea of matriarchy. This refers to a sense of being in charge, but also means a great responsibility and burden in upholding the respectability of the family. There is also a history of men being removed, while women had to handle the

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<sup>131</sup> Dezalay and Garth (2002b) describe how grassroots NGOs feel disempowered by recasting gender issues as rights issues. The shift means they must exceed their skills, as well as their class and educational background, in order to adequately and proficiently express their demands and to participate skillfully and thus effectively in the public (national or international) arena where their claims are played out, heard and judged.

family; this tended to threaten the respectability of the family. With a high level of unemployment and school drop-out rates, the social and economic conditions are such that a middle-class life (especially for men) is more the material of dreams and exit fantasies than of actual options. Thus, because of the lack of material as well as social capital, the women engaging with the law would relinquish themselves to the state for protection, although without having the adequate resources to uphold and realise the new subject position. This would mean that a woman, instead of gaining control over her life, would lose control over it, this time to the state. At the same time she would also lose whatever ambivalent self-esteem and sense of self, rooted in where she comes from, she might have. It thus often appears as safer and more reasonable to remain within the realm of the relational, defined by the immediate and familiar environment and the relationships it produces.

However, this does not mean that within this realm women do not attempt to ameliorate their situation. The prevalence of exit fantasies about a better life clearly shows that women are constantly concerned with improving their lives, even if their attempts are constricted by material and social conditions. It is here where the "offer" of the state to involve the police becomes a resource. The refusal to take on the necessary subject position that underlies engagement with the law confines police power to the realm of the women's local, lower-class relational realm, defined by local ideas about relationship and gender relations. The police intervention is thus disengaged from the wider legal system. And because of its tangibility and its affinity with physical violence (such as the use of force and arrest), it lends itself squarely to being translated into new means of recognisable punishment and heavy-handed persuasion to stop (momentarily and provisionally) the violence. The intervening police officer is assigned to play a particular localised role in a situation of local and private circumstances.

## **7.5 The powers of domestic violence policy "estranged"**

The process of translating the role of the police force into one of locally applied punishment, physical disciplining, and heavy-handed persuasion, clearly points to the broader practice of local justice. The disconnection (and consequent localisation) of

police intervention from the wider criminal justice system also helps to explain how and why the domestic violence legislation is used in other cases, which only partly fit into the legal definition of what constitutes domestic violence.

In Westbury, cases have been opened in the name of domestic violence on the basis of inventing or twisting the story so that the police would accept it as a "serious" case, thus making the intervention of the police possible. In terms of evidence, these cases have little chance of succeeding in court, but that was often not the intention of those who made the charge. The following incident gives an idea of how the powers provided by the Domestic Violence Act are applied beyond the definitional boundaries and how the Act is used within other kinds of conflicts.

A young woman had laid a complaint against her ex-boyfriend and his new girlfriend. However, she failed to appear in court after she had been subpoenaed as a witness. Later, she came to the police station to withdraw the case, whereupon she was arrested for not appearing in court. She was released the next day with a fine for defying the ends of justice. The case was dropped. Her sister, who had accompanied her to the station to withdraw the case, was not very moved by the fact that her sister was arrested since, as she said:

"She deserves it. She should not have opened the case against him and the girl in the first place, because they did not do anything to her. Yes, he is a gangster and he dropped her and the girl was after him already for a long while but they did not do anything to her. And she knew it. That's why she did not come to the court. She thought if she would stay away, they would just drop the case and that she had gotten back at him and the girl. But I am sorry for her that she has to spend the night now in a cell."

The motivation of the young woman from Westbury for opening the case of domestic violence was revenge – to "get back" at her boyfriend because of jealousy and, as she said, because she felt deeply hurt. She must have been partly aware that the legislation did not actually fit her case because she made up a complaint. At the same time, the idea of police intervention and of some tangible action against the former boyfriend must have been very attractive. The case backfired for her, though, since she had underestimated the

role of the state once the case went beyond the initial arrest. In the process, she got the idea that involving the state could mean a loss of control. Involving the police was a precarious undertaking and needed a certain skill. Nevertheless, she had succeeded in the sense that her ex-boyfriend and his new girlfriend were locked up for one night in the station cells before they could be released on bail.

A more successful case involving the police for a different purpose than strictly domestic violence is revealed in the following scene:

I was driving with the detectives through Westbury. As they stopped in front of a house they ran into a man who was the complainant in one of the detectives' domestic violence cases. The man had opened a case of common assault against his brother-in-law. He recognised the detective who was dealing with his case and told him: "I will come to the station later to withdraw the case. He has paid me the money he owed me; I gave him 24 hours and I told him otherwise I would go to the station again, but now he said he has the money. I am on my way to get it from him, and then I will come and drop the case." It appeared that the man had opened a case of domestic violence to put pressure on his brother-in-law (who had not assaulted him) to pay him back his money. Tellingly, the man was not even secretive about his manoeuvre, obviously not aware of or fearing the consequences for him. The detectives were not very impressed, however. They shook their heads and told him off. Back in the car the one detective said to me: "You think this is unusual? No, no, this is the usual way. They open cases for whatever they want, and then we have to go out and take the complaint seriously, otherwise we get into trouble, and then they just come and withdraw the case when it suits them. That is the way they run their business, and we are wasting our time and energy, but I tell you why, because our service is the only thing in this world for which you don't have to pay."

Again it is the police's intervention, or the threat of it, as a result of invoking the powers of the Domestic Violence Act, which is used to gain an advantage and solve a private conflict. One could even argue that there is an element of popular justice, with its irreverence towards the differentiation between criminal and civil cases, in this distortion of the powers provided by the legislation. In general, popular justice and its elements of

retribution, material restitution and arbitration, often through the means of physical violence, is carried out by community members or community organisations themselves (Oomen 2004; Merten and Ntabazalila 1999). However, here we find that the police are manoeuvred into executing their power for the purposes of individual or local ideas and modes of justice. The police are brought in on the basis of their ability to carry out punishment and threats and the authority they hold by virtue of this type of force.

It is telling that in the literature on domestic violence legislation, if a woman opens and withdraws a case of domestic violence where she clearly has been the victim of a violent assault, the woman is presented as over-burdened by her social context. However, I argue that the deterministic explanation of why she does not persist with the law appears to be an excuse to safeguard the legislation and its purported usefulness and to conceal the fact that the law actually requires a particular and exclusive subject. Very poignantly, for example, in a report entitled *Magistrates and the Domestic Violence Act*, compiled by the Consortium on Violence Against Women<sup>132</sup> (Artz 2003) – probably the most outstanding and professional advocacy-cum-research coalition on gender violence issues in the country – the first thing which is mentioned in the paragraph on withdrawals is that trauma, similar to that experienced in hostage situations, can lead women to come to see their captors as their saviours (Artz 2003:42). The motivation for withdrawing is thus put on a par with an extremely self-denying and masochistic psychological distortion. While I am not denying that such a phenomenon can occur through repeated or particularly violent abuse, it has to be noted that this interpretation may deny women their claim to common sense and discretion when resorting to withdrawal. It basically erases reasonable agency from the act of withdrawal.<sup>133</sup>

In contrast, when the legislation is used for purposes outside the definition of the legislation – such as in the above examples, or in cases about “maintenance” and “jealousy” as mentioned in another report on domestic violence (Moult 2003:60) – then suddenly women are ascribed with a wilfulness which is highlighted by depicting them as

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<sup>132</sup> The Consortium on Violence Against Women is made up of the Institute of Criminology at the University Cape Town, the Gender Project and the Community Law Centre based at the University of the Western Cape, Rape Crisis Cape Town, and the Health Sector and Gender Violence Project.

<sup>133</sup> One could even go so far as to say that pathologising their act of rejecting the legislation limits their claims to be full citizens, since they do not act as good citizens which would be to embrace the legislation and reconfirm the legitimacy of the government.

shrewd and manipulative or of bad faith. Thus, a distinction is being made between those “disempowered but deserving women” (women as victims), and the empowered and shrewd women (women as manipulators).

In this light, I would like to argue that if we forget for a moment the expectation of the legislation, and its broader mission of restoring the legitimacy of the government, these actions appear rather as an expression of the social manoeuvring within a field limited by a lack of social and economic resources. From the perspective of this realm – disconnected from the wider workings of the law – it is the appeal of the access to the tangible and persuasive police force which leads to a practice of local justice. In both cases – the one seemingly more legitimate than the other, but both situated in an environment of limited resources to advance living conditions and a history of state reliance – the force of the police is deferred and localised. It also shows how women (and men) can be bound by local entrapments, while simultaneously they can be manoeuvring to ameliorate their situation, be it by shifting of the line of violence in relationships, the recovery of self-respect after being ‘dropped as the girlfriend’, or the recovery of material resources.

## **7.6 Retaliate, resist, abide – new police practice**

### 7.6.1 Looking from the other side of the encounter

For the police, the practice of using the legislation as a form of heavy-handed persuasion and authority in local conflict, which in Westbury is followed particularly by women, is a source of frustration and provocation. This chapter’s introductory scene, in which the victim of domestic violence was threatened with arrest, clearly shows the police officers’ perceived need to restore order, which has been challenged by the complainant’s behaviour. The exasperation of the police has to be understood as a reaction to the modernisation of the state through legislation reflecting human rights needs and the liberal notion of protection and creating individual autonomy in the private sphere. They feel provoked by legislation that creates and compels new police practice. This situation makes itself manifest in changing gender and social relations between

police and the women of the area, as well as in the organisational realm with regard to particular administrative practices.

I begin this section by analysing the gender aspect, which is closely related to the issue of being drawn into the domestic sphere. I then turn to the aspect of an increased case-load, which is exemplified by seemingly insurmountable piles of dockets. As the bureaucratic manifestation of the state's expansion into the private sphere, dockets provide a poignant site of provocation for the officer on the one hand, and loss of control for the withdrawing complainant on the other. Together, these aspects form the matrix through which the practice of the people from Westbury, enabled through the domestic violence legislation, is interpreted and perceived by the police.

#### 7.6.2 "Strong women – weak men"

Many police officers strongly and explicitly express their objection to the task of intervening in the private sphere. This is based on the belief that violence is a legitimate and necessary form of behaviour within the relationship between men and women, and that private matters should be dealt with within the private sphere, without outside intervention. The following extracts from conversations with two police officers – one North-Sotho-speaking and one Zulu-speaking – illustrate their moral logic on the role of private violence and their lack of support for the legislation. The first police officer commented:

...and then this domestic violence legislation. It is necessary that a man has to give a woman a slap from time to time. If she does something bad, she has to be told that she can't do it like this. You can really excuse such a behaviour. Yes, if the man has planned it, then it is bad, but when it was a mistake ... you can't just leave him, he is your lover. And a woman, she can slap a man, too. When he comes home drunk, she slaps him, throws him on the bed, pulls off his clothes and then she turns to the wall. That's what woman do, isn't it like this? And the next day she apologises and he apologises. They don't need the police to sort things out.

The other officer, who works in the charge office and often has to open cases of domestic violence, commented:

I think they must reverse this legislation. This legislation brings a third party into a relationship which is only about the man and the woman who have committed to each other. Now, the woman comes running to the station and she wants to open a case against her husband because she is angry with him, but the moment they come to put him in a cell she wants to withdraw the case, because all that was important to her before the fight comes back into her mind and she does not want the one she loves behind bars. I think the legislation mixes into family matters. How can a man tell a woman that he does not like that, for example, she is not home when he comes home. You [speaking to the researcher] listen through the ears, but some people they don't listen through the ears; you have to touch them so they can listen; they listen through the skin. The woman is subject to the man. Isn't it like that, that universally the woman is subject to the man? I don't know, maybe with white people it is different. There the women are like men, and men are like women. There a woman gives the man a slap and the man just turns away, and holds his cheek. But I think men and women who fight most, they love each other most. When she sobs, like this: 'Sniff, sniff', then she calls your name and then you love her even more and she calls you in deep love. I have seen women who have scars in their face, at their arms ... but they still love their men. I think that people who fight most, love most. People who are like Desmond Tutu, who talk like him, they don't love. And it is not right that the women can run now to the police.

Black male police officers were particularly outspoken about the fact that the legislation would bring a foreign element into relationships, and that they were not convinced about their ability to carry it out. While clearly underplaying the severity of the violence that is inflicted in such relationships, they displayed a clear perception of how gender relationships are embedded in a certain socio-cultural context; in this context, they consider violence to be normal and meaningful. In the first comment, violence in a relationship is contrasted with the "premeditated violence" that underlies an unambiguous crime such as armed robbery – "If the man has planned it, it is bad". By virtue of this

contrast, “impulsive” violence is redeemed from its association with crime – that is, it is not considered to be criminal. The comments also suggest that a man’s authority can be dependent on the ability to inflict violence. Without that, he is powerless. The link between listening and talking reasonably (like Desmond Tutu) and whiteness (as embodied in the European researcher) is contrasted to the ability to imagine love and passion. In the familiar realm (the private sphere), violence is seen as part of communicating. This evokes an awareness, as much of cultural as of class differences. Both officers paint women as far from powerless, and insist that there is equilibrium (but not equality) between men and women. They believe that this balance becomes distorted if women have the possibility “to run to the police” – an outside resource of power. They clearly see it as weakening men, rather than strengthening disadvantaged women.

Police officers at Sophiatown police station, especially those who were Afrikaans-speaking, popularly called domestic violence cases “*ma slaan pa docketts*” – that is, “mother beats father docketts”. While obviously so named with the impropriety and crudeness innate to police slang – which like humour can work cathartically through the expression of politically incorrect or other forms of verbal transgression or inversions – it nevertheless shows their contempt for domestic violence cases. It points to the prevalence of the idea that women are equally involved in violence at home. In its acerbic way it goes even further. It alludes to the idea that the woman is the dominant person in the household, and that she has the means to abuse the man. Such views are dismissed by the domestic violence policy-makers as a misjudgement on the part of police officers: police officers, due to their own patriarchal ideas, fail to recognise domestic violence (Paranee 2001; Artz 2003).

While the prevalence of patriarchal ideas certainly exists, as the above comments by the two officers confirm, I would like to explore how police officers come to see themselves in such a position in their practice. I would like to suggest that there is a certain reverberation with a social reality, which becomes magnified for police officers through their close involvement with the populace of Westbury. This reality relates to the matriarchal role taken up by women in Westbury. Police officers often experience women as being in charge of households. Due to their responsibility for men and family, women are often either decisively delivering the men to the police (as in the case of

domestic violence) or, when it seems opportune, defending them fiercely – especially when the crime concerned does not impinge on the family or even materially supports it. Women, as they obstruct arrests or direct the involvement of police by the withdrawal of cases, appear to be taking on a very assertive role vis-à-vis the police officers. Often an exuberant outspokenness – which is not confined to the private sphere but which “trespasses” into the public and the police station, and which often makes police officers the target of verbal abuse or mockery – further influences police officers’ understanding of women in the area. Thus the woman appears more as an agent in charge of her decisions and someone who is standing up for herself than as a disadvantaged victim. Police officers then resist what they see as a situation in which women already have superior strength and are allowed, through the domestic violence legislation, to accumulate even more strength.

In this sense, the so-called “abuse of the legislation” through making and then withdrawing complaints is only partly about the fact that women are estranged from the law. To a great degree, it is about women who appear to be in charge *and* who engage the law on their terms, which leads to the perception that it is they who are abusing the law. It is the double bind which is important here. Given the prevalence of such perceptions and evaluation of experience, it “makes sense” that police officers feel unconstrained, and even encouraged, to take corrective action:

Arriving at the station in the afternoon, one of the detectives comes up to me with a big smile on his face and tells me: "You should have been with us today. We only arrested women. We taught them a lesson, that they can't just run to the police station and open a case against their men when it suits them. They have to learn that they can't just open a case against their men. Today they learned that they can also be arrested. The next time they [will] think twice before they open a case, because a man can also open a case of domestic violence."

The revengeful action takes the form of correcting what is seen as an unwarranted bias of the legislation. The police officers’ defence of what they think gender relationships should be features prominently in this.

However the satisfaction deriving from revenge cannot be explained merely by the police officers' concern about what is happening between men and women in Westbury. The fact that stories about abuse of the legislation proliferate, and that these stories often play a part in longer tirades of dissatisfaction with police work, indicates that police officers are in fact *personally* disempowered by the new practice. The police officer is not only forced to become complicit in what he sees as the domination of women over men, but is unwillingly implicated in furthering that domination in the sense that the legislation shifts the gendered nature of police work in general, and the encounters between police and subjects in particular.

The police officers of Sophiatown police station constantly complained about women calling for the police and then withdrawing the case, mistaking them for social workers. Over and over again, the officers stressed the distinction between a social worker and a police officer, with the latter having more difficult responsibilities, while it is up to the social worker to deal with the "petty and irritating" social matters of the people and especially of the women from Westbury. These concerns clearly point towards the classic binary opposition between the law enforcement side as masculine and the welfare side as feminine. This division finds its resonance in a whole set of meanings and practices rooted in the binary opposition of public and private, and society and state. However, the state, while traditionally seen as male, exemplified by its executive arms such the military and police, can be subdivided according to the nature of control and intervention. Intervention into the private sphere, traditionally the role of welfare, is then the feminine side of the overall masculine state. This means that if the new police practice constitutes a welfarisation, in the sense that police officers now have to be responsible for what they considered to be the prerogative of social workers, it also amounts to a feminisation of their work. This conflicts to a great extent with their identification of their work as masculine. Joan Wardrop (2001), in her study of the Soweto Flying Squad, makes the point that police do not simply display a pointless machismo or "essentialised or undifferentiated toughness". However, their sense of what they consider the essential quality – namely, being in control and level-headed in dangerous situations – is still ultimately rooted in ideas of dominant masculinity. Their relationship with the public is held up as male superiority – either in the role of protector

or by virtue of their exposure to danger, physical challenge and the rationality involved in investigations. The introduction of the domestic violence legislation upsets the order and reverses some of the binary oppositions which traditionally allowed police officers to ignore what they did not consider as crime but as "petty and irritating matters".

### 7.6.3 "Domestic mess"

What can also be picked up from the comments of police officers about social work is the difficulties police officers face, when being drawn into the domestic sphere, with what they regard as the "messy" nature of this sphere. "Messy" here applies in both senses of the word – as cluttered and unintelligible, as well as dirty.

With regard to the first notion: It has been noted that one of the daily challenges of police work when applying the law is to interpret an ambiguous and complex reality in a way that fits the delineated categories of the law. For police officers, this challenge is exacerbated when they become involved in the domestic sphere. The domestic sphere resists being conclusively fitted into a picture of victim and perpetrator. Because of the intimate nature of the private sphere, the police officer is confronted with mutual implications and a spiral of justifications and blaming, which often go back much further than the immediate violent incidents. This creates for the police officer an often impermeable moral haze; or as Altbeker (2005:24) describes it:

In these cases the image of a thin blue line is completely misleading because in none does the wrongdoer have a boundary to cross: he lives within the perimeter, sleeping beside or drinking with his eventual victim. Anyone posted on a frontier looking for an assault launched from the other side would be looking the wrong way.

It also has been noted that police officers, in order to get motivated about their work, make practical judgements about guilt or its absence (ignoring the legal principle which states that a person is innocent until proven guilty, and which ascribes judgement to the courts). The situation is complicated by the moral ambiguities of the domestic sphere. Interventions in the domestic sphere thus undermine and destabilise the masculine ideal

of remaining in control. It also means that if the police officer follows through with the intervention he has to apply a concentrated understanding to the intricate matters of the relationship.

It is with regard to understanding the intricate matters of the relationship that the notion of "messy" as "dirty" comes into play. A concentrated understanding holds the potential for social proximity, which is experienced as forced transgression and contagion. Even by taking a statement, or by trying to make sense of the case by carrying out further investigations, the police officer has to engage with some of the complexities of the case.

I was working with Sergeant Le Roux. When he teamed up with his police partner, Sergeant de Bruin the two embodied the rough team of the squad. To impress me, they counted how many arrests they had made in the last two months. Indeed, they had outperformed everybody else in the unit.

One morning we went out to arrest two men who were sought for armed robbery. They caught one of them. Then things took a different turn. Sergeant de Bruin had some business in town and so Sergeant Le Roux went on the next case on his own – a case of domestic violence and gross bodily harm (GBH). The case had been opened by a transvestite who, according to his complaint, regularly had to suffer the scorn of his family, including physical assault. There were about six suspects in the case. Sergeant Le Roux arrested four of them: the aunt, her two daughters and the one daughter's husband.

The aunt especially was outraged. She cursed Sergeant Le Roux and told him how rude he was. She played the role of the courageous and righteous mother to the hilt, using her entire verbal and moral arsenal. In Le Roux's office, where they all sat to give statements, she got a chance to call her youngest daughter. She told her to get a lawyer for the family because "they have arrested us today and the police is very rude to us and we cannot talk to the sergeant because he is not listening". Then the family of the daughter's husband arrived. Overrunning Le Roux's office, they pleaded with him to let everybody go, because the daughter was pregnant and because it was a special Muslim holiday. Then finally the three women and one man were given the chance to give their version of the incident. Since the detective was listening to them by then, the women were very courteous

and charming, and came up with a very convincing version of how the incident had unfolded. They also explained that they had been threatened by the complainant. They claimed that they had actually wanted to open a case, but because of certain circumstances they had not managed to get a protection order.

It appeared that the actual story was far from clear-cut. Getting drawn into their story, Sergeant Le Roux started to empathise with the accused. It was no longer the quick arrest which he had anticipated when he first headed for their house. Since each statement took about 40 minutes to take down, he spent the rest of the day with the family in his office. Other family members came and went, asking what they could do. At the end of the day Sergeant Le Roux submitted to their pleading and allowed them to leave, on the condition that they would all appear for the court case the next day.

They were overcome with joy. They thanked him and complimented him for his understanding and generosity. In a gesture of great gratitude, the food which the youngest daughter had brought to the station in case the mother and her sisters had to stay in the cells was handed over to the detective. They stressed that it was a special dish which had been cooked in advance for the festive day.

Sergeant Le Roux took it, but once they had left the room, in a sudden swing of mood and attitude, he said in a dismissive and disparaging way: "Those guys in the cells can eat it. I wouldn't dream of taking these people's food home to my family. You can just imagine what's in it." He then added that all his time had been wasted and that he truly had more important things to do.

The vocalness of women comes out in this case quite clearly, and so does the police officer's initial demonstration of police potency. What is most significant about the incident, however, is Sergeant Le Roux's oscillation between social distance marked by superiority, social proximity and engagement through compassionate absorption, and expressions of disgust and rudeness – the last being an attempt to undo the social proximity which had prevailed in his office and to restore the initial, more masculine, state of the day. By denigrating and rejecting the food he re-established a social hierarchy. One could even say that by sending the food to the cells (which he indeed did), he symbolically put the complainants back where he thought they belonged. He then made it clear that he had cases of much greater importance to deal with, and that this

should not be seen as his main work, even if he spent the better half of the day on the case.

While it becomes clear that social proximity and distance are constantly being renegotiated, the patent urge to undo proximity can only be explained by the fact that a marked distance between police officers and the people from Westbury is considered by police officers to be the norm. Social proximity, on the other hand, is experienced as transgression and contagion. This distance found a clear expression in police officers' response to a survey question which asked them if they were familiar with Westbury through their own social context or through the neighbourhood in which they grew up. Only one officer interviewed during the research period said that he had been exposed to such a conflict-ridden society as Westbury or that it had any similarity to what he knew in the area where he grew up. While a handful stressed that it was a learning process and that they understood the people better now, the majority answered the question of whether they had exposure to Westbury with a definite and slightly scandalised "No", as if the question itself was abhorrent or offensive. This was equally valid for white Afrikaans-speaking officers and for black officers.

Most black officers evoked tradition and culture as the main factors which set them apart from the people in Westbury. They claimed that where they came from there was a lot of respect for people, especially for elders and traditional hierarchies. Some of them also told me that when they went back home they were treated as authorities and with great respect due to their status as police officers and civil servants. They were often seen as members of the community who had "made it" and who could provide for the whole family. The fact that they had a regular income, that they could buy houses (with the help of police housing subsidies) that they even lived in racially mixed areas in Johannesburg gave them elevated status, especially among their village folks and families.<sup>134</sup> They therefore often stressed their disgust about the way in which the Westbury community acted out their social conflicts, such as the excessive use of alcohol

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<sup>134</sup> This has always been the case. It would be a mistake to think because in the past members of the police force were seen as the long arm of apartheid and as the enforcers of injustice against blacks, that a black policeman would have been seen as a perpetrator by his community. This was mainly the case in urban areas, where there was a politicised anti-apartheid movement. In most areas, however, especially in rural areas from where black police officers were mainly recruited, to be a civil servant was seen as a great success and was the ambition of many young men. For an authentic account of this historical aspect see N.R. Mandela's (2000) *Long Walk to Freedom* and John Miles' (1996) *Deafening Silence*.

which led to violence and social destruction. Their narrative allowed them to consider themselves as standing on higher ground socially and culturally. The apartheid idea that Africans had at least their culture and tradition, while coloured people had nothing but their inferior status because they were the product of miscegenation, clearly reverberates in these narratives.

The distancing of white Afrikaans-speaking officers from the mainly coloured people of Westbury has an additional historical and spatial dimension. Most Afrikaner police officers working at Sophiatown police station come from the urban areas of Johannesburg. Some of them grew up and still live in Newlands and Triomf one of the (former purely) white working-class areas of their policing district. Their disrespect for the people of Westbury is a combination of classism and racism, which has been shaped by the apartheid history of the country, especially with regard to poor whites. In his study of police transformation in Cape Town, Jensen (2001) argues that the urge of coloured police officers to explicitly distance themselves from the working-class coloured community comes from the racial proximity. With white working-class officers, it is the symbolic geographical proximity that creates such an urge. It reminds them that there is only a fragile border between them and the coloured townships, which also implies that there must be some social and economic proximity between themselves and Westbury.

One of apartheid's rationales was that the white under-class was in "danger" of becoming poorer than certain groups of black and coloured people. With the formalised introduction of race-based preferential policies under apartheid, this proximity was obliterated – or at least held at bay. However, with the end of apartheid and the changes taking place in South Africa, the reliability of race as an economic and social buffer declined. This threat of proximity and the challenge to the white working-class officer's social position is reason enough for such an officer to feel an urge to constantly position himself as aloof to the coloured "neighbours". Transgression of the class/race boundaries has to be avoided. White police officers are easily provoked by any attempt from the working-class coloured community to claim equality, service and rights. Each entitlement by the Westbury community is perceived as contributing to the demolition of the racial class border.

When police officers work in groups, their reputation is most at stake, and they tend to reinforce their image of what policing is about. It is especially in such situations that social distance is acted out in the form of displays of physical disgust, denigration of other groups and racist attitudes, as well as humiliating treatment of the local population of Westbury. During night-raids police officers from Sophiatown police station would enter the houses of people showing open disgust for the smell in the houses, and make provoking comments about the living conditions. They would make jokes and intimidate people, whether they were suspects or not. With each of these acts the racialised divide was reproduced. The detectives would again and again say about the complainants: "It is their own fault; if they would not drink so much they would not have these problems." One detective said on the occasion of going into the Westbury area to make an arrest: "These things over there, they don't know manners." While it is common for police to dehumanise criminals and hold them personally accountable for their deeds, in the case of Westbury many officers hardly distinguish between victims and perpetrators due to a general aversion. They justified their attitude by saying, "each complainant we get here at the police station is a perpetrator of another case". With this attitude, any claim of being entitled to respectful treatment by the police can be nullified.

Given this situation, any practice which compels police officers to lessen the social distance between them and their subjects upsets a complex and historically rooted relationship, and leaves them caught up in an uncomfortable and despised state, with the need to restore order. Ironically, it is in relation to the image of the police officer as a superior physical discipliner, and in relation to the authority derived from such an officer's rudeness and distancing behaviour, that women and men draw the police into their private and local conflicts.

#### 7.6.4 "Administrative onslaught"

As a final aspect of the way in which police officers' practice is transformed by the domestic violence legislation, I would like to discuss the issue of workload and the increased number of dockets. As described in Chapter Four, the practice centred on the piles of dockets assumes the form of a docket culture. Dockets are a source, as well as

means of punishment and humiliation. Since the closing of dockets constitutes a surrogate measure of performance and represents "good work", dockets often provide grounds for anxiety. In addition, they are a source of embarrassment, since administrative tasks are often seen as being part of a more female sort of work which tends to be based on better education. As a disciplinary pressure point within the police hierarchy, dockets provoke subversion and various coping strategies. As such, docket culture structures police officers' routines in a fundamental way. It is through the lens of sensitivities, which emerge from the meaning and practice of the docket culture, that domestic violence legislation translates for detectives into an "administrative onslaught".

Dockets speak of crime, in the sense that they are the prime bureaucratic manifestation of the state's dealings with crime. They represent the primary charting and recoding mechanism in relation to crime. Based on police dockets, statistics are compiled and conclusions drawn about the state of crime in the country. They categorise crime, and they shape and accumulate the administrative narratives of complainants, witnesses, suspects and experts. They produce knowledge and facts for and by police officers, prosecutors and judges. They ultimately bring the crime forward into the public realm.

As argued before, the government's willingness to pass the domestic violence legislation can be understood as the state's attempt to assert its monopoly on the means of violence over its population. This takes the form of promoting a human rights culture, which aims at regulating violence not just with regard to the state-subject relationship, but – on a so called horizontal level – *among* subjects in the private sphere. The form of governance applied is the disciplinary expansion of the state into the private sphere and the conferring of autonomy onto women. It is an institutional expansion, in the sense that the police service (and the courts) are assigned with regulating violence.

With this expansion, the violent intimate relationship becomes a new object of knowledge acquisition by the state. As such, it can be brought forward into the public sphere and altered by the intervention of the state. Dockets, as a primary interface between state and population – with their qualities of charting knowledge and defining the qualities of crime – are the initial instruments of objectification and, hence, governance, which is applied to bring the relationship forward into the public sphere.

The information captured by dockets might be utterly inadequate. Activists and researchers have complained extensively and publicly about the lack of central records; they also complain that, until today, the extent of domestic violence can still not be established because of the inadequacy of sources. While this means that the instruments of governance are fallible, and while it speaks of the limited capacity of the state to expand its disciplinary powers, it nevertheless shows the concern for recording. It also illustrates how these activist are very much complementary and, in terms of legitimacy, instrumental to the state's expansive and disciplinary undertaking. This does not change the fact that even incomplete recording – authorised and commissioned by the expansion of the state – results in an augmentation of administrative work for the police, in the form of the increase in docket numbers. Each case opened under the domestic violence legislation means that the police officer has to carry out the necessary administrative tasks, such as taking statements and keeping track of the number of dockets on hand. Considering the discomfort that is associated with this task and the anxiety that is provoked by each docket, each extra docket, as Sergeant Bothma makes clear, will be felt:

One day, Sergeant Bothma, was rubbing his hands in great satisfaction when I joined him in his office. With a sense of malicious pleasure he told me that a Westbury woman had just come to him to request the withdrawal of the case of domestic violence which he had opened the other day. Sergeant Bothma explained to me that he first had played hard to get and had kept the woman on tenterhooks, eventually sending her to the prosecutor with her request. At least, so Sergeant Bothma said, the woman also had to make an extra effort: "I will let her feel that all the time I spent sitting at my desk was not nothing. She will have to do her share now."

To refuse the woman's request and send her on to the prosecutor is just another form of revenge and an attempt to rectify a certain order. In this case, however, it is around the issue of the administrative record – the docket – that the revenge is lodged; at stake is the time and effort spent on the docket.

The detective's revenge takes the form of unleashing the disciplinary power which is imbued in the administrative effort against the woman. The disciplinary power emanates from her case being charted in the docket; she, by allowing this to be done, has commissioned the state as a protector, which means she has handed over some of her discretion to the state.

For the police officers, the act of withdrawing a charge exacerbates the challenge they face in domestic violence cases. For them the act of opening and then withdrawing a case represents carelessness and inconsideration in the light of what for the police officer is a hugely sensitive matter, namely the receiving of dockets. Each extra docket can be thought of as an extra threat and source of anxiety, humiliation and inadequacy. As such, carelessness and inconsideration appear as disrespect and disregard for the police officer's plight. It further reminds the detective of the discretion and power the woman exerts over him by opening a case of domestic violence. It puts her in the position of being able to inflict punishment and humiliation on the police officer. To first open and then to withdraw a case is felt as a double assertion of this discretion and as an unnecessary, thus arbitrary, infliction of punishment and humiliation.

Hence, the effect of the expansion of the state into the private and domestic realm is not just a simple augmentation in workload, represented by a numerical increase in dockets. The increase in workload in the form of increased dockets means an increase in humiliation and punishment, and therefore anxiety. It also means an increase of the administrative task, and thus of the more feminine and the educationally demanding load. And as if this was not enough, with the shift of discretion and through women's assertion and apparently arbitrary application of discretion, it means that power is placed in the hands of some of the Westbury populace to inflict punishment and humiliation on the police, and so to reverse what has been a long-ingrained relationship based on the police inflicting humiliation on the populace.

## **7.7 Conclusion**

In this chapter I have discussed the domestic violence legislation as a specific although typical case of the introduction of human rights and as an example of

accountability towards the population and the law. The Domestic Violence Act is a representative case of the application of human rights in the sense that it is aimed at the protection of the weak, vulnerable, disempowered and disadvantaged, reflecting explicitly the human rights credo of creating equality. It is also a good example of accountability in that it demands an increased responsiveness by police officers towards the population. In the application of the Domestic Violence Act we find a confluence of accountability towards the law and accountability towards the population, clearly built upon the assumption that this dual accountability is reinforcing rather than contradictory.

In its broad definition and its stipulation of mandatory duties for the police, the domestic violence legislation reflects the post-apartheid attitude of the government and its disposition towards the regime of international human rights and civil society activism. It also embodies the liberal notion of creating autonomous and responsible subjects both through holding the state accountable, and through the subjects' own engagement with the law. On the other hand, it exemplifies the expansion of the state's responsibility for its subjects through law enforcement into the private sphere. Within the South African context, it is one of the most clearly delineated and innovative legal changes affecting law enforcement.

I have shown how the disciplinary powers conferred by the legislation are being rejected by the police, because they demand women's autonomy. These powers are localised by the women in the area and used for certain social manoeuvres, such as the recovery of a sense of self-respect and to negotiate the boundaries of violence, rather than for eliminating violence from relationships. In this process, police officers are disengaged from the rest of the criminal justice system. Their role is re-inscribed with a form of authority which is rooted in power over transitory arrest in local(!) cells and the threat or use of violence. This interpretation of police intervention calls for a physically persuasive discipline which is tangible in the local realm. Ironically, it is an interpretation of authority which resembles the terrifying power of the police in the past, rather than the benign and gentle authority into which human rights, according to the populace, can translate. It is through the domestic violence legislation that police officers are absorbed into the local realm despite their resistance to it.

The expansion into the private sphere and the mandatory compulsion for police officers to intervene are conducive to the appropriation of police officers by local people. The legal encroachment on the private sphere is conducive to this appropriation of policing powers in the sense that it already means a move away from a more clearly delineated moral realm into the messy moral realm of domestic violence, and in the sense that it is the realm of close social interaction where civil liabilities are concerned. This also creates a new context whereby policing powers can more easily be used for issues of local popular justice, which fall outside the legislation's definition of relationships. It allows a continuity of social practice by local people, enabling them to make use of state resources for the advancement of their situation under conditions of blockage and limited resources. The evidence suggests that there is a continuum linking the seemingly divergent extremes of everyday police practice – namely between the very informal police practice of sociability (see previous chapter) and the practice that is compelled by mandatory human rights enforcement. Both ends of the spectrum lend themselves to the appropriation and redirection of state power. This also shows where the challenge lies for police officers when introducing human rights: it makes them vulnerable to being disengaged from the criminal justice system and becoming absorbed into the informal realm. If the informalisation only meant access to material or other advantages for police officers, then that might be less problematic for them. However, if it means, as in the case of the domestic violence legislation, that they are directed to act against their sense of self and to experience humiliation and punishment, then it constitutes a painful process for them.

Can we understand the need of police officers for retaliation and revenge, and understand why they are frustrated, and why they do not enthusiastically embrace the task of enforcement of the domestic violence legislation? The answer, as I have shown, is a complex one. It lies not only with police officers themselves but just as much with the legislation, and with what the legislation presupposes and expects from them. It is important to understand the nature of the changes which emerge from of the implementation of the legislation. From this perspective we can look at police officers and find that, in these cases, it is the discrepancy between the subjectivity which the

legislation and the accountability toward the law prescribes for them and the attitudes they actually hold, which is crucial.

This discrepancy is further exacerbated because police officers perceive the lack of agency that the legislation attributes to the victims of domestic violence, as being mismatched. They are suspicious of the legislation's disciplinary subtext with regard to making police officers responsible for restoring the autonomy of women. In fact, there is a similarity in the police officers' and the women's perspective, in that they both refuse the subject position of victim, and respectively they also reject the restored autonomy of women through the law. However, the women do not reject the legislation in its entirety. And by women appropriating the legislation and adapting it to the local realm, the police officer still gets to feel some of the gender shift which the legislation is to make in the form of increased command by women.

# 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 – illusory 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.

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## Summary

The democratic changes taking place in South Africa in 1994 merged providentially with international human rights concerns. One could even argue that South Africa epitomised the post cold war to 9/11 period in which former authoritarian regimes turned willingly towards a democratic and market oriented, liberal democracy. In this new tide of respect for human rights, and as actually embodying the evil of the past, the South African police was faced with the explicit demand to take on and put into practice the principles of human rights based policing. In line with the overall *Zeitgeist*, human rights were seen as key to bringing about post-apartheid legitimacy for state institutions. It compelled some far reaching administrative and institutional changes. How then did human rights translate into local police practice, and specifically into the daily practice of detectives at two police stations in Johannesburg? This thesis is an exploration of this question.

The translation of human rights into daily practice was, as will be shown, far from straightforward. At the interface between police, the law and people a spectrum of human rights vernaculars emerged. These vernaculars gave new meaning to human rights. They revealed that the dominant legalistic language and practice of human rights, which claims universality and non-particularity, is highly specific. These vernaculars also made police practice workable and the state legible to those directly affected. Through this, new social manoeuvres and new practices of local justice were produced.

This thesis contends that the ideology of international human rights, which at the time seemed to be the only legitimate post-Cold War political ideology, presented itself as a hyper-reality, which was in many ways self-serving and self-promoting. This hyper-reality, I argue, is built around a performative language process. The language process, in a tautological way, replaced foundational transcendental claims with the idea of universal human dignity and a de facto consensus about the primacy of international human rights standards. These *a priori* tautologies continue to be reproduced as the 'common sense' of a specific sociality made up of activists, officials, experts and lawyers, who congregate specifically around the assumption of the primacy of human dignity and international human rights standards.

Human rights therefore have their own contingencies. Within the above mentioned common sense human rights have been shaped into a legal and semi-legal language and practice which have the ability to discredit any other less judiciary forms of human rights. The legalistic articulation of human rights, I argue, have made a judicial capital which among other things presupposes a certain level of middle-classness, the necessary requisite in order to apply human rights correctly. Further, the international outlook of human rights, embodied in the expansionist international institutional landscape which promotes them, demands a cosmopolitan capital which includes mobility, a certain 'tasteful' lifestyle, and a acceptance of English as lingua franca as entry requirement to the sociality which has 'the human rights common sense' as its *raison d'être*.

One of the offshoots of this hyper-reality has been a global demand for a human rights policing, and the proliferation of likeminded experts and policy documents about how human rights policing is to be brought about. In this, the police have become both the object of transformation and the means for the transformation of societies towards constitutional democracies. The trope of the policy consensus is an institutional model of accountability which decentralises control over the police to three levels – international law, national law and the people. It has been inscribed with an inherent ability to impress on the police a respect for human rights.

However human rights in general, and policing based on human rights in particular, prescribe a very specific subjectivity for police officers. This subjectivity carries on the one hand the co-ordinates of judicial and cosmopolitan capital, and on the other hand it translates into expectations regarding the kind of authority which police officers are to employ in their everyday practice. This authority is rooted in ideas of a well-skilled non-violent administrative attitude, internalised self control, and good communicative abilities. It is a blueprint of identity and moral autonomy which finds a sense of freedom and belonging in a detachment from social immediacy. If occupied comfortably and with proficiency, such a human rights subjectivity can bestow an elevated social status and a sense of belonging to the new democratic South Africa.

Most police officers at the two police stations of this research struggle to occupy this subjectivity, for a number of reasons which include their historically lower-class

background, the ingrained neglect of educational and bureaucratic skills, and a socialisation which confirms for them the expediency of personalised state violence. For these policemen, though in different degrees, human rights pose a threat; a potential source of humiliation. The predicament of the omnipresence of human rights on the one hand and their exclusivity and inapplicability on the other is what brings about the vernacularisation of human rights.

In this thesis I distinguish between two types of vernaculars. The one is a constellation in which a human rights performance stands in some necessary relationship of simultaneity with a more violent policing authority and the preservation of police discretion. In the other type the boundary between these two realms is dissolved, and a new kind of human rights language emerges.

I found articulations of the first type of vernaculars at several different levels of the police organisation. One example is with regard to the making of history of the police by the police. On the one hand they openly celebrate their human rights transformation as a radical incision, while other versions see this transformation as merely one of many changes in a continuous modernisation process. Another example is how, at the management level, the police openly and willingly engage in international and national co-operation with human rights NGOs around certain projects such as training; at the same time the police prevent those projects from permeating the police organisation in any substantial way. In such cases human rights are used as a kind of mirror to reflect a picture of what international agencies want to see. This illusion of a growing consensus of human rights can protect police discretion and spaces in which police heroism can be celebrated in a way which rises above the tides of history.

This vernacular can be conceived of as a split between a front stage and a backstage, with the backstage realm being where a personalised and violent authority is applied at the level of actual police practice. This phenomenon manifests itself in a number of ways, since different police officers or groups of officers find different ways to move between the front and the backstage realm.

Coming to the second type of vernaculars, the thesis shows that the boundary between the front stage and backstage is not, however, an absolute or rigid one. Some vernaculars aim exactly at reconciling or transcending this split. This can be seen in the

way everyday police practice interfaces with human rights in the absence of the common sense-producing sociality. In such cases a police officer, recognising tacitly the failure of foundational power of the inalienability of human dignity and the primacy of international human rights standards, may supplant these concepts with a transcendental Christian claim. The translation of human rights into a Christian moral framework is powerful and not uncommon, as it directly touches on most police officers' moral imaginary. Because Christianity pervaded both Afrikaner nationalism and the anti-apartheid struggle, human rights enmeshed with a Christian imaginary is able to smooth out some of the racial and historical antagonism. Most importantly though, through this Christian moral language police officers can recover for themselves a position from which to judge, as human rights as juridical technical procedure deprives them of the ability to use their own moral discretion.

Another vernacular articulation is employed when (mainly black) police officers access human rights through their experience of having been part of a (black) trade union movement. The trade union movement employed a human rights language that carried the traces of an outlook that is less legalistic and more working class. This vernacular allows for an interpretation of human rights mainly as concerning police officers' rights. It can enable a entitlement vis-à-vis the people police officers interact with, a strong sense of immunity from wrongdoing, and a new legitimisation of the use of violence.

Another powerful vernacular emerges when an everyday practice of policing characterised by a front stage/backstage split, is played out in the context of social marginality. Such circumstances exacerbate the experience of the police – as a consequence of this split – as fragmented, unpredictable and always potentially threatening. In the light of this people concerned find that police can become more legible and somehow less unpredictable exactly by incorporating the uncertainty the police produce, and viewing them through a social imaginary of informal privatisation of policing. This perspective puts the normative idea of public police at an explanatory distance and foregrounds the sense that police officers personally embody state power. From this perspective, human rights provide people with access to personalised police powers which, as heavy-handed persuasion and tangible punishment, can become means of informal justice.

The appropriation and redirection of state power can take place – depending on the police officers own investment in the human rights front stage – with everything from outright complicity of a police officer to his repulsion. A police officer, who just performs on the front stage in so far as it keeps him out of trouble, but who otherwise is invested in using his backstage powers as a commodity to enhance his livelihood, might be happily playing along with such efforts of local justice. Very different so for a police officer who sees his human rights performance as a way to claim some sort of middle-classness. He might experience the efforts of people of appropriating him as contaminating and highly erosive; instead of him or her managing to compel people to enter the formal realm of the law, he is drawn into the local, informal and lower class realm.

In this thesis I show that all these social manoeuvres become visible if one puts on analytical par the hyper-reality of human rights (and its policy consensus) with the tactical and tacit practices of everyday life both of people and police. It allows us to see how the contemporaneous present takes shape beyond a suffocating exclusive dichotomy which posits an either/or choice between the realisation of a teleological normative future or the continuation of the past. I conclude that human rights do not necessarily produce legitimacy, nor are they in total opposition to state violence, and in fact they often become the means through which state violence is reproduced, appropriated and re-directed.

## Samenvatting

De democratisering van Zuid-Afrika in 1994 ging op een opvallende manier samen met een groeiende internationale aandacht voor mensenrechten. Zuid-Afrika leek zelfs de belichaming van de periode na de Koude Oorlog en voor 11 september, waarin autoritaire regimes zich bekeerden tot een marktgerichte liberale democratie. In deze nieuwe sfeer van respect voor mensenrechten werd van de Zuid-Afrikaanse politie, de belichaming van het kwade verleden, geëist dat zij zich de principes van een op mensenrechten gebaseerde politiepraktijk eigen zou maken. In overeenstemming met de *Zeitgeist* werden mensenrechten gezien als de sleutel tot de opbouw van de post-Apartheid legitimiteit van staatsinstituties. Dit bracht een aantal verstrekkende administratieve en institutionele veranderingen teweeg. Hoe zijn mensenrechten vertaald in de lokale politiepraktijk, en in het bijzonder in de dagelijkse routines van de rechercheurs van twee politiebureaus in Johannesburg? Dit proefschrift presenteert een verkenning van deze vraag.

De vertaling van mensenrechten naar de dagelijkse praktijk is verre van eenduidig. De interactie tussen politie, wet en bevolking heeft een scala aan lokale interpretaties, dialecten, van mensenrechten voortgebracht. Deze dialecten geven mensenrechten een nieuwe betekenis. Ze laten zien dat het dominante legalistische mensenrechtenvertoog en –praktijk, niettegenstaande claims van universaliteit en onpartijdigheid, juist heel specifiek is. Het zijn deze lokale mensenrechten dialecten die de politiepraktijk werkbaar en de staat begrijpelijk maken voor direct betrokkenen. Deze dialecten brachten nieuwe sociale manoeuvres en nieuwe lokale informele vormen van recht met zich mee.

Dit proefschrift betoogt dat de internationale mensenrechtenideologie, de enige die na de Koude Oorlog legitimiteit leek te genieten, zich presenteerde als een hyperrealiteit die, zoals ik betoog, is opgebouwd rond een performatief taalproces dat, op tautologische wijze, fundamentele transcendentale vragen vervangt door het idee van universele menselijke waardigheid en een *de facto* consensus ten aanzien van het primaat van een internationale mensenrechtennorm. Deze *a priori* tautologieën worden gereproduceerd als *common sense* binnen een sociaal netwerk bestaande uit activisten, ambtenaren,

experts en advocaten, die samenkomen rond aannames ten aanzien van het primaat van de menselijke waardigheid en een internationale norm voor mensenrechten.

Mensenrechten zijn dus contingent. De al eerder genoemde *common sense* vormt een beginpunt voor de ontwikkeling van mensenrechten tot een juridische en semi-juridische taal en praktijk, die het aanzien van minder gecodificeerde vormen van mensenrechten ondergraaft. Ik betoog dat de legalistische uitwerking van mensenrechten leidt tot een vorm van juridisch kapitaal dat, onder andere, een bepaald middenklasse niveau veronderstelt als een noodzakelijke voorwaarde voor de juiste implementatie van mensenrechten. Het internationalistische karakter van mensenrechten, belichaamd in een expansiegericht internationaal institutioneel landschap, vereist bovendien bepaalde vormen van kosmopolitisch kapitaal, zoals hoge mobiliteit, een zekere smaakvolle *lifestyle*, en de acceptatie van Engels als de lingua franca. Deze fungeren als toegangsvoorwaarden tot de sociale ruimte die zijn bestaansrecht ontleent aan de stilzwijgende, algemeen geaccepteerde aannames ten aanzien van mensenrechten.

Een van de bijproducten van deze hyperrealiteit is een wereldwijde vraag naar op mensenrechten gebaseerde politiepraktijken, en de proliferatie van experts en beleidsdocumenten gewijd aan de manieren om dergelijke praktijken te realiseren. In deze context is de politie zowel het object van deze transformatie, als een van de mechanismen om een overgang naar constitutionele democratie te bewerkstelligen. Een institutioneel model van aansprakelijkheid staat centraal in de beleidsconsensus, waarin de controle over de politie op drie niveaus plaatsvindt: dat van internationale wetgeving, nationale wetgeving, en de bevolking. Dit model zou het respecteren van mensenrechten binnen de politie garanderen.

Mensenrechten, en in meer specifieke zin, politiewerk dat gebaseerd is op mensenrechten, vereist een bepaalde subjectiviteit in politieagenten. Deze subjectiviteit draagt aan de ene kant de coördinaten van het eerder genoemde juridisch en kosmopolitisch kapitaal, en aan de andere kant vertaalt het de verwachtingen ten aanzien van het soort autoriteit dat de politie tentoon zou moeten spreiden in haar alledaagse werk. Deze autoriteit is geworteld in het beeld van een goedgetrainde, niet-gewelddadige administratieve houding, geïnternaliseerde zelfbeheersing, en goede communicatieve vaardigheden. Het is een blauwdruk van identiteit en autonomie gestoeld op een idee van

vrijheid en groepslidmaatschap die gebaseerd zijn in afstand van sociale nabijheid. Diegenen die een dergelijke mensenrechtenssubjectiviteit met gemak en op competente wijze opnemen kunnen hieraan een hogere sociale status ontlenuen, evenals een gevoel onderdeel te zijn van het nieuwe democratische Zuid-Afrika.

De meeste politieagenten van de twee onderzochte politiebureaus hebben moeite om deze subjectiviteit aan te nemen, mede als gevolg van hun lagere sociale afkomst, een diepgewortelde onderwaardering van onderwijs- en bureaucratische vaardigheden en een socialisatie waarin de doelmatigheid van geïndividualiseerd staatsgeweld eerder bevestigd dan betwist wordt. Mensenrechten worden door veel van deze politiemensen als bedreiging ervaren, zij het in verschillende mate. Ze vormen een mogelijke bron van vernedering. De situatie waarin mensenrechten alom aanwezig zijn, maar tegelijk ook in hoge mate exclusief en moeilijk toepasbaar zijn, leidt tot de creatie van een scala aan lokale vertalingen van mensenrechten, die ik hier als dialecten omschrijf.

In dit proefschrift onderscheid ik twee van dergelijke dialecten. De ene is een constellatie waarin een mensenrechtenperformance bestaat naast een meer gewelddadige vorm van politieautoriteit en een blijvende mate van handelsvrijheid voor de politie. In het andere type verdwijnt juist het onderscheid tussen de twee domeinen en ontstaat er een nieuw soort mensenrechtenvertoog.

Ik vond articulaties van het eerste dialect op verschillende niveaus binnen de politieorganisatie. Eén voorbeeld heeft betrekking op de geschiedschrijving van de politie door de politie. Aan de ene kant wordt de overgang naar een mensenrechtenaanpak geroemd als een radicale breuk, terwijl andere versies de overgang voorstellen als een van de vele fases in een continue moderniseringsproces. Een ander voorbeeld: op managementniveau staat de politie zeer open voor internationale en nationale samenwerking met mensenrechten NGOs op het gebied van bijvoorbeeld training. Tegelijkertijd voorkomt de politie dat dergelijke projecten op een meer substantiële manier doordringen in de politieorganisatie. In zulke gevallen dienen mensenrechten als een spiegel die een gewenst beeld toont aan internationale organisaties. De illusie van een groeiende consensus rond mensenrechten kan dan juist het voortbestaan garanderen van de politie's handelsvrijheid en van de ruimtes waarin politie heldendom geprezen kan worden op een manier die zich weinig gelegen laat liggen aan het historische tij.

Dit specifieke dialect wordt gekenmerkt door een splitsing tussen frontstage en backstage, waarbij het backstage domein ruimte biedt aan een verpersoonlijkte en gewelddadige vorm van autoriteit in de dagelijkse politiepraktijk. Dit fenomeen neemt diverse vormen aan, omdat verschillende politieagenten of groepen binnen de politie verschillende manieren vinden om te laveren tussen front- en backstage domeinen.

Met betrekking tot het tweede type dialecten laat het proefschrift zien dat de grens tussen front- en backstage niet absoluut of rigide is. Sommige dialecten richten zich juist op het verzoenen of overstijgen van deze splitsing. Dit wordt vooral duidelijk op die momenten waarop de alledaagse politiepraktijk raakt aan mensenrechten, zonder de gedeelde sociale ruimte die gedeelde aannames ten aanzien van mensenrechten reproduceert. In dergelijke gevallen wordt een politieagent geconfronteerd met de gebrekkige impact van een fundamenteel concept als het onvervreembare karakter van menselijke waardigheid en het primaat van een internationale mensenrechtennorm. Hij kan deze dan bijvoorbeeld vervangen door concepten uit een transcendentiaal, Christelijk repertoire. De vertaling van een mensenrechten- naar een Christelijk moreel kader is erg effectief en komt regelmatig voor, aangezien het in het verlengde ligt van het morele universum van veel politieagenten. Daar zowel Afrikaner nationalisme en de anti-apartheidsbeweging doortrokken waren van Christendom, kan het gebruik van Christelijke symboliek in een mensenrechtenvertoog bestaande raciale en historische spanningen overwinnen. Een van de belangrijkste consequenties is echter dat deze Christelijke morele taal politieagenten in staat stelt iets van hun positie terug te winnen nu juridisch-technische mensenrechten procedures de mogelijkheid om af te gaan op hun eigen moreel oordeel aan banden heeft gelegd.

Een andere lokale vertaling komt in het spel wanneer (hoofdzakelijk zwarte) politieagenten mensenrechten benaderen vanuit hun ervaringen in de (zwarte) vakbeweging, waar een mensenrechtenvertoog circuleerde dat de sporen droeg van een visie die minder juridisch was, en wortels had in de arbeidersklasse. Dit dialect biedt ruimte aan interpretaties van mensenrechten waarin de waarborg van de rechten van politieagenten centraal staat. Het benadrukt en versterkt de rechten van de politieagent vis-à-vis de bevolking, alsook een zeker gevoel van immuniteit ten aanzien van beschuldigingen van misbruik, en kan dienen als legitimatie voor het gebruik van geweld.

Een ander invloedrijk dialect komt naar voren wanneer de alledaagse politiepraktijk die gekenmerkt wordt door een sterke scheiding tussen front- en backstage, zich begeeft in een sociaal marginale context. Ten gevolge van het gelijktijdig bestaan van een front- en backstage domein komt de politie over als gefragmenteerd, onvoorspelbaar en een potentiële dreiging. De lokale bevolking probeert de politie begrijpelijk en minder onvoorspelbaar te maken door de *social imaginary* van informele privatisering van politiewerk. Dit perspectief gaat voorbij aan het normatieve idee van een publieke politie en benadrukt de mate waarin politieagenten persoonlijk staatsmacht belichamen. Zo gezien bieden mensenrechten betrokkenen toegang tot verpersoonlijkte politiebevoegdheden die, net als hard politieoptreden en concrete afstraffing, onderdeel kunnen worden van informele vormen van recht. De mate waarin politieagenten zelf belang hechten aan het publieke gezicht waarin mensenrechten centraal staan is sterk bepalend voor de manier waarop politieagenten reageren op pogingen van de bevolking om ze te betrekken in hun informele rechtspleging: deze reacties variëren van openlijke medewerking tot hartgrondige afkeer. Een politieagent die vooral voor de vorm het publieke mensenrechtengezicht ophoudt, maar zich verder vooral interesseert in het in stand houden van zijn backstage bevoegdheden die dienst kunnen doen als handelswaar en een bijdrage leveren aan zijn levensonderhoud, zal waarschijnlijk graag inspelen op zulke lokale vormen van recht. Dit kan heel anders liggen wanneer het een politieagent betreft die zijn mensenrechtenperformance gebruikt om aanspraak te maken op een middenklasse status. De pogingen van betrokkenen om hem op te nemen in hun lokale, informele en lagere klasse vormen van rechtspleging, en het gebrek aan bereidheid op te gaan in het formele juridische domein, kunnen door hem als vervuilend en ondermijnd ervaren worden.

In dit proefschrift laat ik zien dat al deze sociale manoeuvres zichtbaar worden wanneer men evenveel aandacht schenkt aan de hyperrealiteit van mensenrechten en de daarop gebaseerde beleidsconsensus, als aan de tactische en stilzwijgende alledaagse praktijken van bevolking én politie. Om inzicht te verkrijgen in de wijze waarop het huidige moment vorm krijgt moeten we voorbij gaan aan een verstikkende exclusieve dichotomie die een keuze afdwingt tussen óf de realisering van een teleologische, normatieve toekomst, óf een voortzetting van het verleden. Ik concludeer dat mensenrechten niet

noodzakelijkerwijs legitimiteit produceren, noch zijn ze *per se* het tegenovergestelde van staatsgeweld. Mensenrechten zijn vaak juist een van de mechanismen waardoor staatsgeweld gereproduceerd, toegeëigend en opnieuw vormgegeven wordt.