

Human Rights and Police Discretion

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Life is like a game of tennis, you have no control over how that ball comes to you; it's what you do with the ball when you hit it back (Margaret Moth CNN, 2008).



4 Propositions on the intersection of police discretion and Human Rights

Proposition #1 – There is a paradox of policing a civil society

- ☞ The need to balance social regulation (control) with social empowerment – authority with communal legitimacy
- ☞ Civil policing seeks to regulate human conduct within a legal consensus not outside of it
- ☞ There is a clear need to focus on how policing can support and facilitate Human Rights

Proposition #2: This creates a strain between state authority/individual rights

- ✓ In democracies the domestic police enforce the law AND the constitutional and legal protections (rights) afforded residents, visitors and others
- ✓ A law abiding society exercises individual freedoms and Human Rights, while respecting the rights of others

The case of Professor Henry Lewis Gates

- ✓ A Harvard University professor returns home from a trip to China and can't open his door –time: mid-day
- ✓ Someone reports that two men appear to be forcing their way into a house –race not mentioned by caller
- ✓ Police respond, get appropriate identification from Gates, but he gives them a really hard time
- ✓ Gates is arrested for disturbing the peace
- ✓ Prosecutor declines prosecution, but President Obama jumps in the discussion saying the police acted stupidly
- ✓ A media sideshow ensues – everyone has a beer at the White House – but what of this situation?



Lewis Gates arrest from his home

Legal and ethical issues

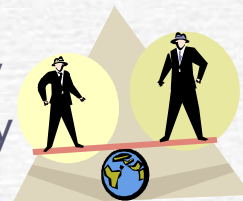
- ☞ The event offers little complexity, some ambiguity – respond to a house and see what is happening
- ☞ After identifying a person in their own home, what other action is necessary?
- ☞ Can the police sense of peace be disturbed?
- ☞ Is demeanor a legal condition for which someone can be arrested?
- ☞ What local cultural expectations about the police in Cambridge, Massachusetts exist?

These events happen in Belgium as well:
Frank Vanhecke – EU Parliament Member



Proposition #3: Police discretion is a mediating between order and liberty

- ✓ Rather than viewing conflict between order and liberty, the discourse can shift to how the two can compliment each other
- ✓ Order without liberty is tyranny
- ✓ Liberty without order is anarchy
- ✓ The police use discretion to mediate between order and liberty



Police use of discretion in support of Human Rights: Current practice

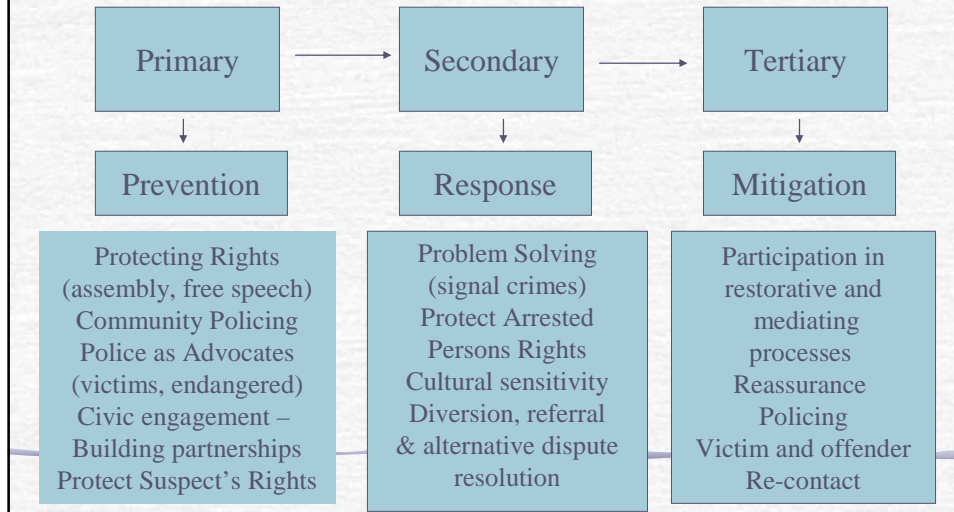
- ✓ 80% of police work uses discretion to maintain order
- ✓ Police use referrals to mediate disputes, e.g. housing disputes, drug referrals, youth-based programs
- ✓ Police advise victims about how to pursue rights and claims
- ✓ Police protect of victims, e.g. battered women and children
- ✓ Police enforce civil and criminal court orders to protect potential victims, or stop dangerous practices

Proposition #4: Police protection of Human Rights across interventions

- ✓ We often think narrowly of police protection of Human Rights
 - Post arrest treatment of offenders
 - Detention and questioning of suspects
 - Use of force by the police
- ✓ The police have several interventions levels– primary, secondary and tertiary, each has a Human Rights element



Policing for Human Rights across an intervention continuum



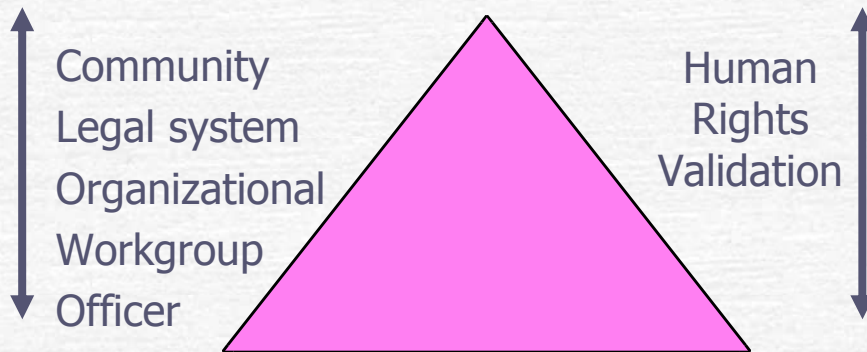
Human Rights as a first principle



- ✓ Clear connection with broader communal goals
 - The Belgian model
- ✓ Police selection and training emphasizing decision making complexity and ambiguity, law and social values, conflict resolution, the rule of law – A Key Issue -- absent a rule, what to do?
- ✓ Evaluation and clearer supervision of police decisions
- ✓ Rewarding and celebrating police support for Human Rights
- ✓ Openness and transparency of police policy and decision making
- ✓ Civic engagement – it is more difficult to violate the Human Rights of those you know

The legitimated police environment

Levels of police accountability



Some threats to police support for Human Rights: A caution

- ☞ Worldwide shift from crime control to terrorism
- ☞ The militarization of policing
- ☞ Police backlash to "community policing"
- ☞ Poor implementation of COP
- ☞ Major world-wide shifts in immigration
 - often demonizing immigrants
- ☞ New crime --cyber crime and human trafficking – new criminality, requires a new policing, but moves police away from issues of local community safety



Concluding Propositions

- It is possible to view and then implement policing systems to sustain and facilitate Human Rights
- Raising awareness, providing notice, creating transparency and celebrating actions taken are the keys to such an approach
- COP and other forms of policing focused on crime prevention and social order can lead the way in giving policing a clearer focus on Human Rights
- We must guard against slipping backward in the face of pressures for terrorism, other crime specific responses, and the moral panics they often represent

