From the Editor

Greetings! I hope everyone is enjoying the holiday season. It is obviously a busy time as we finish up the Fall term. For Police Section members working in academe, it is a time of scrambling to grade papers and tests before the break. Student members are no doubt scrambling themselves to wrap up assignments and final exams, and to make their way back home for the holidays. Our members who are working criminal justice professionals are certainly busy as well as they attempt to balance family life with some of the added occupational demands and work stressors often associated with holiday seasons.

The busy nature of this time year caught up with me as well. I had hoped to get this issue of the *Police Forum* out by the end of November. But the pieces just didn't fall into place for that to happen. My apologies.

In this issue, you'll find a couple of interesting concept papers. Ming-Li (Lily) Hsieh, a doctoral student at Washington State University, invites readers to consider recommended areas of classroom discussion that will improve student comprehension of contemporary counter-terrorism policing strategies. Additionally, George Eichenberg of Tarleton State University explores in an essay the notion of preemptive policing through technology as a potential paradigm shift against the backdrop of the moral quandary which accompanies such a shift. I thank both authors for their submissions.

Since the last edition, some of you have contacted me with new ideas for submissions. Please keep the ideas and, importantly, the actual submissions, coming!   Remember, the *Police Forum* is interested in a wide range of pieces, including essays, articles, research notes on pilot studies and other projects, book reviews, point-counterpoint pieces, and others. You can make your submissions by emailing me directly at <u>bumg0004@umn.edu</u>.

Have a terrific Christmas season!

Jeff Bumgarner
ACJS Police Section Secretary
Editor, *Police Forum*

Police Section Archives

Lucy Edwards Hochstein is the section historian and archivist. The Police Section Archives are housed at Radford University, Radford, Virginia. The Police Section is always seeking to extend and update its archives. Contributions to this effort are greatly appreciated and donations are always welcome!

Archive Development

The Police Section Archives currently possess back issues of many different journals. The current list of journals and years are provided below. Bear in mind, however, that the years listed are simply ranges of time for issues we possess. For most journals, there are issues we are missing within the stated range. For a detailed list of the particular issues we have in our possession, go to the Police Section page of the ACJS website and follow the appropriate link.

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> *American Journal of Police (1987-1996)*
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> *International Criminal Justice Review (1997)*
> *Journal of Criminal Law and Criminology (1967-1978)*
> *Journal of Interpersonal Violence (1994)*
> *Journal of Juvenile Justice and Detention Services (n.d.)*
> *Journal of Police Science & Administration (1973 & 1982)*
> *Journal of Research in Crime and Delinquency (1991)*
> *Justice Quarterly (1984-1986)*
> *LAE Journal of American Criminal Justice Association (1978)*
> *National Social Science Journal (1994)*
> *National Women's Studies Association Journal (2008)*
> *Police Quarterly (1998-2008)*
> *Prison Journal (1959-1978)*
> *Social Problems (1976-1991)*
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A Seminar Discussion on Contemporary Counter-Terrorism Policing

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Abstract

Much of the mission of post 9/11, counter-terrorism policing has shifted to local law enforcement. However, it is rare that seminar courses cover the ideology and strategic operations of local counter-terrorism policing. For those who are not familiar with the subject, merely studying national and international terrorism/counter-terrorism issues does not provide a realistic view of the topics criminal justice students are most likely to encounter in their careers. Hence, this essay recommends a range of seminar discussion areas for contemporary counter-terrorism policing utilizing material from three comprehensive works: Deflem's (2010) *The Policing of Terrorism*, Haberfeld, King, and Lieberman's (2009) *Terrorism within Comparative International Context*, and Pickering, McCulloch, and Wright-Neville's (2008a) *Counter-Terrorism Policing*. The inclusion of this material would allow students to obtain the full picture of contemporary counter-terrorism policing.

Introduction

Even though a decade has passed, people still remember in great detail aircraft hitting the towers and the World Trade Center collapsing (Dunne & McDonald, 2011). For many Americans, the events of 9/11 evoke images of terrorism, a painful and unforgettable tragedy. Since then, the United States government has implemented a number of new homeland security and international counter-terrorism strategies. In addition, academic studies have been conducted on terrorism/counter-terrorism issues and seminar courses have been offered within many criminal justice programs.

Indeed, most courses are divided into two sections. Briefly, the first section is designed to impart a basic understanding of terrorism. This part covers evolving definitions of terrorism, as well as an overview of counter-terrorism efforts around the world. Students often explore the motives, methods and consequences of terrorist attacks in terms of political ideology, religion, and nationalism. The second section may be devoted to counter-terrorism strategies. This part discusses levels of responses toward terrorism in the context of security management (e.g. intelligence), criminal justice agency efforts (e.g. federal and state law enforcement), and military force (e.g. war on terrorism). However, syllabi rarely talk about terrorism/counter-terrorism policing issues and community-based operations but rather mainly focus on international and global perspectives.

Realistically though, as operations in the war on terror becomes more formal and routine, the central government is no longer the only law enforcement entity to bear the counter-terrorism burden; much of that mission had been delegated to local police (Lyons, 2002). From a homeland security perspective, local law enforcement agencies have to establish counter-terrorism systems and cooperate with any office of the U.S. Department of Homeland Security (DHS). Local police have felt significant pressure not only to develop paramilitary task forces but to also engage in intelligence gathering and terrorist crime analysis (Lyons, 2002). This would seem to necessitate a reconceptualization of the policing curriculum and suggests a deeper look into localized counter-terrorism policing in seminar courses. This essay proposes several seminar discussion topics supported by three notable books, Deflem's (2010) *The Policing of Terrorism*, Haberfeld, et al.'s (2009) *Terrorism within Comparative International Context* and Pickering et al.'s (2008a) *Counter-Terrorism Policing*. As a result, curricula could provide an updated understanding of the context of counter-terrorism policing at the local level which would assist students in envisioning a clearer picture of post 9/11 contemporary police mandate.

A Pathway of Seminar Discussion Topics

For most graduate students participating in a seminar in terrorism/counter-terrorism, the subject matter seems to connote "homeland security" with overlapping boundaries and ambiguous terminology. To many, this area does not seem to lend itself to empirical study the way other criminal justice subjects, such as corrections and courts do. Thus, a seminar class should perhaps cover the older themes of terrorism/counter-terrorism with specific nuances to explore the contemporary needs for counter-terrorism policing in a rapidly changing political landscape. By utilizing a suggested pathway of discussion questions, one can obtain a broader picture of contemporary policing which will help students absorb and apply terrorism concepts as well as to develop problem solving skills for the field, all within the short-term seminar period.

Figure 1. A Hierarchy of Discussion Pattern

Inquiry A: Apply Criminal Justice Theory and New Notion of Homegrown Terrorism

Tentative Leading Response:

Some seminar books, such as Wilkinson's (2011) *Terrorism versus Democracy*, McGarrity et al.'s (2010) *Counter-Terrorism and Beyond*, and Spindlove and Simonsen's (2009) *Terrorism Today*, are useful for depicting international terrorism because they are able to build upon the extensive historical background of this subject (Barghothi, 2005). Readers may piece together the characteristics of terrorism that reflect the different individuals or groups engaging in social conflicts that have threatened civilians as well as the stability of governments over the centuries (Korstanje, 2010). Also, one can define terrorists based on the methods used to suppress social and cultural values or through the various attacks on political structures or symbols they disapprove of (Schmid, 2004) with non-conventional terrorist tactics. And finally, as would be necessary, one can attempt to define contemporary counter-terrorism or counter-terrorism policing--something that is much less common in the existing literature.

One of the goals of discourse in this area would be to contribute to the study of contemporary terrorism by applying relevant criminological theories. For instance, Deflem (2010) conceptualizes terrorism as crime or social deviance. At a micro level, terrorism "focuses on the characteristics of terrorist perpetrators" (p. 16); whereas, at a macro level, terrorism is a phenomenon with tremendous fluctuations that are the results of "political strife, economic conditions, and cultural-ideological conflicts" (p. 16) in society. Therefore, counter-terrorism efforts should strengthen "social control" to respond to the "social deviance". Social control should not be represented unilaterally by "a military, legal or political character" but multilaterally "across a range of institutions", represented in the criminal justice system (p. 17).

In emphasizing a comparative theoretical approach using global perspectives, it is important to encourage students to do more than simply align terrorism with stereotypical foreign-based attacks by considering local level threats as well. Haberfeld, et al. (2009) highlight this break with the groupthink and draw readers to the notion of "homegrown" terrorism. This paves the way for a broader view of contemporary terrorism and influences the development of counter-terrorism efforts in worldwide states. Because some states believe that the activity of Muslim terrorist groups is indirectly tied to increasing incidents of homegrown terrorism, the level of international terrorism threat is often rated as serious. As a result, states have shifted from traditional counter-Al-Qaeda (AQ)-linked terrorism targets to counter "Islamist" terrorism (Body-Gendrot, 2008; Mythen & Walklate, 2006; Poynting & Mason, 2008).

Inquiry B: How Does Counter-Terrorism Even Relate to Policing?

Tentative Leading Response:

Students should be aware of worldwide events[1] that have been attributed to Muslim

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[1] For example, 9/11 in New York in 2001, bar bombings outside the US consulate in Bali in 2002, the shopping center bombing in the Philippines in 2002, suicide bombings in Morocco in 2003, suicide

extremist groups and how they seem to embody the image of contemporary terrorism (Fenn & Blight, 2011). Specifically, two major incidents, 9/11 in New York and 7/7 in London, seem to have transformed Muslim communities into "risk groups" of contemporary counter-terrorism subjects and how individual Muslims have become nationally if not internationally prominent "suspects" (Jackson, 2005; Spalek, 2010). Moreover, it is also felt that Muslim groups have a higher likelihood of making terrorist attacks, and that local police bear much more of the added responsibility for everyday policing, overseeing local security and preventing terrorists attacks in the community (Bayley & Weisburd, 2009; Grabosky, 2008).

These images and perceptions have fueled the development of localized counter-terrorism policing. According to Deflem (2010), homegrown terrorism is now viewed as more serious than the possible operations of AQ organizations. It is argued that Muslim minority groups need to be continually watched and kept under close surveillance. The other function of counter-terrorism policing emphasizes intelligence work. It is impossible to crack down on terrorism without low-level data and intelligence. Awareness of specific local conditions put police in a perfect position to gather community intelligence and supplement counter-terrorism policing efforts. For instance, in Florida, the low-level police database, the FINDER system, is a valuable intelligence resource for preventing terrorist attacks (Scott, 2006, 2009). The FINDER system includes local information with both criminal and non-criminal events, which are routinely collected in everyday policing. In a similar way, the Metropolitan Police Service (MPS) in the UK was to install an additional 2,500 closed-circuit televisions (CCTVs) in London. Also, the MPS focuses on proactive methods such as an intelligence-led policing (ILP) model (Maguire & John, 2006; Ratcliffe, 2002, 2008). This effort is based on police intelligence gathering in order to target the right offenders and to predict emerging criminality for counter-terrorism missions.

Inquiry C: Why Is Community Counter-Terrorism Policing Important?

Tentative Leading Response:

Counter-terrorism measures emphasize that intelligence gathering starts within local minority community groups. As a result, community policing should be seen as a better way to access Muslim communities and other minorities than interventions by federal-level agencies. In fact, community policing has a role to play that supplements the functions of homeland security (Chappell & Gibson, 2009; Jones & Supinski, 2010; Lyons, 2002; Oliver, 2006; Thacher, 2005). Community policing can also be a key partner in countering the threat of AQ-linked terrorism (Hanniman, 2008; Innes, 2006) and in the collection of intelligence. Haberfeld, et al. (2009) and Pickering et al. (2008a) seem to propose similar roles/functions for community policing in the context of counter-terrorism and national security in their books. Deflem (2010) also indicates that effective local law enforcement training would be beneficial for the local police to respond to counter-terrorism needs, considering that "the organization of counterterrorism policing

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bombings in Istanbul in 2003, transit bombings in Madrid in 2004, the murder of Theo Van Gogh in Amsterdam in 2004, 7/7 subway bombings in London in 2005, a flaming jeep crash at the UK Glasgow airport in 2007, three terrorist arrests in Stockholm in 2008, four New Yorkers arrested for plotting terrorism in May 2009, three terrorists arrested before the bombing of the New York City subway in September 2009, explosives found at East Midlands Airport and Dubal in the UK in 2010, and suicide bombings in Sweden in 2010 (Fenn & Blight, 2011).

implies an analysis of the strategies and objectives police pursue in the fight against terrorism" (p. 5).

Pickering, et al. (2008a) believe that the Victoria Police in Australia are the best example for community counter-terrorism policing worldwide (Pickering et al., 2008b). In fact, the "Victoria Police as a case study for illustrating continuities and dissonance between those undertaking daily community-policing functions, and their approach to community and counter-terrorism" (Pickering et al., 2008a, p. 71) exemplifies the social cohesion model. It may be important to determine why the social cohesion model would work in the context of counter-terrorism policing. Empirical research could perhaps clarify whether community cohesion and harmony would be a precondition for effectively gathering intelligence for counter-terrorism policing.

In Pickering, et al.'s (2008a) research, they found that the Victoria Police not only announced that the social cohesion community policing model is the best strategy for counter-terrorism policing, but also wrote a similar formulation in their business plan that "[Victoria] police have a key part to play in ensuring that laws are applied in ways that enhance social cohesion, safety and the rights of citizens" (p. 50). Also, they worked to strengthen the dialogue between minority groups in the community and police, and this dialogue was key in "reducing fear and anxiety, addressing rumors or misconceptions, and considering…any lessons there are to learn for the future…building trust and sharing information" (p. 69), and is credited with indirectly enhancing community cohesion.

In addition, Victoria's police focus on the protection of human rights in their jurisdictions. Officers used the coercive powers of "stop, search and seize" only once (p. 55) in the Muslim jurisdiction in the context of homegrown terrorists. In fact, Victoria's police acknowledge that inappropriate coercive approaches (i.e., surveillance, monitoring, searching, and interrogation) not only jeopardize community cohesion and erode policing legitimacy, but also negatively impact intelligence gathering in counter-terrorism efforts. Pickering et al. conclude that community cohesion is a fundamental element for realizing the possibility of community policing in countering terrorism. Therefore, a substantial amount of work has to be done on "building the cultural literacy of the police, and associated available time, to improve the quality of interactions they have with members of culturally diverse communities" (p. 125).

Inquiry D: What Kinds of Issues Are Involved in Community Policing and Counter-Terrorism?

Tentative Leading Response:

Since post 9/11 and 7/7, global tensions regarding terrorism seems clear. Muslim terrorists have been identified as public enemy number one. The combined policy approach (i.e., mixed criminalization and suppression methods) is considered to be a form of quasi-paramilitary power (McCulloch, 2001). In a short period of time, both federal and local law enforcement agencies have increased the authority and powers used in their domestic jurisdictions. There is no doubt that contemporary counter-terrorism policing generates many issues and problems while attempting to counter Islamic terrorism. There are several critical issues that have to be

addressed: intelligence cooperation, human rights, counterterrorism training, and community trust.

1. Cooperative Counter-Terrorism Channels between States

In the US, state and local law enforcement not only have a partial role in homeland security, but also enforce "intelligence operations" which are "applied equally well to terrorist threats and crimes in the community" (Peterson, 2005, p. vii). A Bureau of Justice Assistance report restates the importance of community policing in the context of collecting intelligence noting that local police (e.g. patrol officers) "must be encouraged and trained to look and listen intelligently" (Peterson, 2005, p. 11) on counter-terrorism related matters. However, there are no specific discussions of how federal and state or state and local law enforcement agencies cooperate with each other and build intelligence communication channels before delegating parts of the homeland security mission to community policing in the context of counter-terrorism.

The demand for cooperation and intelligence sharing among states means that in order to have an effective counter-terrorism strategy that addresses national threats and potential terrorism risks there must be cooperation among the states and assurances that information will be passed on. One task then would be to create a centralized channel to mobilize state and local law enforcement information coordination. To some, it may seem difficult for the US to develop partnerships and cooperative networks when DHS has such a "centralized look" yet—in reality, the internal agencies still are very decentralized—not only in the collection of intelligence but also in counter-terrorism intelligence. The creation of horizontal as well as vertical pathways for the effective exchange of information is problematic and deserving of scholarly attention.

Practitioners would undoubtedly agree that without proper channels to communicate with internal agencies and well-developed cooperation among states and local authorities, intelligence would not be as effective as federal agencies' would expect and community counter-terrorism policing endeavors might be discounted. Intelligence is essential in the prevention of terrorist attacks. If organic intelligence cannot be promptly gathered and exchanged, conveyed, and analyzed among states and local law enforcement, it would be considered "dead", "expired", and "useless" because intelligence only becomes "useful operationally after it has been interpreted" (Cope, 2004, p. 201).

2. Counter-Terrorism Legislation and Human Rights

Can human rights be sacrificed under a vast umbrella of homeland security? Mainstream critics say no, but to many it already appears that it has happened in the past, and is occurring now. Some believe that the war on terrorism is different than other historical circumstances because "America is under attack". Terrorists not only threaten the ideals of democratic power but also undermine world peace. Some research shows that during times of tragedy and devastating catastrophe, people are more tolerant concerning human rights violations and more accepting of police coercive force (Deutsch, 1990; Sullivan, Piereson, & Marcus, 1982). Moreover, Rothkopf (2011) complained that the war on terrorism and contemporary counter-terrorism programs stir up a series of irrational "intelligence wars" in worldwide states and many perceive that (i.e. coercive surveillance and an overemphasis on gathering intelligence) as "a

wrong source of power". Despite the fact that the war on Islamic terror does not appear anywhere in any of the official documents, Burke and Fukuyama (2011) assert that many countries now focus their intelligence and security operations on problematic Islamist terrorism. As a result, no one seems to pay attention to human rights in the Muslim community as long as they are able to address homeland security matters.

Pickering, et al. (2008a) like many other contemporary critics, state that as a consequence, counter-terrorism programs significantly impact individual residents and families, "fuelling a process of alienation and social exclusion" for minority groups, and ultimately pushing young people to embraces and support for terrorism (p. 56-57). These policies merely inflame people's hostilities in Muslim cultural wars and cause people to experience a divided world in the context of counter-terrorism (Rothkopf, 2011).

Much of the discussion of human rights might sound cliché. How do we balance human rights and counter-terrorism policies and programs? And, how do we insure that protection and vindication of human rights is not used as an excuse or stumbling block for effective policing (Independent Commission on Policing for Northern Ireland, 1999). Defending and maintaining human rights should not conflict with counter-terrorism policing and national security. Mike Smith, Executive Director of the Counter-Terrorism Committee's Executive Directorate (CTED), asserted that "human rights and counter-terrorism need not conflict" and effective counter-terrorism and respect for human rights should be mutually exclusive (UN News Centre, 2011).

3. Counter-Terrorism Training Needs

As Deflem (2010) asserts, the mission of counter-terrorism policing has been framed within a national security ideology. Hence, local law enforcement has been delegated new tasks and must effectively assume a frontline counter-terrorism role. However, counter-terrorism strategies are different from everyday community policing (Murray, 2005). One must ask then, can we just apply counter-terrorism policing to community policing without any standardized training?

Haberfeld, et al. (2009) studied counter-terrorism responses and preparedness in a number of different countries. It was determined that those countries and their local law enforcement agencies "struggle to find effective ways to mobilize diverse communities and generate their support and elicit information to assist the agency in international crime control and counterterrorism" (p. 1). Moreover, counter-terrorism training is problematic. For instance, although Turkey focused on gathering community intelligence, the police did not have formal training with respect to how to access communities for counter terrorism information. There was no real counter-terrorism training plan in Sweden either. Although they have many communities populated by immigrants, police did not know how to reach out to these minority communities and mobilize them in the context of counter-terrorism. In Netherlands, there was no proper counter-terrorism training for the Alien Police even though "intelligence-gathering efforts at the local level" (p. 68) was emphasized.

Consequently, information about how to train police officers remains elusive. What standards of counter-terrorism policing and protocols for gathering intelligence are there? Moreover, what kind of degree and level of training should be required in order for police to respond effectively to homegrown terrorism? Does the field need to add a whole new set of counter terrorism policing tasks (e.g. including coercive force) to everyday policing, or should they only focus on training police officers how to mobilize the community and gather intelligence? Will counter-terrorism training conflict with everyday policing (Hill, 2010; Kieh, 1992)? The answers to these questions need to be explored.

Pickering, et al. (2008a) did another survey about counter-terrorism training. They used four indicators—preparedness, prevention, response and recovery—to measure the Victoria Police's perceptions about counter-terrorism training. Even though the researchers suggested that those indicators "should not necessarily be read as objective indicators as to how well trained members are in relation to counter-terrorism"(p. 100), they are good indicators in the context of different stages of counter-terrorism training. The European Union (2005) suggests similar counter-terrorism strategies to prevent, protect, pursue, and respond. At the state or federal level, training is much easier and more comprehensive because it is an original part of national security. The difficulty is in how to apply these indicators to local counter-terrorism policing. These indicators might be useful in developing full training courses or evaluating community counter-terrorism efforts.

The most important point appears to be that counter-terrorism training should at least consolidate two demands: accomplish the gathering of community intelligence pursuant to the homeland security mission and, at the same time, protect human rights. This consolidation effort must be assessed and reassessed in an ongoing process for long term police training. Otherwise, counter-terrorism policing cannot be done effectively, efficiently and legitimately.

4. Building Community Trust

In community counter-terrorism policing, no matter what model the state decides to adopt, the primary purpose is to gather community intelligence (Sloan, 2002; Spalek, 2010). If this is so, then the biggest and the most important precondition in the context of gathering community intelligence needs to be addressed—community trust.

Spalek (2010)'s study found that police officers "built implicit trust through officers spending many years gaining an in-depth understanding of the Muslim population" (p. 806). He emphasized that trust is the key element linking community counterterrorism policing and minority groups (Goldsmith, 2005). Without trust, there is no connection between local police and the minority population and efforts of counter terrorism will not succeed. Without trust, community members would possess hostile and fearful mindsets that impede community policing initiatives and it would certainly make citizens hesitant to cooperate with community police officers (Reisig & Giacomazzi, 1998).

Furthermore, Pickering et al. (2008a) assert that trust was a central concern and key factor in the social cohesion approach. Building on trust is a healthy path toward community engagement and has facilitated a more natural intelligence-gathering. Trust could help the

agency develop a more sophisticated level of policing and would "facilitate understanding between police members and minority groups, and to ensure that their difficulties are heard within large mainstream organizations such as the police"(p. 76-77), which would later lead to effective counter terrorism. Trust is a new way to help police officers "frame police legitimacy" across diverse minority communities (p. 72), and build deep cultural and religious understanding and tolerance.

We know that trust is a precondition of any counter-terrorism program in a diverse community. Murray (2005:350) states that "public attitudes to the police will also be a determinant in the success of community policing". Without trust, each time police activity is initiated, there would be criticism of abuse of authority and claims that human rights have been ignored. This would make it difficult to implement counter-terrorism strategies. On the other hand, there are still many questions to address. Specifically how can trust be built in ethnic and minority communities? Furthermore, building trust is not a one-way street. How then do police officers come to trust Muslim groups and not see them initially as suspects? After building mutual trust, would the gathering of community intelligence be secure with no more barriers? There are also concerns about whether building trust with community members would cause dual roles for police officers exercising coercive force in certain incidents and instilling a sense of safety and protection in others. To understand community counter-terrorism policing, students must dig deep enough for these answers as there are many puzzling aspects of community trust waiting to be solved.

Conclusion

This essay provided a pathway for seminar discussion topics as well as some tentative answers to help students develop a full picture of contemporary counter-terrorism policing. This strategy attempts to exceed the rather limited approaches of more traditional comparative terrorism studies. For those who are not familiar with counter-terrorism policing, simply studying state level terrorism/counter-terrorism matters would not provide the scope needed and such a narrow view would not generate enough insight into the topic.

As counter-terrorism policing has shifted part of its focus to local law enforcement, the complexity of issues involved should be addressed in seminar materials. For comparative counter-terrorism policing classes, curriculum design should not only touch on a broad range of different practices from around the world but also include community counter-terrorism policing strategy development and improvement. While new issues need to be added as they arise, this essay proposes subjects that may lead to controversial debate in seminar courses. The content should generate valuable insights that will serve the post 9/11 contemporary terrorism/counter-terrorism policing arena well.

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The Minority Report Paradigm

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Abstract

The premise of this essay is that preemptive police operations may be necessary to achieve the police mandate though such tactics are morally extremely dangerous. As such they require ethical analysis and moral justification. The purpose of this essay is to identify and discuss the ethical issues surrounding preemptive law enforcement operations. Discussion will include the historical development of reactive versus proactive policing, the moral uses of inchoate crimes, the moral pitfalls of preemptive policing, and the use of preemptive tactics in gang interdiction and counter-terrorism.

Introduction

The purpose of this essay is to discuss the rise of proactive policing in America in part as a result to late 20th century fears of terrorist activity. It is the premise of this paper that while driven by terrorism, this shift is in fact a part of the natural evolution of social institutions as the base of society shifts from industry to a post-industrial, information age, as posited by Alvin Toffler. The process of this evolution will be followed to provide context to the primary discussion, arguing that proactive policing involves a foundational change in our understanding of civil and natural law rights; that in fact, changes in policing represent a massive change in society.

Modern policing is in large part a product of the Industrial Revolution. As such, it evolved from the perceived necessities of industrial society, particularly in an urban environment. Peter Manning noted that the police mandate was based primarily on an 18th century view of natural law, human and civil rights, and evolved as interpretation of the works of Rousseau, Montesquieu, Hume, and others evolved. As part of this evolution, the understanding and defining of what constituted crime in Britain differed from continental Europe. As such, policing evolved in Britain and America as strongly reactive as compared to a more proactive European model.

In Britain, law evolved into a functionalist common law model. While British law certainly contained a classicist bias, a conflict model is not wholly incompatible with functionalism. For example, most common law crimes suggest a strongly functionalist origin as murder, rape, robbery, theft, etc. (crimes against persons and crimes against property), are universally condemned as harmful to the social contract. On the other hand, European law, emerging from Canonical law and the Corpus Juris Civilis of the late era of Ancient Rome, developed such ideas as crimes against honor and ecclesiastical crime. For reasons that remain speculative, the European idea of political crime including strict limits on free speech never developed in Britain or America. This is not to say people have not been punished in either

country for what was essentially political crime, but it was never accepted as was the case in France, Spain, and the German or Italian states. Likewise, the idea of proactive law enforcement was never as acceptable to the English or Americans as to Europeans.

As an island, Britain was always more insular than the European continent. While there was extensive intercourse between Britain and her cross the water neighbors, feudalism never developed to the extent it did in Europe and died out far more quickly. Perhaps, because of that small degree of isolation, the Angles, Saxons, and Celts of the British Isles maintained a stronger streak of independence. It may also have been a matter that these Germanic tribes were always more independent and less tolerant of authority. As a result, by 1750 law enforcement in Britain was rather primitive compared to France, for example, where the military and quasi-military units had long been used extensively to keep order. The British system was strongly decentralized as fitting for an agricultural society.

The Industrial Revolution, originating in England, created a huge demographic shift as young males left rural areas for the brighter prospects of the factories and the temptations of factory towns. The 'hue and cry' and strongly self-help based system of traditional law enforcement could not cope effectively with the ensuing crime. Large numbers of discharged soldiers following the Napoleonic Wars and the results of bad agricultural polices created serious problems of public order and crime by the mid-1820s. Widespread crime and the fear of a French-style revolution led the British to seek a better system than the loose traditional model while realizing the more military model of the continent would never be acceptable.
So, for numerous cultural and situational reasons, British policing developed along a primarily reactive model. For many of the same reasons, American policing did likewise.

There have been times in American history when there has been substantial deviation from a predominantly reactive model: the labor troubles of the past 100 years or so, the Red Summer of 1919, the Communist scare of the late 1940s-50s, the late 1960s, and more recently in the wake of 9/11. In each case there were protests. Most recently the USA PATRIOT Act and other anti-terror laws have been assailed by civil libertarians as destroying the Constitution and the American way of law. Many of these critics are notable for their insistence that the Constitution is a 'living document' needing reinterpretation by each new generation as society evolves, and our understanding of civil liberties and the role of government with it. It may be that our concept of civil liberties as interpreted by many liberals and conservatives is in need of an extensive revision. It is possible that our current ideas concerning privacy, freedom from restraint, etc., are outmoded by changing times. In other words, neither side of the argument is correct; rather, we are experiencing a paradigm shift that makes our 200 to 250 year old understanding of rights obsolete.

The Third Wave

In a series of books Alvin Toffler proposed that there have been three major paradigm shifts in human society: the Agricultural Revolution which began 6-8,000 years ago, the Industrial Revolution which began about 250 years ago, and the Information Revolution which began about 50 years ago. Each paradigm produced its own unique set of social institutions. Our current concept of civil and human rights is firmly a product of the Industrial Revolution; as

such it may very well be outmoded. This is not said with any joy. It is presented merely as fact. The philosophy of community policing, rather than representing a modern adaptation to changing times, is likely merely a nostalgic effort to hold onto a rapidly receding past. As this author argued in a previous paper, the much discussed paradox of community policing and the increased militarization of law enforcement is in fact not a conflict for the future, but rather a symptom of a paradigm shift with community policing representing an idealized version of the Industrial Age policing and the paramilitary flying squads of Britain and America the Information Age.

Policing has always been information dependent with proactive policing being for more information consuming than reactive. For most of police history, indeed for most of history, information has been a scarce commodity. This has changed; in fact the greatest challenge of the Information Revolution may be individual adaptation to a constant glut of information. As a minor example, 50 years ago television network news was uniformly 15 minutes in length with a couple cuts to commercials. We now have numerous 24-hour news channels available in several languages. The fact that much of this news is trivial, if not down-right asinine, is illustrative of the problem. With so much information available how does one identify and process the knowledge relevant to one's life?

With the available technology, the information available to law enforcement staggers the imagination. Today, much of this information is inaccessible to agencies, not for technical but legal reasons. When one considers the fact that this information, while forbidden, has the potential to save thousands of lives and or prevent millions of dollars in property loss, it should become evident that a moral quandary exists.

The Minority Report Paradigm

In a 1956 science fiction short story called *The Minority Report*, Phillip K. Dick presents an future world in which three psychics or 'pre-cogs' are used by the Washington D.C. police of 2054 to identify murderers before they commit their acts. This program results in a murder free city for six years. On the eve of this experimental program being expanded nationwide, John Anderton, head of the 'pre-crime unit', finds he is falsely accused of planning a future murder. While on the run, he learns some interesting and discomfiting facts about the pre-cogs and the pre-crime system. Unfortunately the short story does not make an in-depth examination of the morality of preemption, based on psychics or otherwise. Nor does the 2002 movie of the same title starring Tom Cruise produce deep thought. Both the book and film play with free will versus determinism, but neither takes the point to the depth of a junior level criminology class.

While the existence of pre-cogs is unlikely, the existence of sophisticated electronic surveillance is an inescapable fact. The use of such surveillance equipment cannot predict crimes, *per se*, but can certainly establish whether intent, motive, means, and opportunity exist. Although the existence of these variables does not establish whether a crime will or will not take place, they do enable the criminal justice system to engage in preemption with a probable low level of false positives. The main objection is that there will be inevitable false positives because predicting human behavior is always tricky. It becomes more so when dealing with people who for whatever reason, are not 'reasonable' in the currently accepted sense. This includes jihadists,

Klansmen, serial murderers, pedophiles, and many others we generally regard as criminal or at least dangerous. Such means of collecting criminal intelligence would also be extremely intrusive into everyone's daily life. While not criminal, most of us doubtless engage in behaviors or have habits we prefer to keep private. The high technology of preemption would open all our lives, at least in small bites, as the technology would sift through cell phone calls, emails, web surfing habits, and numerous other activities, including walking down the street and being observed in some tasteless habit while being surveilled by a CCTV camera.

In addition to making intrusion by governments and private enterprise both simple and pervasive, the information age has made the world a more dangerous place. Mass production and interchangeable parts revolutionized warfare, but its increased expense gave governments a virtual monopoly in waging war. International law more or less quickly adapted to recognize and regularize this change. Carried to its logical conclusion, the Industrial Revolution eventually made industrialized warfare obsolete. The cost in personnel and material as well as the concept of total war simply made large scale warfare impossible for most. The Information Revolution on the other hand, through communication and technology has made sustainable, low level conflict (third generation warfare) affordable and possible for small interest groups, and even individuals. Under the current legalisms surrounding warfare, attacks carried out by interest groups are in a gray zone between war and crime while individual acts, however motivated and however destructive are generally considered crimes. Just as military and political scientists speak of third generation warfare, so must criminal justicians begin to think in terms of third generation crime. And as preemption is becoming a key component to fighting third generation wars so must preemption become a key component to fighting third generation crime.

Crime itself is changing. While there will always be common murderers and thieves, information technology makes it possible to steal transnationally from the comfort of one's home or the nearest internet café. Cybercrime is just an example of the potential of the criminal use of technology. At a lower level, cell phones and email can easily be used to plan and execute common crimes. Likewise, random electronic surveillance with the intent of making preemptive arrest is perhaps the most logical weapon against such acts. As random preventive patrol was the standard of industrial age policing, so is random surveillance of electronic communication likely to become the backbone of information age policing. This will entail a substantive revision of one's right to privacy in communication. However, if the government has the power to save lives and prevent property loss, have they not an obligation to do so? Many will argue, such an obligation exist. If so, rights must be re-conceptualized just as rights were re-conceptualized during the transition from agricultural society to industrial society.

This reconceptualization need not be radical. Rather than beginning anew, we need only modify our current concepts of rights, responsibilities, and the social contract as occurred 250 years and 6-8,000 years ago. While such a reconceptualization may appear radical to many, it will occur over time, indeed, it has been occurring over the past several years although few have identified the change in these terms. Just as the term 'natural law rights' had a different meaning in Ancient Rome and late Victorian London, so it will have a different meaning to a late 21st century America.

Police Forum

CALL FOR SUBMISSIONS

The *Police Forum* is seeking law enforcement-related submissions for future editions.   Opinion pieces, essays, research notes, scholarly articles, and book reviews are all welcome. Announcements relating to calls for papers, conferences, and job vacancies are also sought. Other submission ideas will also be considered.

Please email your submissions or ideas to Jeff Bumgarner, Editor of the *Police Forum*, at bumg0004@umn.edu. Or, feel free to call Jeff directly at 218-281-8274.

Police Section Events
ACJS Annual Meeting
Dallas, Texas

Be sure to mark your calendars and attend the Police Section reception and business meeting at the ACJS Annual Meeting at the Sheraton Dallas Hotel.

The Police Section reception is scheduled for March 21st from 4:00-6:00 p.m. in Majestic 5, 37th Floor.

The Police Section general business meeting will be on March 22nd from 5:00-6:15 p.m. in Lone Star A2, 2nd Floor.

We'll see you there!

ACJS 50TH ANNUAL MEETING PRE-REGISTRATION FORM

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6. No attendee shall be a disruptive influence in panel sessions, Section meetings, or any other Annual Meeting events.

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