PKSOI PAPERS

Fostering a Police Reform Paradigm

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June 2013

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ISBN:

FOREWORD

Of all the myriad of lessons learned in recent conflicts, the importance of police forces, to counter insurgencies and maintain security, is well-recognized. The police may be civilian, military or combination of types of police. Numerous articles, studies, and books have been published about all aspects of police reform but this monograph takes a different approach. It combines the theoretical with the applied and provides practical and historical applications of police reform.

The authors have diverse experiences – Ms. Finkenbinder, a career in municipal and state policing before moving into academia; Professor Millen, a retired Army officer and PKSOI Security Sector Reform analyst, and Colonel Lowe, a senior military police officer with 23 years of experience as a teacher, staff officer and commander. Combined, they have more than sixty years of experience teaching, mentoring and reforming police.

Precisely, because of this, they understand that police reform is more than a checklist of outputs. It requires a paradigm shift from being focused on policing tasks to one that understands the rational and moral foundation of police forces and how they fit into society. Police reform needs to know the distinction between the Rule of Law and Rule by Law and how the latter can be used to perpetuate evil in the name of the state. Police reform needs a blueprint for building stabile police organizations and that blueprint is doctrine. But, none of it matters without the practical application involved in hiring the right people for the right tasks. The authors have tried to balance the philosophical, doctrinal and practical considerations

to encourage a police reform paradigm – one that is based upon human rights, yet respectful of cultural differences.

It is our pleasure to publish this foundational paper, focused on the fundamentals of police reform.

JODY L. PETERY
Colonel, U.S. Army
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ABOUT THE AUTHOR

Karen Finkenbinder spent a career in municipal and state policing before pursuing Ph.D. studies. She will soon graduate with a Ph.D. in public administration, her research focus on police organizations and police reform. She is a graduate of the United Nations Police Commander Course, the Police Officer Executive Leadership Course and many of other police courses. For many years, she taught incumbent and new police officers at police academies and continues to teach adjunct criminal justice courses at universities in Pennsylvania. Karen has her MPA from Pennsylvania State University and her Bachelor's in Criminal Justice from Missouri-Western State University.

Raymond Millen is a retired Army officer with three tours in Afghanistan, the last as a senior mentor to the Chief of Strategic Plans department in the Ministry of Defense. While on active duty, Professor Millen served as an infantry officer and foreign area officer for Western Europe. From 2001 to 2008, he was the Director of European Security Affairs at the Strategic Studies Institute. Professor Millen is currently the Security Sector Reform analyst at the Peacekeeping and Stability Operations Institute, Carlisle, PA. He is the author of numerous articles, monographs, and books on NATO, counterinsurgency, Afghanistan, and security sector reform issues.

Colonel Lowe, a senior military police officer of 24 years of experience. Colonel Lowe has five operational deployments, to include wearing the blue beret of the United Nations in Haiti (1995). He served four years as Chief, Doctrine for the US Army MP School

where he oversaw products ranging from detainee operations to law enforcement procedures. He currently serves as PKSOIs Deputy Director and associate for all police-related matters.

Fostering a Police Reform Paradigm

Karen Finkenbinder, Robert E. Lowe, and Raymond Millen

A country's police forces can be either a protector of or a predator on society. In this regard, young democracies are particularly fragile and susceptible to lapses into authoritarian regimes. Police forces can either serve as a check to an encroaching central government or as its agent of oppression. Authoritarian states are often called police states for a reason.

Regardless of their personal beliefs, individual policemen are sworn to uphold the law. This duty is just if the laws are aligned with the natural rights of man, but unjust if the laws infringe on these rights. In practice, police do not differentiate between Rule of Law and Rule by Law, so the architecture of the political system is of paramount importance for new democracies. Justice is therefore intimately tied to the political system, which is a product of the social contract of a written constitution. Accordingly, police reform must remain cognizant of the multi-ordered effects from policies, strategies, programs, and processes, which may impact negatively on the political system.

Police forces are not simply a peacetime instrument either. As recognized in Iraq and Afghanistan, albeit belatedly, police forces are essential to countering insurgencies, which traditionally are aptly called police actions. Since insurgencies start off as local movements, often in remote areas, police are often the initial responders, meaning they must possess the authority and skills to confront seditious movements which are acting to subvert the local government. This is no simple task. Insurgents are often indistinguish-

able from common criminals because the former needs money to fund their movement. A well-developed reporting system of criminal activity is imperative in order for higher echelon investigative offices can study patterns. In most cases, experienced judgment at the local level is needed since inchoate insurgent groups may operate legally at first, so alerting the authorities of potential trouble lifts the veil of secrecy that many subversive groups need for unimpeded propagation.

This study seeks to develop a police reform paradigm to guide international assistance policies and programs for new democracies. The approach of this monograph is atypical of most studies on this genre in that it discusses the philosophical, doctrinal, and practical underpinnings of police reform: 1) The Relationship between the Nation-State and Its Police Forces; 2) Reforming a Nation's Police; and 3) Practical and Historical Applications of Police Reforms. The philosophical, doctrinal, and practical aspects of police reform are like the preparation of a dish. Philosophy creates the link between sustenance and health; doctrine serves as the recipe for the preparation of ingredients in the proper amounts; and practice is in the tasting of the product. In combination, they complete the paradigm.

The philosophical background provides the rational and moral foundation of police forces and their role in society. Understanding both the need and the role of government in society establishes the rationale for law enforcement. Drawing the distinction between Rule of Law and Rule by Law underscores the potential moral contradictions of policing. That is, how it is that normal policemen can carry out evil in the name of the state. The original meaning of justice is also appropriate to apprehending the obligations of indi-

viduals and the relationship between the police and the community. Although controversial, even provocative in this era, the police cannot carry the burden alone with society eschewing its responsibilities.

The doctrinal framework is essential for a police reform paradigm. Doctrine is the architectural blueprint for building sturdy institutions. It is well recognized in military doctrine, and confirmed through a decade of war, that building policing capacity is critical to stabilization. But it is a complex process that requires a comprehensive plan, coordinated with and owned by the host nation, which considers policing requirements at all levels of government. Policing must be delivered in a way that balances security and community needs in culturally acceptable ways. Hiring the right people and training them in the right tasks can inoculate police organizations against corruption and bad practices; however, the right supervisors are needed as a booster shot.

No paradigm would be complete without practical experiences to provide the requisite feedback for adjustments. Indicators for a strong and thriving society may include a criminal justice system that is responsive to the people. Critically important in any post-conflict operation is ensuring the establishment of a criminal justice system. History, however, is replete with examples when such an emphasis on the rule of law or a criminal justice apparatus does not occur. Consequently, the long-term development of the society is seriously threatened. Promulgating lessons learned from Iraq, Afghanistan and other international examples into professional discussions and military education systems is a good, first step towards erasing past failures.

As this study will demonstrate, police reform is not a mechanical process without forethought or strategic thinking. The goal is to foster police forces which serve the needs of society rather than buttressing the power of a police state.

The Relationship between the Nation-State and its Police Forces

For the sake of query, what is the reason for police? If the citizens in a society are armed (and the vast majority of societies have armed citizens), then the principle of self-protection would seem to obviate the need for police, whose stated purpose is to serve and protect the populace. The answer is actually tied to the larger question: why does society need government?

James Madison answered the question succinctly: "If men were angels, no government would be necessary."[1] Thomas Hobbes noted more darkly that without government, society would remain a victim to continual outrages of war (which can include criminal anarchy), "where every man is enemy to every man."[2] Just as the military protects the sovereignty of the nation-state, the police protect communities from criminal, insurgent, and terrorist actors. But, who protects the citizen from the government? The assumption of a benevolent government is by no means valid, even if it began as a democracy. Madison realized this tendency, following through from his initial sentence: "If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."[3]

The Founding Fathers prudently developed a political system of checks and balances among the branches of the federal government and between the federal government and sub-national governments (enshrined in the Tenth Amendment to the Constitution), placing a higher value on personal freedoms and responsibilities than on efficient yet encroaching government.

For the police, the distinction between a democratic government and an authoritarian government may not be that apparent, particularly if a democracy has degenerated into a tyranny over time. Like the military in wartime, police forces are not likely to question openly the policies of the regime, regardless of personal views. Since government decisions which affect the police are generally in the form of laws, the difference between rule of law and rule by law is important.

The Difference between Rule of Law and Rule by Law

Before addressing the differences, it might be helpful to understand the relationship between laws and justice. Human behavior is influenced by various laws: universal law, civil law, common law (or people's law), as well as customs and traditions. There also exist the laws on both extremes of the spectrum: the ruler's law (tyranny), and anarchy (the lack of law), which will be discussed later. The Roman political philosopher, Cicero explained that the nature of law is bound by the nature of man: "law is the highest reason, inherent in nature, which enjoins what ought to be done and forbids the opposite. When that reason is fully formed and completed in the human mind, it, too, is law."[4] Universal laws are those which apply to all human beings and are defined as inalienable rights.

Immanuel Kant identified as a "universal conformity to law" an adaptation of the Golden Rule: "do unto others as you would have them do unto you."[5] John Locke epitomized classic liberal philosophy by his conceptualization of the inalienable right of property, which not only encompassed the ownership of physical property but more importantly, the inviolability of one's own person.[6] Hence, in one fell philosophical swoop, Locke placed limits on government power (i.e., slavery, unjustified imprisonment, and arbitrary executions). So at the highest levels, universal law is intimately tied to virtue and morality.

Naturally, universal law is not enough for society; it needs written laws as well. Locke placed premium value on fixed laws, legislated openly: "To this end it is that men give up all their natural power to the society which they enter into, and the community put the legislative power into such hands as they think fit, with this trust, that they shall be governed by *declared laws*, or else their peace, quiet, and property will still be at the same uncertainty, as in was in the state of nature."[7] Like Cicero, Locke linked law to reason. "The end of law is not to abolish or restrain, but to *preserve and enlarge freedom . . . where there is no law, there is no freedom*: for *liberty* is, to be free from restraint and violence from others: which cannot be, where there is no law: but freedom is not, as we are told, *a liberty for every man to do what he lists*: (for who could be free, when every other man's humor might domineer over him?) but a *liberty* to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own."[8] Madison took legislated laws a step further: "It will be of little avail

to the people that the laws are made by men of their own choice if the *laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood* [my emphasis]. . . . Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?"[9]

As societies differ from one another, so too do laws. Civil laws can be quite ancient and often associated with Continental Europe, such as Roman Law and Code Napoleon, and are codified. Civil laws are not subject to precedence during jurisprudence; rather it gives priority to doctrine. In this sense, civil laws form the basis for crafting constitutions. Alternatively, common law is generally uncodified, relying substantially on legal precedence and interpretation of the law.[10] Arthur Larson viewed law in practical terms:

In any civilized society, the law is a distillation of the experience of the race, providing guides to conduct that have been found over the centuries to enable people to live together in harmony. The average citizen does not constantly go behind each rule of law that may affect him during the day, asking whether, in the circumstances, it serves his interest to obey a particular rule at a particular time, or inquiring whether the rule itself really has any rational basis. He simply obeys the rule. Any society in which this was not true would soon disintegrate into anarchy.[11]

Customs and traditions are handed down through generations, older than civil law, and hence more enduring. They are social mores for human conduct and interaction with others. They are very powerful. For instance, if a social custom militates against betraying the trust of a family member, it is highly unlikely a family member will turn in a close relative who has broken the law. These are rule of law measures, which

ideally permit people to seek happiness through freedom without fear of others, particularly government, from encroaching on their inalienable rights. Accordingly, the national constitution embodies rule of law through checks and balances, placing a premium on individual freedom rather than efficient government.

At the extremes lie anarchy and tyranny. Anarchy reflects a breakdown in authority and disregard for the law. In Thomas Hobbes' view, this would be a return to nature, making the life of the citizen filled with "continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short."[12] A tyrannical government rules arbitrarily with unrestricted power. Often associated with a dictator (yet, the legislature, having the power to make laws and collect revenue can be just as arbitrary), who rules by decree and edict, meaning the ruler combines both the executive and legislature (or the legislature simply rubber stamps the ruler's laws) in one office. Of course, a benevolent leader, such as the enlightenment monarchies of the 18th century, may rule wisely and institute reforms, but the rule can never be equitable because of inveterate cronyism, favoritism, and patronage, on one hand, and persecution, disenfranchisement, and oppression on the other.

As Cicero noted, authoritarian regimes rule by law, making a pretense of the legal procedures and making a mockery of what is just and unjust.[13] John Adams complemented Cicero, stating "No man will contend that a nation can be free that is not governed by fixed laws. All other government than that of permanent known laws is the government of *mere will and pleasure* [my emphasis]."[14] Rule by law is best exemplified by George Orwell's Animal Farm in which rights are changed at a whim: "All Animals are Equal"

modified later to "But Some Animals are More Equal than Others." The Third Reich exemplified rule by law. The anti-Semitic purity laws and marriage laws progressed to depriving Jews of their businesses and homes—all perfectly legal. Such was the mindset, that when the *Fuehrer* opted for the Final Solution (i.e., the extermination of the Jews), the Reich Attorney General wanted it codified, much to the chagrin of and rejection by Hitler's inner circle—there could be no law with Hitler's signature. Similarly, the Soviet Union under Stalin imprisoned and exterminated millions more than Hitler's Reich, but it made sure there were show trials first. In this sense, dictatorships are the most efficient regimes, unencumbered by traditional laws, customs, or morality.

In short, rule by law is about the use of force to control society. It is a manifestation of arbitrary governance, used to promote the agenda of the regime. The signs are readily apparent. Whenever government cites the need to protect the welfare of the citizens by restricting freedoms, rule by law is in play. In contrast, rule of law strives to protect natural rights, limiting encroachments on individual freedoms. Rather than restricting freedoms, rule of law places responsibility and authority at the lowest level for people to regulate their lives without interference.

Despite the plethora of thought devoted to political philosophy, especially from the enlightenment, modern constitutional structures which devote too much effort to unbridled rights and not enough to fostering freedom through structural checks and balances. This flawed approach increases the probability of political corruption, political entrepreneurship, disenfranchisement, and anti-government unrest, eventually leading to a tyranny. All the listed utopian rights are cynically

discarded as the regime accumulates power and rules arbitrarily. At this point, the police become an instrument dedicated to the preservation of the state. As a consequence, the tempo of police activities accelerates as rule by law creates whole sectors of criminals and in turn exacerbates unrest which requires restoration of order. Authoritarian regimes expect police to uphold the law and not consider the connection of justice in law enforcement. At this point, addressing the meaning of justice is germane to the larger argument.

The Meaning of Justice

Aristotle explained that "in the state, the good aimed at is justice; and that means what is for the benefit of the whole community."[15] He defines a just person as one who obeys the law and acts fairly with others. Aristotle contended that for laws to be just, they must be a product of the legislature, as long as it seeks "the common advantage either of all the citizens or of the best of them, or of the ruling class or of on some other such basis. So in one sense we call just anything that tends to produce or conserve the happiness (and the constituents of the happiness) of a political association."[16] Aristotle also mused that the law must apply equally among peers.[17]

So, fundamentally, justice and injustice are antipodes of individual ethical conduct and bound to the common good of the community. If everyone behaved in a manner which brooked no harm to others, then few laws would be necessary. In the philosophical sense, justice is the citizen's moral obligation to the community, and a just society expects conformity. In this sense, policing should not be confined to the mechanical process of enforcing the law. Because of their

special powers within the community, police should exemplify model citizenship and exhort the populace to use the Golden Rule as their moral compass. Correspondingly, police are obliged to provide feedback to local government officials which laws are counterproductive, unenforceable, and repressive. Certainly, this duty sounds a bit utopian—the police have to deal with some pretty evil criminals—but all the same, they need to be careful not become jaded by the human refuse, transferring their disgust to citizens who commit minor infractions. In this sense, the Golden Rule must apply to the police as well.

The Old West Allegory

It is a complete conundrum why police reform receives so little attention and resources in security sector. Whether as part of a DDR (disarmament, demobilization, and reintegration) program or counterinsurgency, less attention is paid to police forces, especially community police, than to military reform and the "hearts and mind" nostrum. The uncritical zeal in which the defense community embraces some counterinsurgency practices suggests policy officials lack a strong sense of history. To highlight the futility of current practices, an allegory of the Wild West should be instructive.

An Arizona town of several hundred frontier people in 1870 is plagued by lawlessness. Indian bands occasionally raid outlying farms, disrupting the marketing of agricultural and dairy products to town. Small ranches struggle as a result of cattle rustling. The local cattle baron fares much better, with enough capital to hire cowpokes and security. The baron is not an evil man per se, but he does protect his interests.

Consequently, his influence on the mayor and the town council is pronounced. Tragically, a couple of gunslingers got into an altercation at the saloon and killed the sheriff when he tried to intercede. Absent a sheriff, a sense of fear and foreboding enveloped the town. Without a sheriff to organize and deputize citizens for self-defense, everyone felt isolated and took up no collective defense against threats. Vagabonds take advantage of the security vacuum and often rob the bank, stores, and even citizens at gunpoint. While the cattle baron is sympathetic, he cannot protect the town or convince anyone to become sheriff. More alarming, he learns the railroad is reconsidering extending a branch to the town, so he contacts the governor for immediate assistance.

Upon learning of the town's plight, the governor promptly contacts the federal government since this problem seems beyond his power. Washington D.C. promptly dispatches the nearest cavalry unit from Fort Apache two hundred miles away. Upon arrival, the cavalry commander is overwhelmed by the various problems afflicting the town. Frankly, he knows little about law and order and cannot very well remain in the area for an extended time. So, he does what he knows best—a military sweep of the area. Serendipitously, the troopers discover some wanted train robbers, who have found refuge at a ranch. Taking prompt action, they kill the robbers, but unfortunately destroy the ranch in the process, killing several family members and ranch hands in the process. Nevertheless, the cavalry reports to the War Department that the town is secure along with all the other towns in its area of responsibility.

More auspiciously, a new federal program, endorsed by the governor, results in the dispatch of

federal assistance teams to the town. One team gives tips on farming and husbandry; another team digs a well and builds a school house; another team collects excess weapons lest they fall into the wrong hands; lastly, the governor visits and pays money to victims of both depredations and the military response. The resulting reports to the Washington D.C. detail the assistance rendered, the gratitude of the town, and how these programs were taming the West. A brief mention of the missing sheriff prompts Washington to create a force of federal marshals to institute law and order over all towns throughout the West. Factoring in congressional funding for training facilities, recruitment, equipment, and trainers, the program should make real headway by 1880. In the interim, the farmers fled, the ranchers went to more secure grazing areas, and the town folk sought out new communities. All that was left was a ghost town.

Obviously, the central problem of law and order remained unresolved. What the town needed was a sheriff to organize and deputize the armed citizenry for defense. One of the most famous incidents took place in Northfield, Minnesota on 7 September 1876 when the James-Younger gang tried to rob a bank. Both law enforcement and the townspeople responded. While two townspeople died, the robbery failed, resulting in the killing of two gang members as well as the wounding of two Younger brothers. All except Jesse and Frank James were killed or captured by a posse and sent to prison.[18] The taming of the Old West was admittedly a slow process, but the essential components of governance took hold in the towns without assistance from the federal government. Towns hired law men, who were often on both sides of the law from time to time, to protect the community. They

kept tabs on strangers entering their town, ensuring they behaved. For those who did not, they went to jail. They formed posses to pursue criminals. They brought captured criminals to territory judges. They were paid an adequate salary along with room and board. What motivated them was a sublime sense of duty, a peaceful community, and perhaps a family. Neither the U.S. Army nor the federal government tamed the Wild West—local communities did.

Bolstering the Police through Burden-Sharing

There exists an inverse relationship between the promotion of self-interest and the level of government involvement. In other words, the higher the level of government, the less competent and equitable it is in governing the affairs of the individual or family. This is not a novel concept; rather it is an ancient principle called subsidiarity. "This tenet," according to Father David Bosnich, "holds that nothing should be done by a larger and more complex organization which can be done as well by a smaller and simpler organization. . . . This principle is a bulwark of limited government and personal freedom."[19] For democracies, subsidiarity is imperative as Bosnich underscores: "True democracy is a product of local institutions and self-reliance. Consolidation is the weapon of tyranny, but the friend of liberty is particularism."[20]

Subsidiarity is enshrined in the U.S. Constitution by the 10th Amendment: "the powers not delegated to the Unites States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In his explanation of intent, James Madison wrote:

> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. . . . *The power reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State* [author's emphasis].[21]

In essence, not only did the Founding Fathers design the U.S. political system to protect the rights of sub-national governments and individuals, they also empowered them to assume responsibility for their preservation. Conjoined with the 2d Amendment, the right to bear arms, the people are legitimately recognized as the first line of defense against home invasion and as a second line of defense against threats to the community.[22] Under this system, the populace does not expect the police to provide complete security, nor does it blame the police when attacks occur. For their part, the police do not become exhausted trying to prevent crime—an impossible task—while at the same time trying to hunt perpetrators. An armed populace and organized police force are the best deterrent to community threats.

In terms of governance, separation of powers between the central government and sub-governments as well as avoiding the traps of statism, diminish significantly political corruption and political entrepreneurialism, which the populace recognizes immediately as injustice. If the government wishes to retain legitimacy and a law-abiding society, it needs to adopt political structures which allow self-policing.

These are important considerations when conducting police reform in inchoate democracies. As a practical and philosophical matter, police reform should

not attempt to inject national police forces in local communities. Training enough professional national police for all local communities takes years, and the local populace will likely mistrust police which do not originate from their community. Similarly, DDR should not fixate on disarming the populace in the zeal to disband militias. Doing so only creates a security vacuum, which criminals, terrorists, and insurgents will exploit. The recruitment and immediate employment of local police should be the responsibility of the local authorities. When school positions become available, the sheriff, and later his subordinates, receives professional training.

There will always exist some tension between Law & Order and inalienable rights. For newly trained police, an understanding of rule of law, justice, and the Golden Rule will mitigate this tension.

Reforming a Nation's Police

Police Reform: In Theory

It is well recognized in military doctrine that building policing capacity is critical to stabilization.

The presence of uniformed, international civil police in a community can increase the sense of personal security of local citizens who would be intimidated by or opposed to the presence of armed, foreign troops in their community.[23]

Military doctrine also recognizes the integral role that civilian police play in success; however, before the transition from the military to civilians, it is quite possible that the military will train and advise host-nation police forces.[24] But, the military is reluctant to engage in law enforcement.[25]

Police reform is a multi-layered endeavor. Police reform efforts in Afghanistan exemplify what may occur when police reform is conducted at one level, laterally, and not at all levels, vertically. There are types of policing one must consider in creating a police reform package. But within each "type" of police organization, exists a method of delivery. This method of delivery is often determined by the security situation and may be different at each level of policing. Delivery of services may look vastly different in Tirana than in Kabul. And it may look vastly different in Kabul than it does in a remote village in Nuristan province. For as much as Western providers of police reform efforts demand community policing, it is especially difficult to consider it in a non-permissive security environment, in a failed or fragile state. There is a constant tension between types of police, methods of delivering services, and the security environment – all elemental considerations in security sector reform.

A Comprehensive Plan

As logically happens in a post conflict situation, immediate attention is paid to the national level of police. It is a "top-down" approach. However, as observed in Iraq and Afghanistan, a failure to provide a sufficient police-like capacity to reinforce security at the local level, can allow the bad guys to exploit weaknesses.[26] Reforming the police requires a comprehensive approach to the challenges and that usually means a "top-down" and "bottom-up" approach. Dubik refers to this as the "police enterprise." But more importantly, is the understanding that the approach must be comprehensive and the Host Nation has ownership.[27, 28] As we know from recent conflicts,

the post-conflict environment brings in a plethora of international actors offering assistance. Most offer their services in specific areas of competency but this often leads to "duplication of efforts and … contributes to a piecemeal approach to police reforms."[29] Sweden has extensive experience in police reform through efforts with the UN, OSCE, and the EU. In their "Master Plan for Developing a Modern Police Force," the author, Senior Superintendent Dan Peterson, repeatedly emphasizes Host Nation ownership. Peterson recommends a three-phase process:

- Phase I – Is focused on confidence building with the Host Nation's leadership responsible for the police (usually the Minister of Interior). This includes explaining the benefits of developing a Master Plan for police reform. This is the most exhausting phase but is essential as the Host Nation must understand the necessity to have a comprehensive roadmap.
- Phase II – Organizes a workshop composed of key stakeholders involved with the police (relevant ministries, central, regional, local levels, prosecutors, judiciary, civil society). The purpose of this workshop is to create a "shared understanding of the problems and a shared agreement on the objectives and strategies to be pursued."[30] It is at this stage that international organizations choose which subjects of the Road Map to support.
- Phase III – focuses on the Implementation of the Host Nation Plan. This includes a detailed action plan, a high-level Steering Committee to keep the plan on track and ensure it follows international standards and values. The

> Road Map is a "living document" that should be changed as needed – but any changes are driven by the Host Nation. This Committee is chaired by the Ministry of the Interior and the participants include the international organizations.

The development of the Comprehensive Plan needs to determine *what type of police are needed and where*. As Dubik noted, initially, the goal for the police in Iraq and Afghanistan seemed simple – "develop democratic policing,"[31] but it was far from simple. As has been noted by many authors, initial efforts, particularly in Afghanistan, were focused on outputs – train x amount of police by x date. By failing to anticipate what type of police were needed and where – untrained and undertrained "local Afghan and Iraqi police were targeted by insurgents and killed at in numbers that exceeded both nations' armies."[32]

Because of experiences in the Balkans, Iraq, and Afghanistan, the U.S. and its partners in police reform now recognize three "types" of police that must be considered.

Types of Police

National Police

It is always interesting to discuss the idea of a national police force from a U.S. perspective, because the U.S. does not have one. American history does not bode well for a national police force – the fear of centralized authority – means that Americans tend to support their local, and sometimes state[33], police, not any federal force.

> "Because of the U.S. Constitution, policing is conducted through a decentralized network of approximately 18,000 different agencies that enforce criminal laws in accordance with their respective jurisdiction and mission – local, state, federal or tribal." [34]

Some of the federal/national agencies, such as the Federal Bureau of Investigation (FBI); Drug Enforcement Administration (DEA); Bureau of Alcohol Tobacco, Firearms and Explosives (ATF), enforce federal laws which tend to have more stringent consequences than state laws (which are usually enforced by local police). There are about 65 federal agencies whose agents enforce laws. As a rule, they do not regularly engage in routine police service activities such as crime prevention, responding to calls for assistance and patrol. Rather, they specialize in areas such as terrorism, organized crime, trafficking, financial crimes, and controlling borders.

This makes for a sometimes difficult relationship between the levels of police agencies in the U.S. As a rule, federal police do not work in community settings; thus, do not have experience with community dynamics and building legitimacy among disenfranchised groups. Therefore, in the U.S., federal police agents are probably not well-suited to training, advising, or mentoring host nation police that will be engaged in general policing. Conversely, they are well-suited to assisting specialized host-nation police agencies such as border police, criminal police, and the like.

To make U.S. policing even more complex, each U.S. state also has a state police. The models of state police are equally complex. Though they may have state-wide jurisdiction, they are usually not the lead police agency. In fact, local sensitivities often keep

them out of all but the most serious incidents. In some states, they have bifurcated agencies. In South Carolina, the state police are divided into two separate agencies, the South Carolina Law Enforcement Division (SLED) which investigates crime, and the South Carolina Highway Patrol (which conducts traffic enforcement). A different model exists in Pennsylvania, in which the State Police conduct both criminal, traffic, and local policing. Many rural municipalities do not have their own police agencies, thus, Pennsylvania State Police troopers must provide general policing. Interestingly, the New York State Police were used as the model for the Haitian National Police. The New York State Police enforce state laws, protect a border (land and maritime), protect large centers of population and protect rural areas. The developers of the Haiti Plan thought the New York State Police possess all the competencies that are needed in Haiti.[35]

Conversely, most countries do have a national police system. Sometimes they work only at the national level; but, in many cases, they work at the local level. In some countries they are called "State Police," in other countries they are called "National Police" and are often placed under the Ministry of Interior or Ministry of Justice. *Generally, they are the highest administrative, technical, and operational authority and focus on organized crime, public security, border issues, and police training. They are often considered the lead law enforcement agency and work with state, territory, and local police.*[36] But, all national police agencies are not unified, meaning police powers are conferred to one agency, such as in New Zealand or Nicaragua. For example, Germany has a Federal police agency (the Bundespolizei, BPOL) which falls under the Ministry of Interior; however, ordinary police forces are under individual German

states. Though the BPOL conduct border security, protect federal buildings, provide security at airports and railways, and can conduct their own criminal investigations, generally, they refer criminal cases to the state police.[37]

National police can have jurisdiction at the state, province, territory, county, or municipal level. But the reverse is not often true. As a rule, a city police officer in one city does not have jurisdiction to enforce laws in another city. There are exceptions under emergency declarations and mutual aid. Some of the national police agencies have developed deployment capacity help develop or restore rule of law in other countries. They may do this as a paramilitary organization, discussed later, or not. Australia is well-known for its International Development Group (IDG) which deploys the Australian Federal Police (AFP) to assist other countries. Similarly, Italy, France, Sweden, Norway, Finland, Germany, and the United Kingdom, all deploy police advisors, to assist in police reform. And it should be noted, that in the UN context, regional organizations, such as the African Union, deploy CIVPOL and Formed Police Units. In the same context, there are many police contributing countries, such as Jordan, that deploy CIVPOL and Formed Police Units (FPUs).

Creating a National Police Force is not just about numbers.[38] It also means:

> Creating local-to-local national institutions and support systems; planning, training, education, leader selection and development, administrative, logistics, acquisition, facility construction and maintenance, resource management, and internal affairs. Police are only part of a nation's law enforcement structure; they must fit into the confinement and judicial systems.[39]

Local Police

As noted above, local police can be national police working locally; however, in this case, local police are those that only have jurisdiction in their municipality (village, township, city, etc.). As learned well in Iraq, Afghanistan and, to some extent, in the Balkans, "local police are not trained, armed, equipped or organized to defeat insurgent attacks…secure conditions must exist before local police can do their job."[40] Local police are the face of the existing government. They are the "most visible agents of government authority and power."[41] They are closest to the people. It is likely, that in the past, the police were agents of a government that was decidedly undemocratic. Therefore, the local police, more than any group, have an uphill battle to create legitimacy and trust between them and the population.

A recent study of Romanian and Bulgarian police found that, despite police reform efforts, police-community relations were still characterized by distrust.[42] When looking at historical factors, the authors observed that during communist times, "the main task of the police was to sustain the political system and protect it."[43] Furthermore, "routine police work, such as crime prevention, was secondary to the task of maintaining the security of the state."[44] Police reform has been an ongoing for more than thirty years. Likewise, in some areas of the United States, the police have a history of maltreatment toward minorities. Though much of U.S. policing has been reformed and can be considered professional, there is a legacy of distrust between the police and minority groups. Such

histories make community-level policing all the more difficult.

The typical police mission statement goes something like, "Our agency enforces the law, protects our people and their property and preserves order." And, they do try to do that. But what is not often in the mission statement are the other "calls for service" that are not necessarily police jobs but there simply is not anyone else in the community available to do them. It may be a landlord-tenant dispute, a dispute over property, a child that is out of control, or a myriad of other "social" issues in which someone needs to step in to protect the peace of the community. The local police may be the only ones that have the capability and willingness to help.

Paramilitary (Hybrid)

Well cited reports and books have concluded that a paramilitary force is essential to police reform.[45] Such forces are quasi-military. They can deploy rapidly and with greater force than the civil police but also trained to use civilian use of force standard, the minimum force necessary.[46] The term "constabulary" sometimes has negative connotations, as "they are found in democratic and authoritarian countries"[47] but in general, they are recognized as a force that is "organized along military lines, provides basic law enforcement and safety, in an un-stabilized environment."[48] And though the United States does not have such a standing force, it has been recommended. A RAND report recommends a Stability Police Force (SPF) that "engages in a range of tasks such as crowd and riot control, special weapons and tactics, and investigations of organized criminal groups."[49] The re-

port compares it to the Italian Carabinieri and French Gendarmerie.

Perito found that the U.S. has used a constabulary, in post-conflict environments, within and without the U.S. From the Texas Rangers to Cuba (1898), Panama (1904), Nicaragua (1912), Haiti (1915), and Dominican Republic (1916) – all were U.S. created constabularies.[50] After World War II, the U.S. created a constabulary of the best volunteers to help liaison with the German Police and the U.S. Office of Military Government. The school was rigorous and though they constantly had personnel shortages, they had notable successes in countering black marketing, civil disorder and crime. They operated from 1946-1950. Japan had a different experience. At the end of 1948, all remaining U.S. military forces in Japan were reorganized as a constabulary and assigned occupation duties. They performed these duties until the end of the occupation which seriously affected their combat readiness. As the North Koreans marched toward Pusan, an element of the 24th Infantry Division, Task Force Smith, was sent to slow the advance. After the post WWII experience, military commanders vowed never to degrade combat readiness by converting soldiers for other purposes, a legacy still felt today as military commanders resist peace operations.[51]

The utility of paramilitary-like forces has also been recognized by the United Nations. The United Nations offers CIVPOL, police advisors and mentors, for UN missions. But as in other post-conflict environments, when the security situation is tenuous, the Host Nation police and their UN advisors are ill-equipped to hand those situations and the military seems to be overkill. Thus, were born the Formed Police Units (FPUs). FPUs are designed to deploy as units, not in-

dividuals, and can perform tasks such as riot control, security for food distribution, and other such tasks. They are quasi-military and deploy from one country/region. Before deployment, they train together, and arrive as a more cohesive group. There have been all female FPUs deployed to work in Internally Displaced Persons (IDP) camps allowing a measure of comfort and safety for displaced women – not often felt as UN military and CIVPOL sometimes abuse local women. These all-female units are better suited than males to work with women in areas where sexual assault was been used as a weapon of war or religious codes make it unacceptable for women to have contact with unrelated men.

The French Gendarmerie is a national police force that reports to the French Minister of Defense. The Gendarmerie has over 60,000 personnel and is "responsible for law enforcement in towns with fewer than 10,000 inhabitants and in rural areas and for fulfilling the duties of a military police."[52] Each member must have completed military service and their recruitment standards are strenuous. Military officers are often recruited as Gendarmerie officers. "In peacetime, most of what they do is routine domestic policing; however, they have a deployment capability and often provide bilateral police assistance in developing countries."[53] They work cooperatively with other like-forces such as the Italian Carabinieri, the Spanish Guardia Civil, and the Portuguese Republic National Guard.[54] Gendarmeria Nacional Argentina functions as an internal quasi-military force but is well known for its participation in international peace operations.[55]

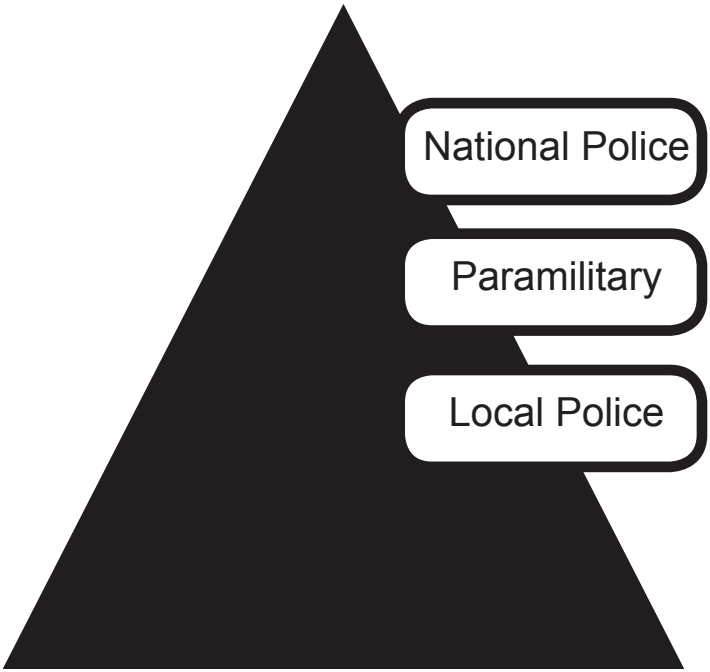

Figure 1 Types of Policing

Police and Discretion

International police reform often calls for community policing; however, a broader conversation must occur before deciding on a method of delivery – and that is the role of *discretion i*n policing. Policing requires officers that use good judgment and assess each situation. Davis (1969) defined discretion as being "free to make choices."[56] Discretion is necessary because the nature of policing is filled with uncertainty and inefficiency. Policing is unique in that the employees at the bottom often have more discretion than

those at the top (Manning).[57] A wise officer learns that it is often better to ignore some behaviors and focus on others because an officer's purpose should be to inspire *voluntary compliance* with the law. This is commonly referred to as enforcing the *spirit of the law*, as opposed to the *letter of the law.* When citizens routinely ignore a law, then law makers must question whether the law is in fact rationale and serves a legitimate purpose. Community policing gives police officers more discretion to serve their communities.

Interestingly, when police discretion was first "discovered" in a study commissioned by the American Bar Association, police administrators called for its elimination. They viewed discretion as the first step toward corruption. Eventually, as community policing developed, it became apparent that discretion can be used positively and its judicious and wise use should be encouraged. Thus, the method of delivering police services (the policing model) is related to the nature of control of discretion. Police must be able to use judgment; adapt rules to local circumstances; make virtuous choices; and be accountable. There are professional, community, legal and moral norms that should bound discretion. [58] Within the past twenty years, police have seen their ability to use discretion limited in some areas, often limited by case law. For example, in the United States, in *Thurman v. City of Torrington*,[59] police were given clear notice that failing to arrest domestic abusers is unacceptable. Subsequent law and policy now mandates arrest in most states. Natural law theory purports that discretion enters as the law runs out.[60] Thus, it is necessary that officers be selected, vetted, educated and trained so they have the requisite foundation to use discretion.

Democratic Policing

Anglo-American countries (U.S., UK, Australia, Canada, and New Zealand) have a legacy from Sir Robert Peel, that of a "visible, reactive, bureaucratically organized means of state-based resolution of conflict with minimal force."[61] David Bayley noted[62] that one of the most important contributions made by police is to maintain stability; thus, allowing participation in political life. This philosophy has carried over into those fragile areas supported by countries influenced by Peel. This concept of democratic policing is a reflection of those countries that conduct police reform. During the 1990's UNCIVPOL accepted that police reform and reconstruction must be democratic.[63] It was first implemented in Bosnia-Herzegovina in 1996.[64]

The United Nations has since codified the principles as:[65]

- Consent and Cooperation
- Impartiality and Objectivity
- Minimum Use of Force
- Clear and Achievable Mandate Legitimacy
- Continuous and Active Support of the Security Council and Contribution Countries
- Legitimacy
- Unity of Effort and Command
- Transparency
- Mobility and Adaptability

The UN is not the only international organization to engage in police reform. The Organization for Security and Cooperation in Europe (OSCE), European Union (EU), African Union (AU), and others, capable of conducting police reform efforts, have essentially

agreed to principles that support international human rights standards.[66] What separates reform efforts may be the method of delivery, or otherwise known as the policing model. Democratic policing can be encouraged, regardless of which policing model is subscribed to. Democratic policing is not synonymous with community policing.

Methods of Delivery (Models)
Professional

As Western policing evolved from the night watchman and a politicized, often corrupt institution, it was replaced by a model centered upon discipline and a hierarchical structure that often used military ranks. The bureaucratic/professional model stressed Weberian ideas of "autonomy, efficiency, and internal accountability through command systems".[67] It is sometimes called the traditional model. This model focused on improving policing, rationally and scientifically, through reform methods that emphasized improved recruitment and training, better supervision, hierarchical and structured command and control, efficient chains of command, and increased usage of technology. It aligned with the philosophy of chiefs of police like William Parker, Los Angeles, who used military language such as that used to describe British infantrymen to describe police officers. Instead of the "thin red line" - police officers were the "thin blue line" and arrayed against "forces of evil."[68] Chiefs like Parker pushed professional policing.[69]

Studies of so-called "professionalized police departments" indicate that traditional negative functions such as coercive law enforcement and order maintenance are predominant in the role perceptions of most

officers.[70] The bureaucratic/professional model grew parallel to a technological movement as well, in which radios, automobiles, criminal investigation methods, and other advances were developed. Goldstein noted that the bureaucratic model is "essentially contradictory to some basic values in American society and argued that the police by the very nature of their functions are an anomaly in free society."[71]

By the 1970's, the bureaucratic model was in disfavor for many reasons. First, because research into police practices questioned its usefulness; secondly, because the insistence that police were professional and treated people accordingly was overwhelmingly discredited in the research; and lastly, because there was a perception of mass disorder and rising crime.[72] In 1968, President Johnson's Commission on Law Enforcement and the Administration of Justice recommended that police departments improve their relationships with minority communities, and those same diverse communities began to demand more from their public organizations and increasingly wanted influence and input into services.

In the 1990s, a movement was waged in public service to become more customer-oriented and use "best practices" derived from business models.[73] Similarly, there was a desire to identify and address the underlying problems contributing toward crime and public disorder and the research being conducted at the time was beginning to follow suit.[74] This movement was given a major impetus by federal funding made available in the 1990's with a clear goal to change policing from a reactive to a proactive strategy.[75]

Community Policing

In the early 1980's, during the first Executive Session on Policing (Harvard Kennedy School), Professors Mark H. Moore and George Kelling presented a paper in which they traced the evolution of policing strategies. Then Attorney General Edwin Meese was a participant and engaged in a discussion with the professors that is reflected in their recent paper, "Toward a New Professionalism in Policing". They presented the political and professional model and proposed a new model, one in which they described "problem-solving and a community strategy."[76] The Attorney General thought a better label would be "strategic policing" and proposed that "community policing" is only one part of a new model. Professor Moore agreed with the Attorney General but observed that the strategic and problem solving aspects of this "new model" would naturally evolve; however, the police would have the most difficulty in building community partnerships; therefore, they should give prominence to the most difficult aspect of the new model - community policing.

Community policing has been implemented in a multitude of ways but, in spite of its loosely defined character, it has been widely accepted by police and politicians, nationally and internationally.[77] As noted in Zhao's work, many scholars believe that the community policing model (often referred to as COP) is very different from the bureaucratic model[78] and is often characterized as an open-systems model.[79] Community policing is, at its heart, a proactive model of policing with two key components - community partnerships and problem solving.[80] It is an all-encompassing

agency philosophy and management approach that "promotes proactive partnerships and community engagement to address the causes of crime and disorder, the fear of crime and disorder, and other community issues."[81]

The basic elements of community policing include: community input when determining community needs, flattened organizational hierarchy so that response is determined at a level close to the community, assistance and response by agencies other than the police if necessary, and fixing the underlying societal disorder problems through problem-solving.[82] Policing agencies tend to be structured for emergency response; a good fit with the hierarchical military model, yet community policing calls for a more decentralized structure.[83] In reality, very little has changed in the organizational structure of police agencies regardless of what model they profess to follow. Though officers may be given more discretion to solve problems - agencies are still hierarchical, rule-bound, and decidedly ''militaristic'' in their organizational and rank structures.

Essentially, there are two overarching methods (models/frameworks) of delivering police services. One, the professional/bureaucratic method is focused on security and suppression of crime. The other, community policing, is more concerned with community development and inoculating communities against crime. Though they may be called other things, and there are many variations and shades of each model, the underlying philosophy is the same – security versus community development. And herein lays a major problem when working on police reform – the security situation very much affects which method of delivery is even possible. Though police organiza-

tions assisting in reform efforts, propose that community policing is the way to go, it may not be possible, at least to meet the expectations of donor countries and organizations.

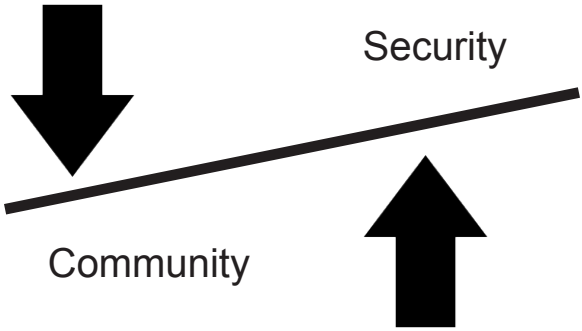

Figure 2: The Policing Model is Determined by Balancing Security and Community Needs

Personnel

As noted early, effective democratic policing requires that officers be selected, vetted, educated and trained so they have the requisite foundation to use discretion. In the past, corruption has brought such issues to the fore. The Knapp Commission[84], which investigated corruption in the NYPD, characterized corrupt officers as *meat-eaters* (those aggressively misusing their police powers for personal gain) and *grass-eaters* (those who accepted the benefits that came to them). As the police are the most visible government presence, corrupt police are not seen as legitimate actors and adversely affect acceptance of the host nation government, at all levels. Corruption also affects those

organizations attempting to reform police because the public cannot believe the advisors are not part of the problem. Similarly, ineptitude has a similar effect. At some point, inept officers make citizens decide it is not worth calling them and they take matters into their own hands.

Corruption is nothing new. Since Sir Robert Peel began to innovate Western policing in the nineteenth century, controlling corruption among the police has been an issue. Sherman found that corruption scandals are "cyclical and regular."[85] U.S. policing is replete with them. There are many solutions – some have argued that in a bureaucratic, punishment-oriented agency, officers have to work around the formalized system to get things done.[86] Proponents of community policing often tout community involvement in hiring, discipline and work efforts as a method to discourage corruption. In the past, ineptitude was not necessarily a dire problem. This is no longer true as current police practices require a well-rounded officer capable of using tools, technology and able to communicate with diverse constituents. Regardless, if one had to choose between a corrupt and an inept officer, the latter may be more desirable. The public often has a higher tolerance for the honest, but clueless, government official.

There are some things that seem to effect corruption but do not prevent it completely. Most of these have come to light, in the U.S., through an adversarial civil justice system in which attorneys sue police agencies and attempt to hold them responsible for things they should have known about had they conducted a reasonable background investigation. Adequate judicial oversight in a developing nation, is probably not going to be available, making the police mentoring and advising role even more crucial.

Selection

If an agency hires a police officer that it should have known had a history of theft, and then the officer does it on the job, this could be negligent hiring. Failing to have employees undergo psychological or physical examinations, failing to check prior employment, and similar lapses, may all be considered negligent hiring. Advocates of community policing often demand that police departments hire those that more accurately reflect the community, in racial composition. They will argue that officers from the community will be less likely to target their community. Though this has not been proven, it is true that women officers, proportionally, tend to engage in corrupt activities, less often than men and they usually test higher on the written and oral portions of entrance and promotion examinations. The National Center for Women and Police "promotes increasing the numbers of women at all ranks of law enforcement as a strategy to improve police response to violence against women, reduce police brutality and excessive force, and strengthen community policing reforms."[87] Similarly, women have been found to be more caring, less likely to judge others, more relationship-oriented, and faster at picking up deception.[88]

In police reform, the lack of women officers is often mentioned as a failure. Women police advisors and mentors (preferably called partners) are essential to connect with approximately half of the affected host nation population. But when international contractors require police advisors to pass fitness standards that do not measure "the essential physical tasks"[89] of a position, older women and male officers, precisely the demographic best suited to mentoring, advising,

and partnering with host nation police, are disproportionately affected. DynCorp, one of the contracting agencies providing police mentors and advisors in Iraq, instituted physical fitness requirements more stringent than most municipal agency SWAT teams in the United States. Such standards preclude some of the best mentors from deployment.

Ideally, police officers should be able to read, write, and possess adequate intellect. Policing supports the judicial system and the latter cannot perform without adequate reporting from the police; however, of more import, seems to be the ability to use judicious discretion and that is a hard skill to test. Mentors and advisors are best able to see this ability in field situations which is why most Western policing requires some sort of field training officer program.

Training

Training is perhaps the most common method of countering corruption, and abuse as well as enhancing performance. However, in U.S. policing, with its large numbers of police agencies and police academies, training standards vary widely in depth, breadth, length, and efficacy. Courts have had some success in holding police agencies for negligent hiring and negligent training after gross miscarriages of justice. Events, such as the one involving of Abner Louima, who was arrested outside a Brooklyn nightclub, beaten and sexually assaulted with a toilet plunger, seem to occur on a regular basis. Recently, in Camden, New Jersey, a police sergeant was sentenced in a federal corruption case for stealing drug money. Much more frequent are human errors such as failure to follow a policy, neglecting to gather evidence, misapplying a law, and

the like. The days of hiring the biggest and brawniest man are gone – police officers need adequate intellect to be part time lawyers, psychologists, and medical doctors.[90] Internationally, corruption scandals involving police, in what are considered developed and professional agencies, also routinely erupt. Training alone has not proven to prevent corruption. Perhaps more relevant is the decision on what to train the police for. This is when the Comprehensive Plan, directed by the Host Nation, is most important. The Comprehensive Plan should address what police are needed for what functions. This should drive the training requirements. Training for community policing efforts is much more intensive than security-focused training. The military may be able to conduct the latter but the former is best done by police who understand building communities. This may include well-trained military police. All police training require a basic set of skills, as much of it is technical in nature (such as weapons qualification, techniques of arrest, etc.) All police training should instill an appreciation for the rule of law – but community policing requires much more nuanced, development-focused competencies. In addition to the police academy, a field training officer (FTO) program is ideal. An FTO (mentor, advisor) can watch the recruit in action and help him/her make adjustments.

Supervision

Repeatedly, in the most recent situations, some have argued that corruption is just part of the culture. But as resistant as police culture is to change, it can be changed. Discretion is a hallmark of policing – officers have a great deal of leeway in choosing a par-

ticular response – however, supervisors are necessary to ensure a code of silence, discrimination, and other unwanted behaviors do not take root in an agency. Hiring and training can help inoculate an organization against corruption and bad practices – supervision is the "booster shot."

Practical and Historical Applications of Police Reforms

British Reform Efforts in Northern Ireland

Though embroiled in a counter-insurgency fight, the British realized the use of military forces alone to reform a society may often fail. Relying on predominantly military units and stern detention policies in Northern Ireland, the British in the late 1960s, for example, quickly realized that sole use of military forces were ineffective in controlling the level of violence and implementing any reasonable reform measures. After frustratingly operating against an elusive foe, the relaxing of judicial procedures, increased discipline amongst military units and a transition from military to police lead for operations eventually paved the way to success.[91] Consequently, what the British effort in Northern Ireland should tell us is that enablers who can help reform a society often reside in other sectors such as the police and the judicial systems.

The Purpose and Causation of Police Reforms

Adjustments, flexibility and adaptation to ulterior methods of police reform take time and is often well beyond simply putting individuals out on the streets or attending rudimentary police training. An initial step

should include analysis of the relationship between the population and the police force. Where is the level of trust? What is the level of confidence towards the police in performing their daily duties? Additional examination and adjustments could include merit-based criteria for promotions, professional police training, training on ethnic, gender and religious topics, and an overall restructuring of the institution as a whole.[92] Such reforms often must include a whole of government approach, detailed synchronization across the interagency, and inclusion of international partners in the overall police reform effort. When reforms occur in austere environments or in the middle of a conflict noted counter-insurgency expert, David Kilcullen, highlighted the critical role police have in restoring normalcy to such an environment. In such areas as police intelligence, informant networks, undercover officers, and joint police-military intelligence centers, the police have an enormous role in turning the tide against an insurgency. Mr. Kilcullen emphasized that police work without the interconnections and links to the judicial and prison systems is nearly futile.[93]

Rule of Law Reform in the Middle East

Emerging from the shadows of colonial powers, Middle Eastern countries struggled to shed off the colonial systems and establish their own identity, especially when it came to rule of law. In *Promoting the Rule of Law Abroad*, Thomas Carothers argued three main impacts on foreign, colonial powers with respect to the rule of law in Middle East and North Africa. First, rule of law was often arbitrary or subjective to any form of implementation. Second, the positioning of imperial political power outmaneuvered any ability

for rule of law measures to gain a foothold. Lastly, without a strong foundation, constitutions tended to exist without any firm judicial interpretation. Consequently, Arab leaders tended to centralize their hold on power, and there was essentially no legal opposition to prevent them from doing so.[94] The author concluded:

> The key to rule of law work in the Middle East is the realization that it cannot get very far if it is decoupled from broader strategies that address the repressive tendencies of authoritarian regimes in the region, along with the popular perceptions of many Arabs that the United States government is complicit in this repression.[95]

And it is for these reasons why encouraging Western-style policing practices, such as community policing, where there are repressive governments poses such challenges. Where the government is corrupt, under resourced, weak, and detached from the population, the "…police are likely to be a poor performer and the relationship with communities will be inherently irreconcilable with community policing." Unfortunately, "In repressive states, police are used as an instrument of the state, not a service to the communities."[96] In situations where such conditions exist, the determination and will of the people lies at the heart of any potential successes in terms of reforms. "However, millions of dollars in outside aid for rule of law reform, while helpful, is no substitute for the internal will to reform."[97]

Broader strokes of developing an effective rule of law strategy, particularly in the Middle East, are no doubt challenging. The long, historical impacts of the colonial powers, economic challenges and repressive

regimes throughout the region make such reforms a daunting task. Simply tossing millions of dollars at the problem also does not constitute a strategy in and of itself. Rule of law reforms in the Middle East must recognize social, political and economic development and how those aspects of a Middle Eastern society are interrelated and connected. As Deborah Isser points out in *Customary Justice and the Rule of Law in War-Torn Societies*, "The point of departure should be *what* is, and not what *should be*, and a desired endstate should not be mistaken for a strategy."[98] Along with societal, economic and political considerations, a more general approach to rule of law efforts in the Middle East could include the following:

- Link to and build on Arab-led activities and initiatives
- Look for more multilateral program development opportunities, especially with European groups that may have complementary experience and expertise
- Focus reform on issues or sectors that increase legal pressure for political accountability, and
- Emphasize issues such as education, freedom of the press, and popular access to diverse, international media and opinions that may be prerequisites, rather than obvious components, of respect for the rule of law[99]

It is for these reasons why rule of law, especially police reform, presented such a challenge in Iraq and Afghanistan. A failure to recognize these factors certainly delayed development and the ability to implement an effective, timely policing strategy.

Lagging Behind: Police Reform in Iraq

Making a long-lasting impact on reform, either through police or other rule of law structures requires the dedication of assets. Our own experience in Iraq does not paint a very favorable picture when it comes to reforming a police organization. Subsequent to the 2003 invasion, the attention given to the Iraqi Police mirrored the lack of prewar planning for post conflict operations. According to Anthony Cordesman in *Iraqi Security Forces: A Strategy for Success*, the police and other two pillars of the rule of law – courts and prisons – were quickly dismissed as having little to no relevance on the overall security situations. Having deserted in droves after the invasion but many returning in May 2003, the Iraqi Coalition Provincial Authority (CPA) took neither the necessary steps to vet the police nor to make an objective assessment of their performance and capabilities. As a result, the police were rushed through training for the specific purpose to get boots on the ground as soon as possible. Cordesman concluded it took the coalition well over a year to finally realize the police and other parts of the security forces played a critical role in the overall stability, governance, and reconstruction of the country.[100]

Further evidence is found in the number of professional police advisors dedicated to the police reform mission. Policing experts Robert Perito and David Bayley, US Institute of Peace, indicated in May 2003 that the Department of Justice and the International Criminal Investigative Training Assistance Program (ICITAP) had initially requested a total of 6,600 international police advisors, to include 360 professional trainers and 170 for the border police. Seen by the White House as too ambitious and therefore the re-

quest being denied, the total number of trained, professional advisors in Iraq more than a year later in June 2004 was less than 300.[101]

Unity of effort and a clear purpose are essential in any type of operation, whether military or civilian. Conducting police reforms where one must consider a host of various organizations makes such coordination extremely challenging. When it is done correctly, the outcomes are tremendous to all involved and in particular the receiving nation. When problems arise and lack of focus exists, the outcomes become less tenable. A case in point, once again, is the training and development of the Iraqi Police. Not surprisingly, the role and mission of the Iraqi police never seemed to gain traction nor hold complete comprehension to the key players of the coalition in terms of the complexity and criticality the police played to overall governance. As Robert Perito addressed in his study of the Iraqi Federal Police, in May 2004 President George Bush signed a presidential decision directive transferring the training and equipping of the Iraqi Police from the Department of State to the Department of Defense. A myriad of organizations and stakeholders had a role in rebuilding the Iraqi Security Forces (ISF) and, moreover, proposed disparate views on what was the overall mission of the police, the relationship with United States forces, and the policing role in countering the insurgency. These Organizations included the State Department, Justice Department, the nascent Civilian Police Assistance Training Team (CPATT), battle space owners and even the Iraqi themselves.[102] Consequently, in a lesson that could apply to any security reform effort, as a result, the training, development and incorporation of the Iraqi police into some semblance of a mission-focused organization were seen as

"rudimentary, sporadic, and underfunded." Needless to say, this inevitably led to tensions between the military and the civilian agencies charged with building up the police.[103]

Key Attributes to Police Reform Planning

The Stimson Center did an exhaustive and comprehensive rule of law study on the critical components in United Nations operations. Through analysis of field operations and interviews across various headquarters, the center identified the following attributes as essential for police reform planning:

- Involve local police and rule of law officials when developing reform plans, including at important junctures
- Emphasize development of critical administrative services
- Stress capacity development versus capacity substitution
- Encourage long-term development (one year or more) over short-term basic training[104]

As Iraq police reform labors seemed averse to these attributes, we saw similar challenges in Afghanistan.

With Many Nations: Police Reform in Afghanistan

The NATO Training Mission – Afghanistan (NTM-A) consisted of dozens of countries. Standing side by side with NTM-A, the European Union Police Mission (EUPOL) had a mandate to establish and train a professional police force in Afghanistan. As Iraq demonstrated a disconnection between leaders on the

role of the police, likewise, NTM-A sought to build and establish a counterinsurgency force while the EUPOL worked to develop a community policing organization. As a result, such opposing views and lack of coordination served as a major weakness in efforts to develop the Afghan Police.[105] Cornelius Frisendorf and Jorg Krempel of the Peace Research Institute Frankfurt reinforced this observation (and the Stimson Center's research on critical attributes) with their study on reforming the Afghan police. With Germany given lead nation status and responsibility for the Afghan National Police (ANP) training, this required the coordination of efforts across the entire area of rule of law, to include prisons, judicial, and defense agencies. Moreover, the development for effective drug control policies and the demobilization, disarmament, and reintegration of former combatants had to be considered. Yet, it was the lack of coordination between the experts in these areas and the lead nations responsible that lessened the overall efficacy of the programs.[106] To summarize, even LTG (Retired) James Dubik pointed out that the Department of State had the responsibility of training police; Department of Justice had confinement and adjudication; and the Department of Defense had the security: "The result was cacophony, not unity of effort."[107] Both police reform efforts in both Iraq and Afghanistan highlight the importance of working together and applying the proper resources to such developmental efforts. Where such efforts fail and attributes such as those recommended by the Stimson Center are not applied, frustration and consternation will exist amongst all parties.

What Does Right Look Like with Police Reform Training?

The training programs in Afghanistan tended to demonstrate versus the sense of urgency to get boots on the ground vice having fully trained police officers. Relegated to a mere eight weeks of training, the effectiveness of the Afghan police after such a training program was naturally very limited. Without a strong, robust program discussing ethics of a police officer or the role the police play in a community, the graduates were more inclined to fall back to their old habits of taking advantage of the population they were formed to protect.[108] Robert Bayley and Robert Perito in their study on policing in war recommended that 26 weeks is the minimal training time required where a community and population based police force had not existed previously.[109]

Host Nation Realities: Are Conditions Right for Police Reforms?

When deploying organizations into an austere environment where reform requirements exist across all levels of governance, the existing government may not welcome such reform efforts. William Rosenau from the RAND Corporation astutely observes that efforts to reform police organizations, especially during a counterinsurgency fight, may not be worth the investment or commitment. Either through a lack of support by the host nation or lack of responsible and accountable law enforcement institutions, such an investment in time and personnel may be a bridge too far. In addition, Mr. Rosenau opines such reform initiatives may run contrary to the host nation desires. As he indicated, "Policing is a politically sensitive ac-

tivity in any government, and regimes are unlikely to accept reforms that threaten existing power arrangements."[110] Thus, as in any operational assessment, analysis of the environment must determine if police reform efforts can succeed. In addition, if the host nation and law enforcement institutions are averse to even the slightest reform efforts, then planners must weigh the risks of even attempting such an adventure. Such risks may include the safety of the advisors and mentors charged with police reform. The potential for insider attacks may outweigh any reform measures based upon even a reluctance to change from the institution itself.

A Hidden Danger: Militarization of the Police

Another police reform challenge confronting uniformed military personnel especially is the potential for militarization of the police themselves. With an endstate obviously being a deep trust between the police and population they are organized to protect, militarization of the police may cause a fracture between the two. With all good intentions and well meaning, such a fissure between the police and population is bound to delay or even derail any overall reform efforts. Cornelius Frisendorf and Jorg Krempel of the Peace Research Institute Frankfurt recommended that, "The police must therefore be as civilian as possible and should only be as military as is necessary."[111] Both Frisendorf and Krempel then argued that if the military are the lead trainers and advisors in police reform efforts then inevitably the police are more likely to end up militarized. Consequently, the militarization of that police organization may send out confusing signals to the public and risk undermining the actual reforms.[112] Robert Perito of USIP also feared that mili-

tarization of the police could result in an organization contrary to the country's long-term requirements.[113]

Looking Back—What Needs to Happen for the future?

Both operations in Iraq and Afghanistan reveal important lessons learned with respect to implementing police reforms. Recognizing such reforms is long-term in nature; the dedication of proper resources (to include personnel) must be committed to that endeavor. More importantly, and critical to any success, it must include prior planning that includes a host of various organizations and nations with an interest in police and rule of law reforms. However, police reform will not work without the consent and cooperation of the host nation. Police reform must be comprehensive and done according to an agreed upon and flexible master plan

Robert Perito, analyzing these lessons learned, observed that there must be an agreement with regard to the roles and missions of the police at the very beginning. In addition, he recognized that professional police officers can provide the right type of role models and advisors for any law enforcement reforms.[114] But, we should not expect too much too soon. Those involved must recognize when things are "good enough." What is most important is that the police are considered legitimate in the eyes of the citizenry or such efforts are for naught.

Conclusion

As agents of the government, the police can be a force for societal partnership or repression, so the reformer must anticipate the multi-ordered effects

of policies and strategies. Studying the political philosophy behind justice, law, and rule of law, provides the reformer with greater wisdom when considering policy issues.

Of course, laws, customs, and traditions differ from society to society, so the intent of reform should not aim to revolutionize them. But neither can practices which violate universal rights remain in place. In many instances, instruction of police forces should be grounded on the Golden Rule.

Providing security is an essential component of policing in all societies, but it must be balanced with inalienable rights. The ultimate end of absolute security is totalitarianism, with the police function reduced to hunting for enemies of the state. Accordingly, community policing is an effective way to increase trust and loyalty among the populace as well as increasing government legitimacy.

Building policing capacity is critical to stabilization and it is multi-layered endeavor. Recent efforts in Afghanistan exemplify what may occur when reform is not synchronized nor implemented as part of a comprehensive plan, one in which the host nation has ownership and can live with. One well-respected model used by Sweden in its international reform efforts is a three-phased process which focuses on confidence building with the host nation's leadership responsible for the police; organizing key stakeholders involved with the police, creating a shared understanding of the problems and creating a shared agreement on the objectives and strategies to be pursued and determining which international organizations do what; and then implementing the host nation's plan. Such planning must determine what types of police are needed and where, laterally (e.g.: federal, bor-

der, federal investigations) and vertically (e.g.: local, paramilitary, federal); as well as, balance security and development needs to determine what model of policing will be used to deliver services (e.g. professional, community). And developers must hire the right officers, capable of using judicious discretion; provide the right training; and equip the right supervisors to ensure proper implementation. As noted earlier, hiring and training can help inoculate an organization against corruption and bad practices – supervision is the booster shot.

Recent history is replete with instances in which police reform efforts lacked emphasis and coordination across the joint, interagency and intergovernmental lines of effort. Arguably viewed as incredulous attitudes towards how police reform nested with overall security and the COIN efforts, senior leaders failed to take into account the critical role police have in stabilizing a society, or at least failed in taking aggressive steps to assist the police in that role.

Strengthening operational planning efforts across not just DoD but DoS and DoJ in particular would certainly provide a step in the right direction. Providing a focus on transitional police reform efforts that also include other critical aspects of rule of law (judicial and corrections systems) would further placate the critics that coordination across governmental agencies can be and is often productive.

Police Reform Recommendations:

- Basic instruction on political philosophy, especially ethics
- Instruction on the fundamentals of community policing
- Instruction on the role of policing in counterinsurgency and stability operations
- Inclusion of police planning during and throughout all operational phases across the joint, interagency and intergovernmental agencies with a vested interest in rule of law
- Development of police reform and rule of law efforts in pertinent capabilities based assessments (CBA) across the joint force
- Emphasis of the role of policing across the relevant DOTMLPF resources

Police reform is more than cranking out police like sausages. More than any other institution, law enforcement interacts daily with the local populace and largely determines how that populace views the government.

Endnotes

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7. Locke, 72.

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9. Madison, No 62, 378.

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12. Hobbes, 76.

13. Cicero argued that the law is based on "right reason in commanding and forbidding," that the "basis of justice" is "regard to others." Without this ethical basis, laws would degenerate into whims. "If on the other hand laws were validated by the orders of peoples, and the enactments of politicians, and the verdicts

of judges, then it would be just to rob, just to commit adultery, just to introduce forged wills, proved those things were approved by the votes or decrees of the populace. Cicero, 111-112.

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19. Simply because Subsidiarity is an ancient principle does not mean it is without controversy. It conflicts philosophically with socialism. As Bosnich concludes, "It conflicts with the passion for centralization and bureaucracy characteristic of the Welfare State." David A. Bosnich, "The Principle of Subsidiarity," *Religion & Liberty*, Volume 6, Number 4 (July & August 1996), accessed on the website of Acton Institute at http://www.acton.org/pub/religion-liberty/volume-6-number-4/principle-subsidiarity, 9 January 2013.

20. Ibid.

21. Madison, No 45, 289.

22. The 2d Amendment states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The reference to a militia suggests that the local authorities have the power to call upon members of the community for common defense, including the right to deputize citizens against organized crime.

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ISBN: 978-0-9894393-1-2