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*Law & Social Problems Essay*

Published in **Pro Bono**, Newsletter of the Law and Society Division of the Society for the Study of Social Problems, Volume 9, No. 1, pp. 5-9, Fall 2002.

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## **LAW ENFORCEMENT 9-11: QUESTIONING THE POLICING OF INTERNATIONAL TERRORISM**

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Building on my comparative-historical work on international police cooperation (Deflem 2002a,b,c, 2000), I investigate the organization of counter-terrorist strategies of criminal law enforcement at the federal and international levels. This short essay is a first report of my on-going investigations. For now, I hope to raise appropriate questions in view of finding the right answers at some later point in time.

### **Terrorism and Law Enforcement**

*The Expansion and Refocusing of Police Powers:* Among the most immediate changes in policing since September 11 has been an expansion of policing powers, justified by the tragedy and enormous devastation of the terrorist attacks. The PATRIOT Act (the 'Provide Appropriate Tools Required to Intercept and Obstruct Terrorism Act' of 2001), a federal bill to broaden police powers against terrorism, easily received congressional approval late 2001. The bill places special emphasis on foreign investigative work and on the investigation of aliens engaged in terrorist activities. Civil libertarians have widely criticized the act, mostly because of the potential abuse of authority and erosion of civil liberties.

September 11 has also brought about a refocusing of police duties and a re-alignment between federal and local policing. Federal agencies now devote more attention than ever before on counter-terrorist measures. The Federal Bureau of Investigation has some 4,000 working on terrorism. Attorney General John D. Ashcroft announced that he wants to slash about \$2.5 billion from the Justice Department programs that do not focus on terrorism to shift these funds towards counter-terrorist strategies.

Many federal agencies and departments besides the FBI are also shifting their operations towards the post-September 11 conditions. A massive reorganization of the Immigration and Naturalization Service is underway, and in the

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Justice Department, a new Foreign Terrorist Tracking Task Force is created. In the Department of State, there is a new Office of Counter-terrorism, which coordinates all US efforts to improve cooperation with foreign governments. Many local police agencies across the country are creating special counter-terrorist divisions, complemented by coordinating offices at the municipal and state levels.

Among the ironic consequences of these adjustments in policing has been the fact that other crimes besides terrorism now receive much less scrutiny from police and, therefore, may be on the rise. For instance, it has been reported that in the Richmond-Petersburg area, some 30 bank robberies have taken place since September 11, which is about the same number as for the entire year in both 1999 and 2000. The crime rate appeared to be in decline after 9-11 only in New York.

*Federal and Local Police Cooperation:* With many police agencies involved in counter-terrorist strategies, coordination becomes a key concern. There are reports of strained relationships between various police agencies involved in counter-terrorist activities, especially between agencies at the federal and local level. Information and assistance are reportedly a one-way deal, with local police assisting federal agencies without much support in return. Local police have publicly criticized the FBI. Former mayor of New York Rudolf Giuliani urged Congress to pass a law requiring federal investigators to share their information with local police. FBI Director Robert Mueller admitted that some FBI agents had wrongly turned down local requests.

At the federal level, the Office of Homeland Security was established by the President by executive order, on October 8, 2001, to coordinate the national response to terrorism. Other coordinating activities are additionally planned. The U.S. State Department, for instance, plans a central training facility, the Center for Anti-Terrorism and Security Training.

*Technology and Efficiency:* A remarkable emphasis is placed on technology in the policing of terrorism. The role of technology is seen as a necessity in response to the new technologies used by terrorist organizations.

The new means of counter-terrorist policing are often covert and hidden. Police targeting criminal networks at home and abroad focus on money laundering and heavily rely on intelligence. In other words, the same means employed in the war against drugs and drug trafficking are now used against the international threat of terrorism. As in the global war on drugs, efficiency in policing becomes the key. Language barriers, poor inter-agency communications, aging equipment, and the fact that the Justice Department has made wiretapping slow and burdensome, are all criticized as hindering the investigations. There is also much talk about bio-terrorism, the use of computers, and the financial assets of terrorist groupings, betraying again an emphasis on means. The PATRIOT Act also places a premium on technology. Among the surveillance tools mentioned in the Act are secret search and seizures, the tapping of telephones, and the use of detention without charges for seven days.

At the same time, however, U.S. police and security agencies, especially the FBI, have been criticized for not having been efficient in curbing terrorism or predicting the September 11 attack. Police officials are quick to respond that they had warned many times against the possibility of new terrorist attacks. In 1998, for instance, Louis Freeh already said that the loosely-organized terrorist networks, such as the one controlled by bin Laden, pose "the most urgent threat to the United States." Not surprisingly, efficiency as an aim in police operations does not equate to effectiveness in results.

*International Cooperation:* Counter-terrorist policing activities have been conducted in many countries, especially in Europe. In Italy, some 600 agents have been assigned to investigate the money trail of the al-Qaeda network. In November 2001, it was announced that foreign intelligence and police agencies in some 50 countries had arrested no less than 360 suspects with connections to the al-Qaeda network. Of these 360 arrests abroad, about 100 took place in Europe, the same number in the Middle East, 30 in Latin America, and 20 in Africa. Some of these arrests were made at the request of the CIA. When one country refused to assist the CIA, it has been reported, a covert

CIA team broke into an overseas facility, stole all necessary information, and passed it on to a foreign intelligence service, which arrested the person.

Police powers abroad have also been expanded. The police of the Ministry of Defense in the United Kingdom has been given broad powers of investigation and can now arrest civilians that are suspected of terrorist involvement. Likewise paralleling conditions in the United States, new agreements and legislations are passed abroad. In the United Kingdom, a new Anti-Terrorism Crime and Security bill was announced. The European Union passed new anti-terrorism measures.

At the international level, then, the September 11 attacks have served as a powerful symbol to step up enforcement in many nations and to enhance cooperation. The head of Interpol, Ronald Noble, admitted that the international sharing of information is not always easy, because national agencies do not want to jeopardize their investigations. To ease the transmission of intelligence, Interpol has established a September 11 clearinghouse.

What are the mechanisms that enable international cooperation against terrorism? Most counter-terrorist information and requests are transmitted directly among intelligence and police agencies. For instance, Scotland Yard Commissioner Sir John Stevens visited New York and the American police command center. The head of Interpol, Noble, also visited New York and Washington to plead for international cooperation. In other words, international police cooperation is established through personal contacts by police officials next to, and irrespective of, diplomatic negotiations. For instance, while Attorney General Ashcroft met with the German Minister of the Interior Otto Schily, FBI counter-terrorist experts separately met with German investigators in Hamburg to discuss the profiles of the members of the Hamburg cell of the al-Qaeda network.

Also, international meetings are held at which counter-terrorist strategies are discussed. The IACP meeting in Toronto, October 27-31, 2001, focused on the policing of terrorism. The same happened at the Interpol general assembly in Budapest, September 24-28, 2001.

## Dynamics of Counter-Terrorist Policing

*September 11 as War:* International terrorism presents a global field on which many of the nations of the world are at war with one another. The relevance of this condition of upheaval in the case of the terrorist attacks is even more acute because the attacks are related to a struggle over political power (in terms of the ideological justification of terrorism as much as the justification of its suppression), and has both an internal dimension (destruction of World Trade Center, loss of human life) as well as external implications (e.g., the war in Afghanistan). As a result, September 11 has brought about a return of police institutions back to the political powers of national states. The governments of nations across the world take up variable positions on the issues of a political and ideological nature involved with terrorism.

It is remarkable how close the current re-organization of policing in the United States (and elsewhere) approximates the war-time re-organizations police institutions underwent in past times. As with war, the impact on policing of September 11 functionally implies an expansion of police duties to include new tasks intimately related to terrorism. Organizationally, police forces have been given new means in terms of equipment, personnel, and budget. In functional and organizational respects, also, police institutions are (re-)aligned with the military. Attorney General Ashcroft has publicly spoken of a "wartime re-organization" of the Justice Department. Additionally indicating a re-alignment between police and the military, President Bush on November 13 signed an order to allow military trials of foreigners accused of terrorism.

These reorganizations of policing may have effects that will endure until long after the more immediate repercussions of terrorism have faded. Organizationally, police institutions will emerge stronger than before if and when their newly acquired means will not be relinquished. Functionally, also, the added means of policing could be applied to policing duties that are not related to terrorism but share some formal characteristic therewith (e.g., riots). Attorney General Ashcroft announced that the terrorism focus of the FBI would become permanent. On December 3,

2001, the FBI announced a restructuring that is already approved by U.S. Congress. The changes especially address problems with technology and information exchange, and imply a move away from traditional enforcement tasks. Four new positions of Executive Assistant Directors are created for offices on criminal investigations and counter-terrorism/counter-intelligence, in addition to law enforcement services (e.g., training) and administration. Similarly, the restructuring of the INS will lead to a new permanent and separate Bureau of Immigration Enforcement, including divisions of International Enforcement, Border Patrol, and Interior Enforcement.

The post-9/11 reorganizations of police activities against terrorism parallel the war-time conditions in the 1930s/1940s that led to changes in policing well into the late 20th century. Typically, during periods of warfare and other turbulent events, police institutions agencies again draw closer to the political centers of their respective states to follow the patterns of cooperation or conflict as determined by the international political scene. External conditions are thus seen to influence the degree of institutional dependence, in turn affecting international policing.

*The Bureaucratic Resistance of Police:* But the political retreat of police under conditions of terrorism today is not complete, for there is now a long-established independent global police culture that for many decades has forged cooperation on the basis of a shared professional expertise in terms of the means and objectives of policing. The degree to which this bureaucratic autonomy has been accomplished during periods of relative stability is not without consequences for policing today, even during times of extreme upheaval. In this respect, the emphasis on the means to combat terrorism (rather than any concern on an adequate definition of terrorism) in the PATRIOT Act is striking. The Act focuses on efficiency in tracking down terrorists, on effectiveness in cooperation, and on the technological challenges posed for police and intelligence agencies by advances in communications technology. Likewise, President George Bush has emphasized the

need for efficient police means, when he declared, "now that we're at war, we ought to give the FBI the tools necessary to track down terrorists". Bush also justified the extreme nature of some of these means, suggesting that "Many of the most effective tools for dealing with terrorist networks are going to be covert and hidden from the public view." Likewise, at Interpol an emphasis is placed on new technologies, which are argued to have passed police by. The Head of Interpol called the organization's own communication system "antiquated, clumsy to use."

While ideological sentiments on terrorism are very divided in the world of international diplomacy, the target of terrorism at the level of police bureaucracy is defined in a language that can be shared among police institutions across the world. Indeed, indications are that police institutions have 'de-politicized' terrorism and stripped it of its (divisive) ideological justifications. For instance, the PATRIOT Act does not define terrorism but refers to the Immigration and Nationality Act on terrorist organizations, which in Section 213 merely provides a list of certain criminal activities defined as terrorism (hijacking, assassination). Likewise, Interpol's recently accepted resolution on terrorism acknowledges that terrorists themselves refer in their actions explicitly to ideological, political, or religious motivations, but Interpol reaffirms its right to address all criminal activity regardless of motivation and defines terrorism (in particular, the attacks of September 11) as "a crime against humanity." This 'criminalization' of terrorism enables police across the globe to rally around a common cause.

Thus, although September 11 is a disruptive event in international affairs, it implies only in delineated ways a return to 'political' policing. For accomplished historical developments in bureaucratic autonomy and the evolution of a widespread global police culture for well over a century now can outweigh the sudden disruptions caused by the terrorist attacks. Although a 'war-time' reorganization of (international) police is ongoing, the emphasis on efficiency of police technique and the treatment of terrorism as a purely criminal matter reflect the impact of a professionalized police culture across nations. The question for

the future is, what will counter-terrorist policing ultimately look like as a result of the conflicting trends of police bureaucratization and politicization.

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