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THEORISING GLOBAL POLICING

Our first task is to contextualise our subject with regard to theories of policing, globalisation, social order and governance. We examine the role of the police within the classic nation-state system and how this has become problematic. We explore the idea of the ‘social contract’ and how this has been re-shaped by an emerging transnational-state-system. The chapter also sets out two typologies of policing that mark the conceptual boundaries of the field. The first explores the distinctions between policing that aims to *secure territory* and that which aims to maintain *surveillance over suspect populations*. It distinguishes between *high policing* (seeking to maintain particular interests of state and social elites) and *low policing* (seeking to maintain the interests of the social order more generally) and between *public* and *private* forms. A second typology suggests four geographical spheres of policing – *glocal*, *national*, *regional* and *global*. These typologies create the conceptual space within which the various forms of transnational policing explored in later chapters are theorised and understood. The groundwork covered here provides the basis for making global policing visible as a theoretical object.

The problem of global policing

There is no such thing as a global police force but there is global policing. *Global policing* refers to the capacity to use coercive and surveillant powers around the world in ways that pass right through national boundaries unaffected by them.²¹ The many examples that we provide in this book include police officers who live permanently overseas or regularly use phones and computers to collect and share intelligence, investigate criminal conspiracies, to authorise arrest, or provide emergency services across a wide number of jurisdictions. A *global police force* would be different in subtle but important ways. If it existed, it would be an institution with universal jurisdiction, global mobility and the formal powers to arrest and detain suspects anywhere in the world. It would also have to have



solid foundations in public international law and have some kind of system of control and accountability linking it to the peoples who inhabit the globe. Such a thing exists only in fiction and in the imagination of a small number of scholars and policymakers.²²

The idea of a global police force occasionally appears in books and films, most hilariously in the 2004 action-comedy film *Team America: World Police*. Declaring that 'world crime is at an all time high', a US paramilitary force of marionettes is given a global mandate to eliminate criminals, terrorists and their backers, and to 'put the F back in freedom'. A more dramatic and edgy portrayal is the 2005 thriller *Lord of War*. The villain, a gunrunner played by actor Nick Cage, is pursued internationally by actor Ethan Hawke, a 'global cop', complete with Interpol badge, gun, body-armour and power to arrest his quarry anywhere in the world. These movies provide distorted images of something that is really happening: policework is globalising and many thousands of police officers work transnationally. At any given moment somewhere such agents are in the air travelling to provide consultancy services, training, investigative assistance, conference presentations and much else. Some will be local beat cops, others intelligence officers or private investigators. They might be identified with big city police forces, national agencies or supranational institutions such as the UNPOL or Interpol.

Stories about policing transnational organised crime, terrorism, people trafficking and cybercrime are now part of the standard daily commercial news diet, often garnished with snippets about Interpol or FBI involvement. Sensationalised global crime stories are hot topics that convey anxiety, fear and insecurity. However, global cops seem distant from everyday life. Global crime stories always seem to happen to other people: 'wanted criminals' or 'terrorist suspects' arrested in murky circumstances in far away places. The tone of the reportage signals that the forces of law and order are protecting good people from the 'dangerous classes' of the world – the global 'folk devils'.

The perception that global cops are a problem only for suspect populations consigned to the margins of the world system is one reason that we were interested in the story of Mr Derek Bond, a 72-year-old British citizen, retired engineer, unassuming mild-mannered grandfather of six who was arrested and held in custody while on a South African wine tasting holiday in January 2003.²³

Mr Bond was first questioned by immigration authorities at Cape Town airport. Later he was arrested on the basis of an Interpol Red Notice and locked up in the cells of Durban central police station. Red Notices, naming a suspect wanted by police for an alleged crime, are circulated through the Interpol communications network of National Central Bureaux (NCBs) to police forces around the world. They are not 'international arrest warrants', because there is no international authority with the power to issue such things, but in most jurisdictions they are interpreted as authorising, or even compelling, local police to arrest.





Mr Bond was detained by the South African police as a suspected fugitive because the details of his passport, stated on the Interpol Red Notice, matched that of another Englishman, one Derek Lloyd Sykes. Accused of a US\$4.8 million telemarketing fraud in the United States, Sykes was on the FBI's 'most wanted list' and was known to use Derek Bond as a false name. On the basis of an arrest warrant for Mr Sykes (alias Mr Bond) issued by the FBI in Houston, Texas in 1999, a Red Notice was circulated through the Interpol network. Unfortunately, this resulted in the detention of the real Mr Bond four years later at the insistence of the FBI legal attaché in Pretoria. The repercussions of this case of mistaken identity eventually prompted into action officials at the UK Foreign Office and the FBI Headquarters in Washington DC. The diplomatic spat between the USA and UK embassies in South Africa seems to have led to some activity on the ground and the real Mr Sykes was arrested in a Las Vegas hotel on 26 September, three weeks after the unfortunate Derek Bond had been arrested in South Africa.²⁴ On release and return to the UK on 28 September, Mr Bond described in vivid detail the dire conditions of his three weeks sleeping on the filthy concrete floor of a Durban police cell.

Like a character from a Franz Kafka novel, Bond found himself accused of a crime of which he had no knowledge, imprisoned by an impenetrable transnational policing system with no helpful means to protest his innocence or provide redress. Afterwards Mr Bond considered the merits of a civil case seeking compensation from US authorities but abandoned it on the advice of his solicitor and in the interests of a quiet life.²⁵ The case of Mr Bond raises questions about the relations between the individual and the complex web of institutions that makes up the global policing enterprise. Derek Bond was powerless to resist while his family, desperately trying to help, were trapped in a bureaucratic hall of mirrors.

The Red Notice issued by the FBI and circulated by Interpol in the Bond case contained inaccurate and incomplete information. It lacked a clear photograph or fingerprints. This case raises many questions. Who is responsible for checking the facts on a document that can result in depriving someone of their liberty? When police power is deployed intercontinentally, which laws are enforced? Where? By which authority? In whose name? What system of external accountability regulates policing beyond borders? Who is in charge when things go wrong and from whom can redress be sought? Who pays for the globe-trotting police? How are global cops recruited and trained? How are the problems known to afflict domestic policing – legal and procedural errors, corruption, racism and the abuse of force – remedied in the transnational realm? In the following pages we aim to provide the theoretical basis on which to answer these questions.

The case of Mr Bond is far from typical, not least because as a white, middle-class English retiree, he does not fit the stereotypical image of the 'usual suspect'. Across the world uncounted numbers of people are held in custody





as a result of some aspect of global policing, the vast majority of whom are economically marginal people often with black or brown skin. The atypical case of Mr Bond piques curiosity about how the world is policed. In trying to make global policing theoretically visible we draw from an inter-disciplinary mix of sociological, legal and political theory, and extend our thinking to include insights from cultural anthropology, international relations, critical geography and history. Our aim is to make the idea of 'global policing' theoretically comprehensible to students of the social sciences and humanities generally.

Policing and social theory

One way to begin to think about contemporary policing would be to provide an overview of globalisation theory for criminologists.²⁶ We certainly think that understanding the evolution of policing offers a uniquely useful window through which to view globalisation. Many books on similar subjects begin by assuming that the meaning of 'police' is self-evident, a position that has an underlying functional logic: there are criminals so we need police to go after them.²⁷ Most accounts of transnational policing simply extend this logic: there are international criminals so we obviously need international police to go after them.²⁸ Instead of taking this 'common sense' approach, we have chosen to build a theory about global policing from first principles. We begin this by asking 'who are the police?' and 'what is policing?' and seek answers by turning to some basic sociological theories of social ordering.

The police idea is a modern one. It came into political parlance during the period known as the European Enlightenment and should be understood as much more than mere criminal law enforcement. The 'science of police' refers to a broad set of social practices intended to order and control, organise and regulate. As Pasquale Pasquino put it: 'What police regulations regulate, or try to regulate, or purport to regulate, is everything which in the life of this society [...] goes unregulated'.²⁹ Similarly, for Marcus Dubber, 'among the powers of government none is greater than the power to police and none less circumscribed'.³⁰ The order ensured by a 'science of policing' is underpinned and facilitated by statistical information on populations, the conditions of prosperity, health and public happiness. Statistics (a concept derived from 'Staat', ie. 'the State') becomes the '*science of the state*'; political arithmetic in which a calculative rationality is used to govern citizens and the life of a society.

This broad definition of policing is both forward and backward looking. It is *forward looking* because it seeks to prevent future ills, and *backward looking* because it also concerns itself with past misdeeds and seeking out those who





break the law. It follows from this definition that our concern with policing must take in the complex mode of functioning of an entire network of institutions encompassing the administrative apparatus of the modern state.³¹ Adam Smith, founder of classical economics, and Cesare Beccaria, founder of classical criminology, both agreed that policing in this broad sense is central to a healthy and happy economic order.³² Beccaria declared, in 1769, that ‘the sciences of education, good order, security and public tranquillity, objects all comprehended under the name of police [...] constitute the last object of public economy’.³³

The modern sociology of policing defines its object somewhat differently. According to Egon Bittner, the functions of police in modern society centre on the Weberian sociological dictum that ‘the State’ claims the monopoly of coercive power in the maintenance of social order.³⁴ Bittner referred to coercive force as *the core of the police function*.³⁵ The police, he argued, are ‘nothing else than a mechanism for the distribution of situationally justified force in society’.³⁶ This view of the police focuses on a central problem of society, which is how to contain (for the good of all) violence, dishonesty, conflict and other contingent harms that are detrimental to social life. This branch of the sociology of policing focused almost entirely on urban police conceptualised, in William Muir’s words, as ‘streetcorner politicians’.³⁷ The police are the keystone in the system of modern governance and an essential political interface between the state and society. Police are to government ‘as the edge is to the knife’.³⁸ Of course, it makes a difference whether the knife is a scalpel or a bayonet.³⁹

The pathways from the Enlightenment idea of ‘police science’ to today’s manifestations of policing are many and varied.⁴⁰ The policing idea has been broken up into a hotchpotch of institutions, each with their own specific functional logic, sometimes working at cross-purposes, rarely rationally harmonised and without a reasoned separation of powers. For example, in the United States drugs are policed by two major federal agencies, the DEA and the FDA. There are points of tension between the rationality of these two agencies: illegal drugs have medical uses and medicines can be used unlawfully. There is, as yet, no overarching theoretical rationality of policing governance that reconciles the potential of this conflicting irrationality. The practical Balkanisation of the policing idea into a myriad of enforcement, regulatory and security agencies – policing everything from street crime and tax evasion, to water and food quality – provides the institutional surface of emergence for policing subcultures that we explore in further detail later in this book. Some social theorists have argued that these policing institutions are united by a common governmentality or risk discourse.⁴¹ Our view is that the complexity of the field of transnational policing activities also gives rise to institutional friction. Consequently, policing may, contrary to its professed ideals to ‘protect and serve society’, actually contribute to harm.⁴²





Policing and the social contract

The modern idea of police sprang from the same intellectual ground as the idea of the social contract, which itself is integral to thinking about the modern state. The social contract is the key to police legitimacy and forms the basis of the liberal idea of policing by consent. The language of the social contract is one for justifying political authority and describing the structure and content of just political authority. That is why the notion of 'policing by consent' is a key constituent of the language game of social contract theory and, by extension, liberal political philosophy and the practice of liberal democratic government.⁴³

Simplifying for the sake of clarity and brevity, we outline four positions relevant to social contract theory.⁴⁴ On the left, we have the vision of Jean Jacques Rousseau who foregrounded the 'general will' whereby the sovereign resides in the entire people who are all equally free. On the right, we have the vision of Thomas Hobbes, according to whom society consists of a people beneath the sovereign authority. The difference between the two lies in their conception of human beings 'in a state of nature'. For Hobbes the natural state of humanity is 'poor, nasty, brutish and short' and in a perpetual 'war of all against all', which requires that the social contract ultimately be ensured through the might of the sovereign. For Rousseau, human beings in a state of nature hate to witness suffering and are naturally empathetic and compassionate. That is why, according to Rousseau, the sovereignty that ensures the social contract can lie with the people. Put simply, a Hobbesian version of the social contract gives overriding authority to the sovereign who is ultimately responsible for peace, order and good government; whereas the Rousseauian social contract grants all 'power to the people'. Hobbes risks autocratic tyranny; Rousseau a tyranny of the majority.

Social contract theory requires both points of view and gives rise to the third position that we identify with John Locke.⁴⁵ The edifice of Lockean social contract theory is built upon a principled insistence on the separation of political powers, which can be viewed as an attempt to occupy the 'golden mean' between the extremes of Hobbes and Rousseau. The strategy of separation of powers is also associated with Montesquieu, whose tripartite distinction between the power of the executive, the legislature and the judiciary was inspired by his observations of the British system (which, at the time, separated the powers of the Crown, parliament and the judiciary). These ideas were woven into the Constitution of the United States. Such a practical set up can be aptly associated with Lord Acton's historical maxim: 'all power tends to corrupt, absolute power corrupts absolutely'. These words of warning remain relevant to would be citizens of a liberal and democratic world society, especially in relation to policing power.

By separating political powers, the Lockean social contract legitimises liberal state governance by providing it with internal mechanisms with which to





'guard the guards'. In the tug-of-war between the two poles of liberal constitutional theory, Rousseau on the left Hobbes on the right, sometimes the centre fails to hold and the edifice of government comes under stress. This can give rise to the 'Machiavellian moment' when the politics of criticism by words and persuasion give way to the politics of brute force. Niccolo Machiavelli lived during the Italian Renaissance – a period that saw: city-states vying against each other for hegemony; France, Spain, Switzerland and the Holy Roman Empire battling for regional influence and control; and the armies of the Papacy fighting for the continuing dominance of the Throne of St Peter. The Italian Renaissance, despite the glory of its name, was a time of troubles. Machiavelli's discussion of the fall of Rome offered a coded pretext for discussing the virtues of republican government. He had good personal reasons to espouse one of the earliest conceptions of 'checks and balances' in the governance of governance. Such were the political dangers of his time that he personally suffered imprisonment and torture, and was eventually charged with conspiracy and exiled. Looking at the present policing of the new world order, one might conclude that a global Machiavellian moment has arrived.

Liberal theories of policing come out of this broad conversation about the nature of the social contract, the state and the practice of government. The idea of policing by consent plays a central and paradoxical role in the tenuous social ordering that results. Where matters concern policing there is always the possibility of a dangerous Machiavellian moment. This is a hazard for any state regardless of the specifics of its Constitution. In that moment lies the potential for power to corrupt or to turn its violence back on the people that it is intended to protect. A practical shortcoming of classical social contract theory that adds stress to the world system is that it is very limited regarding International relations. In Hobbes this is especially evident. There is not a word in *Leviathan* to suggest any relation between states except war and conquest interrupted by interludes of peace, which are merely a preparation for the next war. Kant's 1795 essay *Perpetual Peace* is the first work of western philosophy to broach the possibility that peace could be anything other than an interlude between wars.⁴⁶ In the absence of some principle of global governance, the modern nation-state system could, and indeed did, lead to a war of all against all.

This problem helps to explain how, under the pressure of globalisation, the separation of powers envisaged in the Constitution of the United States has slowly become imbalanced. Arthur M. Schlesinger argued that the growth in the power of the executive branch happened as the United States became a world power and then a superpower. His analysis shows how the power of the executive branch of government, the Office of the President, accumulated during wartime. The exercise of military force abroad facilitated the accretion of domestic policing powers. Schlesinger explained how the reasoned separation of powers between President, Congress, Senate and the Courts gradually became unbalanced.⁴⁷





In our view, the Office of the President of the United States is one site of power in a polycentric global system. The palpable disaggregation of 'the State' left behind what some critics have described as a media-televisual 'simulation' of democracy wherein the public relations expert (using the techniques of mass psychology, spin and media manipulation) became a crucial player in the legitimisation games of governance.⁴⁸ Classical social contract theories have no concept of media manipulation. The institutional drift occurred slowly over centuries but shifted radically in the recent past. What appears normal today differs greatly from what was originally intended more than two centuries ago in legal and political documents based on ideas about the social contract and policing with the consent. The state *qua* 'State' now appears as disaggregated and can no longer be understood as the basic building block of the world system.

In the context of the contemporary world system, traditional liberal democratic notions, such as the 'social contract' and 'policing by consent', are challenged in new ways. The power of globalised private property, embodied in transnational corporations, has grown far beyond anything that classic social contract theorists could have envisaged. As Bertrand Russell remarked in his conclusions on John Locke, a global social contract is an ultimate necessity, but it will look different from that which is depicted in classical theories. That is because 'the single separate citizen has no longer the power and independence that he had in Locke's speculations'. Our age, Russell said, is 'one of organization, and its conflicts are between organizations, not between separate individuals'.⁴⁹ He merely gestured at the problems that classic social contract theory has in grappling with the implications of global corporate power in a neo-liberal social order. We shall have more to say about this in later chapters, but for now we conclude that the transgressive nature of power in the transnational-state-system makes it very different from the nation-state-system that preceded it. This has profound consequences for policing.

Policing and political theory

The original notion of policing encompassed the whole art of government designed to control populations and secure territories. Policing, in its modern sense, was aimed at the internal order of states while the military staked out their perimeters, sometimes leading to warfare. Observing this, the American political scientist Charles Tilly likened state-making and war-making to protection rackets.⁵⁰ From very early on, policing was about the deployment of the state's monopoly claim to the use of force in the maintenance of social order, and maintaining a knowledge system capable of future planning so as to optimise the social life of the burgeoning capitals of Europe. As the modern state system developed and spread around the world, the practical implementation





of the police idea was uneven and manifested differently in societies with different ideas about governance.

Understanding policing as integral to the national-state-system requires a distinction between 'high' and 'low' policing.⁵¹ In early modern thinking, police functions for the maintenance of safe populations, such as emergency fire response, crime prevention or securing the food supply, were considered *basse police*, that is 'low policing'. This is distinct from *haute police*, 'high policing', which aims to secure the interests of 'the state' and political elites. Low policing is for the 'general interest' in contrast to high policing for the 'particular interest' defined by the powerful. Historically, elites were motivated to provide the services of low policing in order to maintain a population capable of engaging in military competition between states. The resulting insecurity of the international-state-system is partly what gave rise to the need for high policing functions. In different countries the policing idea was shaped in different ways. In continental Europe, the 'well-ordered police-state' stressed legality and centralised police authority.⁵² In the United States 'the police' were representatives of a self-governing capitalist democracy affected by a mixture of cultures. Consequently, the occupational police subculture that emerged in the US had a lot more room for freewheeling individual aggression.⁵³

The nation-state-system has evolved into a transnational-state-system and this has implications for policing and military roles. The specifics of high policing have also changed as a result of this transformation. Because of the impact of global neo-liberal market rationality, the idea of the central state as a 'monopoly security provider' is not as pervasive as it was in Max Weber's time. This problematic has been recognised by a range of thinkers who are interested in the way this new global system can or should be governed. Our contribution to this literature is to foreground police institutions and their occupational subcultures in shaping these transformations.

The evolution towards some kind of 'world system' challenges basic concepts of political rationality and legitimacy, with policing at the sharp end. There are different ways of coming at this. Antonio Negri and Michael Hardt propose that 'sovereignty has taken a new form, comprised of a series of national and supra-national organisms united under single logic of rule'.⁵⁴ This they call *Empire*. There are affinities between Hardt and Negri and our own mode of theorising. By drawing attention to the power of institutions based in seigneurial states we signal an agreement that the post-national world system tends to function as a construct among ruling powers. We also agree with Hardt and Negri that the recent transformation created a new kind of political enemy – the criminal, a threat not to the political system but to law. Under the 'civilisation' they call Empire, the 'enemy' is simultaneously 'banalised' (i.e. reduced to a routine set of police repression procedures), 'absolutised' (i.e. represented as an absolute threat to the social order) and globalised.⁵⁵ Critical criminologists refer to these variously as 'suitable enemies', 'folk devils' and 'the usual suspects'.





Alternatively, there is the view of Anne Marie Slaughter who looks at the world system 'through the lens of disaggregated rather than unitary states'.⁵⁶ Using a very broad notion of 'networks', she captures a sense of vertical and horizontal connections between governmental actors in a global system of 'disaggregated sovereignty'. Her aim has been to show that networks of government actors have the capacity to enter into international regulatory regimes of various types and can thereby be bound to a body of international law. Our approach to socio-legal theory is rather different, as we outline in the next section, but we agree with Slaughter that states are not unitary billiard-ball-like entities that articulate and pursue a single national interest. We are similarly interested in horizontal and vertical governmental networks, but our specific interest is with policing because, not unlike Hardt and Negri, we see that the projection of suitable enemies is an ideological construct that provides a justificatory rhetoric useful in shoring up the idea of the transnational-state-system as an appropriate container of insecurity. For symbolic and practical reasons, policing provides the critical infrastructure to project the transnational-state conceptual scheme onto the world system map.

We aspire to something better for the politics of the global system. George Monbiot advocates a one-person-one-vote world government, a utopian vision of a global democratic order that transcends the obsolete nation-state. Monbiot would revitalise the United Nations General Assembly and replace the Security Council with a directly elected World Parliament.⁵⁷ David Held and others propose cosmopolitan democracy, a complex multi-level polity with administrative capacity and independent political resources at regional and global levels to complement local and national polities.⁵⁸ We would rather the institutional processes Held outlines led to the global social-democratic outcome Monbiot postulates, but the policing-insecurities of the present stand in the way of these hoped-for developments. Our inter-disciplinary theory seeks to add to discussions about how global policing influences the politics of the world system and constitutes a major modality of global governance. As we show in later chapters, currently existing global policing promulgates taken for granted assumptions regarding the transnational-state-system as a container for insecurity. By acting to shore up those assumptions, the transnational practices of policing act as a brake on the development of a new democratic global social contract.

Policing and law

Socio-legal theorists and legal scholars are apt to place policing under the rubric of the Rule of Law. Slaughter is not alone in her hope that legal rules can somehow be deployed in the effort to engineer a safe and just new world order. We detect many difficulties with the assumption that transnational policing





practices can be easily tamed by law. Nation-state jurisdiction once seemed to determine the framework of the Law – the ‘command of the sovereign’, in the words of the American legal theorist John Austin. It was possible then to look to the sovereign state as the basis for the *Grundnorm* – the ‘grounding norm’ in Hans Kelsen’s ‘pure theory of law’ – as providing a basis for the Rule of Law’s apparent solidity.⁵⁹ In a transnationalising world in which all jurisdictions are increasingly multicultural and the state is no longer the uncontested basis of social order, the concept of Rule of Law is squeezed between the requirements of legal pluralism,⁶⁰ on the one hand, and the politics of law, on the other.⁶¹ There is an intrinsic ambiguity in the relationship between law and policing that frequently belies the democratic expectation that police are somehow beholden to law. The practical policing task is the reproduction of the already constituted social order using ‘whatever works’ in the circumstances.

The paradox that police are required to use coercion to protect interests endorsed by the constitutional order of which they are a part is what makes them more liable than any other agency to corrupt that order.⁶² A primary source of police power and legitimacy are the enabling legal provisions – sometimes referred to as the Ways and Means Act to ‘get the job done’.⁶³ It is sometimes argued (not without evidence) that, as long as there is the perception of procedural fairness, legitimation of the whole enterprise can usually be achieved, even under conditions of significant legal and material inequality.⁶⁴ The law provides an enabling device for the police to accomplish the work of ordering. As Doreen McBarnet observes, there are many ways in which police use the law as an all-purpose control device.⁶⁵ Therefore, when it comes to law, ‘whether the hand is wearing an “iron fist” or a “velvet glove”, the police will hold the upper hand’.⁶⁶ Socio-legal research has shown that the law is a tool which policing agents use in a discretionary way, frequently in conditions of low visibility.⁶⁷

To make matters more complex, law is also a double-edged sword. That is to say, while *enabling* policing, law may also be invoked as a brake on police power. Legal proceedings in civil courts symbolically shape and influence policing practice in some jurisdictions.⁶⁸ For example, the pressures on big city police departments in North America to change their response to reports of domestic and sexual violence came from civil proceedings and class action suits.⁶⁹ The significant increase in officer time spent on cases of domestic violence that took place during the latter half of the 20th century resulted from widening the ambit of criminal law enforcement to include violence against women in the home.⁷⁰

In public law the legal instruments that may serve to constrain policing power are those that confer ‘civil’ or ‘human rights’. Ambivalence arises in policing when the double-edged nature of law gives rise to ‘counter-law’ – using law against the law – and policing is fundamental to this. When police action becomes problematic, law creates rules to constrain and shape action, ideas that are themselves subject to interpretation. Using ‘law against law’ has paradoxical





effects that confound simple Rule of Law expectations. The relation between policing and law is ambiguous for other reasons. There are lacunae in law that leave room for improvisation by police agents who often respond to situational exigencies that are unforeseeable. As Bittner put it, the role of the police is to find 'an unknown solution to an unknown problem'.⁷¹

Furthermore, the opportunities for the police to use discretion are growing. The widening scope of legal discourse now encompasses not only those who actually cause harm, but also those merely *suspected of being harmful*, as well as authorities who are deemed responsible for security failures. Each instance invites discretion and choice, not rule-governed behaviours. As civil and administrative law become more salient in processes of exerting power, the police use of law has also moved beyond the traditional principles, standards and procedures of criminal law.⁷² This is particularly evident in criminal asset forfeiture, where civil law (with the lower standard of proof: the 'balance of probabilities') can be used to confiscate the 'proceeds of crime' without the necessity of a successful criminal prosecution (which has the higher standard of proof: 'beyond reasonable doubt').

From a global point of view, it is possible to see a 'transnational space between' where both legal and non-legal actors can 'jurisdiction shop'. The transnational space between jurisdictions has created opportunities for 'process laundering'. The Belgian courts, for example, naturally require criminal convictions to be based on evidence lawfully obtained under Belgian law. But during the 1990s when telephone wiretap interception was not allowed in that jurisdiction, Belgian police requested Dutch, French and Swedish colleagues to conduct telephone interceptions on their territories. The intercept evidence was relied upon in Belgian prosecutions and in each instance the court upheld prosecutions on the grounds that it was legally obtained in the jurisdictions concerned, even though it was unlawfully obtained according to the letter of Belgian law. It may be comforting that the relevant Dutch, French and Swedish laws complied with the European Convention on Human Rights, but the transnational-state-system is not limited to European countries, it is global. As we demonstrate later in this book, the policing activities, agencies and authorities that co-mingle in the transnational space between are diffuse and defy simple and traditional systems of accountability. Informalism and discretion are seen as practical solutions to the organisational difficulties the policing occupation presents.⁷³

The commonly held notion that the 'Rule of Law' idea has teeth – that it somehow directs, or could in principle direct, policing action – is wide of the mark.⁷⁴ Police use law as a tool, just as other actors sometimes use law as a tool. Paradoxically, law in practice is always counter-law since it is by means of human discretion, choice and contestation that law is enacted. As it passes outside of itself to become real living law, it emerges as an instrument in the hands of knowing actors. Thus, the policing mission, both locally and globally, amounts to 'Rule *with* Law'. This nuanced perspective concerning policing and law





has implications for understanding the attempt to make policing subject to democratic controls and accountable to law in any given instance. It is also why we pass up the opportunity to parse forensically the details of legal instruments such as the US Patriot Act. From our point of view, laws such as this politically assert the 'right of the sovereign' in a powerfully symbolic way and, although worthy of detailed examination by socio-legalists and others, it must be glossed over in a work of theoretical synthesis such as we are attempting here. Ultimately, we conclude that cultural change is more important than the changing letter of the law because it is from the meanings inherent in the occupational subculture of policing that meanings about the application of law derive (see Chapter 4).

Colonial policing

The modern police idea, and the system of government of which it was a part, emerged *sui generis* in the developed countries of the West during the Enlightenment period and took shape gradually over more than two centuries. The many particular state forms that emerged as the nation-state-system was built up over time manifest their own domestic systems of policing. Each had domestic legitimation requirements and appealed to a national social contract and thereby an exclusionary social good. For example, the former East Germany was formally the German *Democratic Republic* (GDR). Even in what was one of the most efficient (and oppressive) police states in modern Western history, a gesture was made to an implied social contract that excluded the capitalist Germans of 'the West'. Marx's sententious notion of the 'dictatorship of the proletariat', echoing a Rousseauian tyranny of the majority, was justified on the grounds that the communist system that it would supposedly evolve towards could deliver the greatest good for the greatest number.

Alongside the development of the police idea in the West ran a parallel history of colonial policing that is vital to understanding our topic.⁷⁵ Policing was central to the colonial system and imperial domination. It was used to impose European standards of legality although it frequently upheld certain aspects of traditional, native or customary law when it was convenient. European legal institutions of police and courts were used, along with other ideas, to impose modernity upon the globe. The cartographic effect of this was to project onto the world a patchwork quilt of legal jurisdictions that, after the colonial period, were chiefly configured as fictive nation-states. These jurisdictions did not necessarily conform to any local or indigenous sense of ethnic, cultural or historical identity.⁷⁶ A 21st-century example of the post-colonial legacy in policing is the role of transnational private policing in the oil-rich Niger delta and the way it transgresses the artificial state boundaries imposed onto the cultural geography of the West African region.





Policing was the lynchpin of the colonial project. Military authorities attended to ‘constabulary duties’ as well as being an ‘army of occupation’. Very often colonisers encountered organised resistance to the imposition of outside rule and in such circumstances this was responded to with what would nowadays be called counter-insurgency operations. British colonial constabularies strove to elicit a degree of consent from the local population by being seen to conform to local legal customs.⁷⁷ Back home in the evolving liberal democracies, ‘Rule of Law’ rhetoric was an especially important legitimisation device in order to rule *with* law. Concerns for the legitimacy of the colonial project were felt ‘at home’ in another way, since the metropolitan population would be vexed by having to pay for overseas possessions with blood and money. Simply put, the colonial constabularies aimed to install colonial social order sometimes in the teeth of armed resistance. The British approach viewed abiding contact with local populations as the essential condition for gaining intelligence, showing social solidarity and denying insurgents freedom of action. Towards the end of the British Empire, the doctrine of minimal force became – in theory – an important tenet of colonial policing. As Gandhi’s use of passive resistance showed, military and police force *in extremis* tended to stoke the fires of resistance.⁷⁸

Nonetheless, the colonial project in many cases involved bloody pacification including the use of military force in genocidal atrocities.⁷⁹ Especially in the early years of colonial expansion, policing often involved swift resort to deadly force, collective punishments and ‘scorched earth’ policies. Colonial police forces were charged with *imposing* imperial law and maintaining order among the ‘lower orders’ of the colonised populations. The model for British colonial forces was the Royal Irish Constabulary (RIC), a *Gendarmerie* that aspired to follow the civil policing model.⁸⁰ Members of the RIC and former soldiers were recruited to provide colonial policy leadership. Colonial policing practice was different from the model cultivated within the homeland, which was much more concerned with the appearance of legality, bureaucratic efficiency, effectiveness and policing by consent.⁸¹ Whereas domestic policing was more firmly based on principles of minimal force and political independence, the explicitly paramilitary model of colonial policing assumed the *absence* of consent of the policed because, first and foremost, it was a mechanism to maintain domination.⁸²

Colonial policing frequently involved selective enforcement in favour of dominant local groups, the criminalisation of indigenous practices and suppression of protest. A strategy of ‘policing by strangers’ ensured that police officers of all stripes were not policing communities where their own families lived.⁸³ Commissioners and senior officers of the British Imperial police were from England (the ‘mother country’), or from Scotland, Ireland or other colonies of settlement, who were trained at British police staff colleges before being posted overseas or transferred between colonial forces. In colonial contexts, consensual





policing was reserved for the settlement of disputes and investigation of crimes within the settler community. Insofar as Western powers could co-opt formal or semi-formal indigenous institutions of social control to their own ends, 'native customary law' could be incorporated into a consensual model of colonial policing. However, when colonial interests were threatened, the indigenous population could be subjected to coercive policing. As Paul Gilroy notes, the history of colonial power overflows with evidence of a destructive association of governance with military power and marshal law, which distorted every aspect of security governance in the colonies including medicine, schooling and public administration.⁸⁴

There are parallels between colonial policing and the policing of the domestic class order of the metropolis in the contemporary 'global south'.⁸⁵ Although policing class order 'at home' always involved coercion, it seldom reached the same degree as in the colonial context. Still, the analogy is interesting, especially as things move beyond the immediate post-colonial period. Sivanandan, for example, referred to the militarised policing that grew up in Britain in the 1970s and 1980s as 'policing the domestic colonies'.⁸⁶ Twenty years later, the terminology had shifted to refer to policing the global south. For example, in the late 1990s, it was common for big city police departments in the USA to blend 'zero tolerance' with 'community policing' – metaphorically known as 'weed-and-seed'. Optimally from the police point of view, strategic community policing initiatives created the necessary legitimacy to allow the more coercive operations to be carried out with minimal risk or casualties. The weed-and-seed continuum is evidence of the contemporary 'internal colonialism' that keeps the global south down in the global system. Colonial policing in its contemporary manifestations of 'humanitarian assistance' to so-called weak, failing or failed states, works within a similar continuum of practice with 'peacekeeping' at the one end and 'counter-insurgency operations' at the other.⁸⁷ We show later in this book the various ways in which the legacy of colonial policing shapes contemporary global policing.

Types of transnational policing

The field of transnational policing comprises a complex inter-institutional nexus. The global system is not a rigid hierarchy but is complex and polycentric. Like politics, policing is 'local at all points'.⁸⁸ The importance of policing to global governance lies in its dispersal throughout the structure of power that it helps to constitute. The complexity of this system makes it challenging to describe. Ulrich Beck distinguished between 'globalisation rhetoric' and the actual political and social consequences of observable changes in the flows in capital, goods, services and information as markets become connected through





advances in transport and communication technology. In separating the ideological from the practical consequences of such shifts, Beck made subtle but important distinctions between 'globalism', 'globality' and 'globalisation'.

By globalism, Beck meant *neo-liberal* globalisation, or the 'ideology of rule by the world market'. This ideology – in Beck's words a 'haunting mega-spectre' in the world – reduces globalisation to a single economic dimension and, thereby, monocausally and economistically displaces other dimensions of social life, such as ecology, culture, politics and civil society. Globalism, according to this view, can only be enforced and cannot be legitimated. In contrast to the ideology of globalism, Beck uses the word *globality* to describe the contemporary and material reality of world society in late modernity, a reality of enduring patterns of 'worldwide interconnectedness'. This requires good policing in order to establish and maintain the conditions of social trust on which society depends. *Globalisation* was used by Beck to denote 'the processes through which sovereign national states are criss-crossed and undermined by transnational actors with varying prospects of power, orientations, identities and networks'.⁸⁹

A related distinction is between the 'inter-national' and 'transnational'; the former has been used to indicate relationships principally between sovereign states while the latter gestures at more fully globalised relationships where actions, activities and organisational structures transcend and transgress national boundaries. These ideas are vital to the study of global policing because they lift analysis beyond a state-centred understanding of international relations and raise questions about contacts, coalitions, networks and interactions across state boundaries not controlled by the central foreign policy organs of governments.⁹⁰ The terminology itself indicates the importance of *non-state actors* (such as multi-national companies, organised crime groups or new social movements), *supranational actors* (such as persons working at UN or EU institutions) and *sub-state actors* (mid-level professionals operating within a variety of state-based agencies) in global affairs. This complexity is what we capture with the notion of a transnational-state-system, a set of assumptions applied within the context of a global market society.

Our next task is to sketch theoretically the institutional domain of policing within the global system. We do so first by making three analytical distinctions. To the concepts of 'high' and 'low' policing discussed above, we add the contrast between 'public' and 'private' policing⁹¹ and, drawing on work of Richard Ericson and Kevin Haggerty, we distinguish between the 'policing of territory' and the 'policing of populations'.⁹² With these three analytical distinctions in mind, the typology shown in Table 1.1 can be used to describe the broad field of transnational policing.⁹³

Low policing describes an array of roles, functions and work routines. Private security guards are very common in shopping malls, airports and other places of mass consumption or spectacle. Similarly, the visibility of a uniformed public





Table 1.1 Conceptual field of transnational policing

	Police work aimed at securing territory		Police work aimed at securing populations	
	Private forms	Public forms	Private forms	Public forms
High policing	Corporate security guards	Guardians of the state apparatus	Corporate security specialists	State security and the public service
Low policing	Private security guards	Uniformed patrol officers	Private eyes and private spies	Police detectives and undercover cops

Source: James Sheptycki (ed.) (2000) *Issues in Transnational Policing*. London: Routledge, p11.

police patrol makes it the ubiquitous exemplar of the idea of state sovereignty almost everywhere around the world. Although highly visible to the public, the secret social world of the occupational subculture is obscure. Even more so is the manner in which ‘private eyes’ and ‘private spies’ operate. It goes without saying that the routine work of undercover cops is concealed by a veil of secrecy. Most of what people think they know about policing is filtered through widely spread fictional accounts and news story constructions found in the commercial media. If the workings of the most evident kinds of policing agent are, in fact, mysterious to most, those types indicated along the top row of Table 1.1 are even more so. The high policing functions, which guard the integrity of government installations and corporate institutions, are usually kept secret. The legitimacy concerns inherent in these practices are another reason why corporate and state-based high policing occupy the most secretive enclaves of the policing field. This typology itself reveals some of the difficulties of bringing policing, broadly conceived, to account.

To this flat picture of the policing field we can add a vertical dimension. According to the historical sociologist Michael Mann, in the contemporary global system there are five ideal-typical, socio-spatial networks of interaction: (1) local (sub-national), (2) national (bounded by the nation-state); (3) international (relations between nationally constituted networks) (4) transnational (passing through national boundaries unaffected by them) and (5) global (covering the world as a whole).⁹⁴ Mann recognised that empirically these networks blend into one another and that, as in any typology, there are fuzzy boundaries and grey areas. However, he maintained that it is useful to identify the ways in which long distance networks – national, international and transnational – have become denser and have assumed a greater role in the structuring of social life. Applying Mann’s ideas to transnational policing, the spatial networks of policing power in Table 1.2 can be delineated.⁹⁵

This configuration of policing ‘levels’ is in accord with the commonsense understanding of policing agencies as rank-structured bureaucracies. In fact, in the transnational knowledge society, hierarchical organisations are continuously



Table 1.2 A socio-spatial typology for transnational policing

Locus	Network	Examples
Global	Policing entities that have a global reach	Interpol, UNPOL, UN CIVPOL missions; World Customs Organisation (WCO); International Criminal Court (ICC Investigations Division); Egmont Group/Financial Action Task Force (FATF)
Regional	Regional security structures and associations	EUROPOL; Shengen Information System (SIS), Cross Channel Intelligence Conference (CCIC), the Association of Caribbean Police Commissioners (ACCP); Regional Security System (RSS – Caribbean)
National	National security structures created to be able to coordinate a national response and to work with international partners and liaison officers posted in overseas diplomatic missions	UK Serious Organised Crime Agency (SOCA), MI5, MI6, GCHQ, US national agencies such as FBI, DEA, Homeland Security, Treasury Department, State Department, Security Service; Netherlands KDLP; French Gendarmerie and Judicial Police; German Bundespolizei; Australian Federal Police (AFP); National Police Agency (NPA – Japan); Royal Canadian Mounted Police (RCMP), etc.
Glocal	Local policing agencies and units transnationally linked	Drug squad, counter-terrorism, criminal investigation departments, Operation Trident (London Metropolitan Police Service) Domestic inter-agency intelligence sharing systems linking police, customs, immigration and airport security

Source: Ben Bowling (2010) *Policing the Caribbean*. Oxford: Oxford University Press, p9.

cross-cut by networks of communication that bind them together. Institutions tend towards polycentric power, which is very often non-hierarchal.

Dick Hobbs and Colin Dunnighan argued that globalisation creates ‘glocal’ networks in ‘local places and flexible spaces’ linking the local and global into collaborations among criminals and law enforcement agents alike.⁹⁶ Maureen Cain described policing as ‘indigenous but globally aware’.⁹⁷ This draws attention to local police officers – especially those in such units as drugs, counter-terrorism and organised crime – who often understand the broader global political and economic context of their work. Big city police in Europe, North America and Australia respond to local cocaine and heroin street-dealing, for example, well aware that transnational supply networks extend back to South America and Asia. Glocal policing can be understood in terms of its global strategic effect that is comprised by multiple mid-range bureaucratic police co-operation practices across formal lines of jurisdiction.

Lashing together transnational multi-agency operations can be tremendously complicated because public and private security providers all have functionally delimited remits that differ in important ways. The FBI, for example, has a wider remit than the DEA, and the RCMP remit is wider still. The remit of private security providers is customer service so the functions of in-house security for



multi-national corporate entities, such as Halliburton or Coca-Cola, are different to the functions provided by private security firms, such as the GEO Group or the private military company Blackwater (now known as Xe). All of these agencies could, in theory at least, become involved in a globally co-ordinated, multi-agency effort.

The transformative power of information communication technologies in the transnational-networked society is transfiguring highly rank-structured police organisations. Local police units in countries thousands of miles apart sometimes find themselves linked without any intervening central national authority. In an era of mobile phones and networked computers, local police needing information from far distant places can make instant contact as easily as they can with their colleagues in the same building. In many instances regional police co-operation enterprises are constituted precisely so that local policing functions can be networked across national borders without direct oversight by central national-state authorities. There is a good deal of complexity in how these various 'levels' co-articulate in practice. At the global level are institutions that are only loosely coupled to national states. As we show in Chapter 3, some of these organisations, Interpol first among them, are not at all constitutionally beholden to national sovereign interests, *they are fully supranational* and independent.

To understand how this complex system of global policing hangs together, this book advances a theory that pays specific attention to the occupational subcultures of policing.⁹⁸ This perspective holds that the core feature of the police occupation consists in its relationship to coercion, giving rise to a set of sociological and cultural expectations and adaptations that rests on the assumption that policing agents can be solutions to the predicament of authority.⁹⁹ Under conditions of globalisation, what then happens to the consent of the governed? Transnationally, police operate with law, if not under it, and around the world there is a sense that the social contract is being torn apart by competing claims. Policing subculture is a social space where agents actively create meanings of social order. We argue that the practices of transnational policing are essential to the maintenance of the transnational-state-system and serve to bolster it both symbolically and practically.

There are ancillary problems experienced within the occupational subcultures of policing, primarily to do with surveillance and the management of knowledge about policing power. The subculture of policing exhibits considerable local variation because knowledge relevant to policing is local knowledge. Nevertheless there remains a family resemblance among subcultures of policing around the world and this is what we mean by the transnational subculture of policing. Features of that kinship arise from common problems inherent in the use of coercion or the threat of violence as a means to achieve peace and security. Research on policing subcultures also empirically verifies that police agents around the world tend to adhere to cultural values associated with masculinity





such as combativeness, suspiciousness, cynicism, pessimism, conservatism and a thirst for action.

As we will show in detail in Chapter 4, the idea that police subcultures around the world share some similarities is well established. But what is new is a *subculture of transnational policing* among an emerging occupational group memorably described by Robert Reiner as ‘the new internationale of technocratic police experts’, who travel the globe advancing the latest policing solutions.¹⁰⁰ Police agents of various stripes are increasingly prevalent in many settings in the system of global governance. They sometimes operate as liaison officers in an intelligence sharing and support capacity several degrees removed from the actual coercive use of force that is more often delegated to local units. Some are training local officers. Others actually assume operational control of local policing. The subculture of transnational policing shapes the global system in important ways. Decisions that these police agents take and the policies they make shape the transnational subculture of policing, which in turn shapes local policing around the world. The meanings and processes enacted within the policing field reflexively constitute the culture of global policing and thereby the destiny of world society more generally.

Conclusion: policing an insecure world

What would Derek Bond and his family make of this discussion? The media-made myth of the ‘Man from Interpol’ would have already been busted by their personal experience. Mr Bond had direct acquaintance with post-colonial policing and the South African prison system. His family personally endured the inner workings of the byzantine legal realm of cross-border policing. Their direct contact with the technological power of global policing illustrates the political complexity of the transnational-state-system of which it is a part. Those personal experiences plunged the Bond family into doubt about the nature of the social contract struck by transnational policing. Their story raises serious questions about the nature of the global policing enterprise.

This chapter has endeavoured to sketch out the components of a language necessary to establish a general theory of global policing. Our theory allows for subcultural adaptations of policing in different countries, organisational locations and occupational specialisms. Our focus is on the historical evolution of modern policing (a central component of the nation-state) as the transnational-state-system idea evolves and is superimposed onto the world system. The theory concerns the relationship between police and law and how the quality of the social contract shapes the legitimacy (or otherwise) of policing. It recognises the parallel history of colonial policing and foregrounds the coercive aspects of the police role in imposing social order domestically and transnationally. Our





••• Theorising global policing •••

analysis emphasises that power in the global system is polycentric without an exclusive source of authority, and that the policing field is conceptually and organisationally fragmented. Global policing is the result of a complex over-determination arising from multiple factors. The theory suggests that action on the policing field gains coherence as a result of the meanings engendered in the occupational subculture of policing around the world. As we explain in Chapter 4, this is strongly influenced by the newly emerging occupational subculture among specialist transnational police officers.

Theorising global policing is important because policework shapes the global system in crucial ways. Global policing theory is an opening into the global system and a microcosm of it. Transnational policing is a central mechanism in reproducing the transnational-state-system and constitutes the existing global system's most general characteristic. It is a synecdoche of globalisation. The occupational subculture of policing provides an interesting cast of characters for the global stage. The personal experience of the Bond family in their hour on that stage is emblematic of the way in which, to paraphrase C. Wright Mills, private troubles are transformed into global public issues.¹⁰¹ Personal experiences of transnational policing indicate a general sense of crisis and the evidence that we examine in this book shows that policing subcultures are woven into the panic scenes of the global security-control society. To put it bluntly, bad policing creates global insecurity. It follows that global policing is, or should be, one of the crucial public issues of our time.

