

A CROSS-CULTURAL CONSIDERATION OF THE POLICE AND HUMAN RIGHTS

DOROTHY H. BRACEY

John Jay College of Criminal Justice

Most discussions of police and human rights occur when police are clearly violating human rights as they enforce the law or when the laws that they are enforcing clearly violate human rights. This article examines situations that are not so clear. It suggests that the definition of human rights is not always clear and that historical and cultural contexts matter. The concept of human rights is an evolving one, and it evolves through conversation and debate. Finally, police are urged to participate in these conversations, bringing to the table their unique experience and expertise.

- A police officer escorts a prisoner from his cell to the place of execution.
- A police officer arrests a doctor for performing an abortion.
- A police officer summarily fines a woman for not sufficiently covering her face on the street.
- A police officer refuses an arrest for child abuse in the face of convincing evidence that a man has performed a clitoridectomy on his niece.
- A police officer forcibly turns a starving refugee away at the country's border.

All these officers are obeying the properly promulgated laws of their own countries, but each is performing or assisting in an action that some people would consider a violation of human rights. In each case an observer, armed with the appropriate declarations and conventions, could declare the action to be a violation of human rights. And in each case, an observer, armed with the appropriate declarations and conventions, could declare the action to be morally correct.

These circumstances create extremely intriguing situations. Most discussions of police and human rights concern themselves with police conduct that is either clearly lawless or else reflects laws that are themselves clearly morally abhorrent. For such situations, the United Nations (UN) has

produced a set of instruments that provides specific standards and principles by which police performance can be measured. These apply across cultures and can be easily accepted by all officers who take pride in their profession and its mission of service and protection.

But the situations posited above are ones in which police action must take place in a context in which the definition of human rights is not clear. People of good will but equipped with different cultural and historical lenses may differ. Compared to corruption, torture, brutality, or degradation, instances such as these may appear both rare and trivial. However, they take place in a world growing ever smaller, one in which immigration has made ethnic diversity and multiculturalism the norm rather than the exception. It is also a world in which individuals and groups find themselves more willing to proclaim what they see as their rights and to challenge infringements of them. It is a world in which governmental claims of "domestic jurisdiction" are not effective shields against international observation and judgment. For these reasons, it is safe to say that cases such as these will not only become more frequent but also become more visible and controversial. It is the argument of this article that police should be not merely the objects of the controversy but active participants in it.

HUMAN RIGHTS AND CIVIL RIGHTS

The term *human rights* is part of the controversy. It refers to rights that belong to a person as a simple consequence of being human. They are seen as universal and equally claimed for every individual regardless of nationality, ethnicity, religion, race, or gender. The concept can be traced at least as far back as the Greek stoics and is closely related to the concept of natural law that emerged from the Enlightenment and underlay both the American Declaration of Independence and the French Declaration of the Rights of Man and Citizen. After the atrocities of World War II, the term came into common and worldwide use when in 1948 the UN General Assembly adopted without dissent the Universal Declaration of Human Rights. Although the Declaration contains a list of human rights, the concept has not been static. In the past 50 years, it has changed and developed. In fact, a recent volume looking back on its history is titled *The Evolution of International Human Rights* (Lauren, 1998). The evolution has certainly not come to a halt.

Discussions of rights in the United States are more likely to use the term *civil rights*. Although human rights are seen as universal and inherent in the

very fact of being human, the American concept of civil rights has its basis in the Constitution of the United States, particularly its Bill of Rights. They are not inherent in being human; they are inherent in being American. Again, this is not a static concept; differing visions of exactly what civil rights are and who is entitled to them have led to long and sometimes bloody disagreements. To say that those disagreements are over would be to ignore the lessons of American history.

Many of the things that Americans claim as their civil rights, residents of other countries claim as human rights. However, the two terms are not identical. Many of the economic, social, and cultural rights listed in the Universal Declaration are not perceived by Americans to be among their civil rights, whereas cultures that prize tradition, family, and values based on religion find the American notion of civil rights to be too individualistic.

CULTURE, POLICE, AND HUMAN RIGHTS

Clearly, the laws of the examples in the beginning of this article are situated in particular cultural, religious, and economic systems. They reflect differing definitions of who is and how one becomes human, of the place of tradition and its contribution to mental and emotional health, and to the question of whether rights adhere primarily in the individual or in the community.

It is not always easy to know how police should act in an arena where principles enshrined in what purports to be a Universal Declaration of Human Rights often seem not to be quite universal after all. Does it—should it—matter to police that the laws of their country have much, some, little, or no international support? Or if laws made by the powerful or the majority diminish the human rights of the powerless or the minority? What if the situation is reversed—if laws made by proponents of individual human rights interfere with traditions or religions that are more concerned with cultural continuity and the rights of the group? How do police deal with a situation in which the concepts of human rights and cultural relativism seem so often to be at odds?

ANTHROPOLOGY

The discipline of anthropology provides some guidance. Since the draft of the Universal Declaration of Human Rights (UN General Assembly Resolution 217A[III], December 1948), anthropologists have been conflicted

over the concept. A review of anthropological confusion may provide some clarification for others trying to find their way through these inconsistent and often contradictory ideas.

Asked to comment on the proposed draft of the Universal Declaration, the American Anthropological Association (AAA) rejected the entire idea of universal human rights.

Instead, they emphasized that different peoples have different rights concepts and that they also refer to different authorities. AAA members criticized the universal international legal framework as ethnocentrically Western and expressed distrust for the framework of national sovereignty that was charged with enforcement. Anthropologists continually challenge Western ideas of “progress” and associated notions of development that are implicit in early human rights formulations. (Messer, 1993, p. 224)

In 1947, the executive board of the AAA sent the UN Commission on Human Rights a statement declaring that the proposed Declaration could not possibly be applicable to all human beings and set forth three propositions. The first demanded respect for cultural differences, the second asserted that it was impossible to evaluate cultures, and the third stated that the proposed Declaration could never apply to all of mankind (Herskovits, 1947). Although not all anthropologists agreed with these propositions, they did set the stage for a discourse, which is still going on at this moment (Wilson, 1997).

THE DEVELOPMENT OF THE CONCEPT

The concept of human rights “developed as a means to set limits to the power of the state *vis-à-vis* its citizens” (Dembour, 1996, p. 24.) The first efficient piece of international legislation on human rights, the European Convention of Human Rights, adopted by the Council of Europe in 1950, provides that cases alleging infringement of its provisions can be brought before a commission and a court. “These cases are *always* brought against a State, a signatory to the Convention. In fact, no other defendant is imaginable” (p. 25). These political and civil rights of individuals (the so-called first generation of human rights) reflect secular Western values including individualism, and they also reflect the post-World War II period during which they were articulated. It is at this level—the level of the individual against the state—that most attention has been paid to the police, for police often carry out the state policies that are considered abusive of human rights.

The assumptions and concepts of the socialist and welfare states added a second generation of socioeconomic and cultural rights. These—including rights to employment and fair working conditions, a standard of living that guarantees health as well as social security and education, and special rights for women and children—also can be conceived in terms of rights of the individual against the state. However, this generation of rights imposes an affirmative duty on the state, requiring that the state implement certain rights for its citizens rather than demanding that the state simply refrain from interfering in their lives. Police may be asked to act when the state has not passed a relevant law as, for example, if a police officer is asked to return an abused wife to her husband.

The African Charter on Human and Peoples' Rights states a third generation, these "resting on the premise that collectivities have rights that vary across cultures, in relation to other collectivities and to individuals" (Cohen, 1989, p. 1015.) The Charter asserts that the state has an obligation to ensure the exercise of the right to development and "the empowerment of states to accomplish goals of human betterment and the public good, above and beyond the protection of the individual, is claimed to be a justifiable feature of African concepts of human rights" (p. 1015). This implies that there are rights other than the Western traditions of individual human rights and that these rights are "rooted in the African social and cultural heritage" (p. 1015). These solidarity or development rights refer to, among others, peace, an equitable distribution of wealth, and a sustainable environment. Here, for example, police may be ordered to confiscate on behalf of the state property what its owners consider private.

Indigenous people in many parts of the world, often following the leadership of communities in Latin America, are now adding a fourth generation of indigenous rights. These are meant to "protect their rights to political self-determination and control over socioeconomic development—rights that are currently threatened within the state framework" (Messer, 1993, p. 223.) These rights are expressed as belonging to indigenous groups, not to individuals. The most recent UN Human Rights Convention on this topic (with 13 ratifying parties) guarantees rights to traditionally owned land and rejects the assimilationist orientation of the earlier standards. These rights raise the example of a police officer ordered to intervene on the part of the state when a group wishes to withdraw its children from the education that is compulsory for all citizens of the nation.

Although it is tempting to look on these succeeding generations as simply expanding the concept of human rights, it is clear that this view is

deceptively simple. New generations shift the locus of rights among the individual, the community, and the state; they challenge the notion of universality; and they assert rights that are at times mutually exclusive (Bracey, 2002). The notion of successive generations has implications for the police, who are representatives of the state, but who are also individuals as well as members of geographical, cultural, and religious communities. How does one recognize those rights that must be acknowledged and defended under any circumstances? How does one recognize those rights that are specific to a particular time and place?

HUMAN RIGHTS AS POLITICAL ASPIRATIONS

Dembour (1996) gives a starting point by investigating what human rights are not. It is necessary first to come to terms with the fact that no document asserts rights that are truly universal. The Universal Declaration of Human Rights tries. It states, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2). In practice, however, certain classes are excluded. Refugees are one example. The distinction between economic and political refugees is well known. The law does not concern itself at all with those who travel to another country to improve their economic condition. But even international legislation on political refugees does not make it an obligation for states to grant asylum to political refugees not yet within their borders, only not to return them once they are in. Nor are all human rights enforceable.

As its name indicates, the UN Declaration is only a declaration; it is not binding in law. Rather, it sets "a common standard of achievement for all peoples and all nations" (Preamble) but without attaching any sanction to failure to reach these standards, and without even really defining the standards to be achieved. (Dembour, 1996, pp. 29-30)

The European Convention, which does provide enforceable legal rights, confines itself largely to civil and political rights, ignoring even those social and economic rights to be found in the Declaration, let alone those proclaimed in subsequent documents.

As Dembour (1996) then pointed out, the expression *human rights* is ambiguous with regard to the meaning of the term *right*. Although it sometimes refers to rights that can be found in national and international law, it appears that more often it refers to moral rights "which have not yet found

their way in legally binding provisions, but hopefully will” (p. 32). In other words, human rights start to come into being when we talk about them, and the level of our discourse—local, national, international—dictates the level at which we expect these rights to come into being. The language of human rights is a language of claims to a better and more moral world, but some of those claims only make sense in a particular social, cultural, and economic context. Because these contexts are constantly changing, the aspirations expressed in the language of human rights will be constantly changing also. Human rights are a conversation about the world we would like to have—and police should be participating in that conversation.

POLICE AND THE CONVERSATION

David Bradley (personal communication, February 1992) of the police academy in New South Wales, Australia, has observed that, ideally, police should think of themselves as the uniformed branch of the Civil Liberties Union. Given all the complexities outlined in this and in other presentations, how can police prepare themselves for such a role?

Police can take an active part in the ongoing debates and procedures that formulate the definition of human rights in the particular time and place in which they serve. In many societies, police have avoided or even been barred from taking part in the political process. Removing the enforcers of the law from the process of making the law they enforce is often seen as a protection of human rights. But asking police to participate in the conversation is not necessarily the same as asking them to lobby the legislature. It is asking them to place their particular knowledge and expertise at the service of those who struggle to balance competing interests with competing definitions of human rights.

Police are the interface between the bodies that make laws and the people on whom they are enforced, and it is police actions that often turn legal statements into events that influence the well-being and even the lives of members of the community. Consequently, it is the police who are often the first to be condemned if their actions—their legal actions—are perceived to deny certain individuals their human rights. For this reason, police have the right—the right and the responsibility—to make themselves heard as the laws are being composed.

For example, police are in an excellent position to point out the dangers of criminalizing all practices seen as abusive of human rights. In some Western nations, for example, female genital mutilation has been legally

characterized as child abuse. This means that loving, caring immigrant parents who may have made major sacrifices for the welfare of their children find themselves treated as criminals—complete with criminal record, stigma, and danger of deportation—while their children become wards of the child welfare system. This is by no means to suggest that the host nation needs to approve or even tolerate this practice, only that there may be other ways of dealing with it.

Conversely, where the culture does tolerate what may be considered human rights abuses, police may use their authority to give a voice to victims whose social or economic position may render them voiceless. Because they interact on a personal level with those individuals who make up the community, they have the opportunity to become aware of injustices that may be invisible to law-making elites.

Because their duties may bring them into contact with groups that are small, traditional, obscure, or the objects of prejudice, police become aware of ways in which proposed or enacted legislation may have an unanticipated or unfair impact on these people. They may bring such impacts to the attention of those who have the power to do something about them.

As nations commit themselves to punishing the human rights abuses of the past, police who carry out the necessary investigations may be in a position to help ensure that this is done fairly. One nation, for example, has passed the death sentence on peasants involved in a 1982 massacre of women and children. But it seems that the peasants were conscripted into the anticommunist activities that resulted in their participation in the massacre under threat of torture or death by the army. Police might be able to instigate or complete the investigations that would result in the prosecution of those who ordered the massacre as well as those who carried it out (Policy Publications, 1993).

Entering the human rights conversation is not necessarily easy. It calls for a sophisticated acquaintance with the issues, data, players, and language involved in human rights discussions. None of this is beyond police capability. Whether it should (or can) be done by individual officers acting on their own or by delegates of departments will vary with the level of police organization—national, state, or local—as well as with national culture, governmental attitude, and personal proclivity. In any case, it calls first for self-education, for officers to be given or to take on the responsibility for understanding the issues surrounding human rights in general and in their own local context.

Second, it calls for police to make themselves available; this involves writing articles, volunteering for panel discussions or interviews, engaging the press, and contacting human rights organizations. Again, the extent to which any one officer or organization can do this will vary with the local situation.

Third, it calls for dialogue with government officials: dialogues that may be public or extremely private. In some nations and on some issues, this will be easy and police will soon find themselves eagerly sought after; sometimes, it will be incredibly difficult and even dangerous.

CONCLUSION

Police are sometimes perceived, sometimes unjustly, as being opposed to human rights and seeing the protection of human rights as a hindrance imposed on them in carrying out their duty of identifying and apprehending criminals. Perversely, this means that police bring to the discussion an almost unique credibility; they have so often been accused of ignoring human rights issues that when they speak on the subject, they can be assured of being listened to.

In many ways, police are ideally situated to call attention to the problems, both anticipated and unforeseen, that result from the constantly evolving concepts of human rights. They are also ideally situated to suggest solutions. In other words, they are ideally situated to take part in the ongoing conversations that help to define and refine our aspirations and the political processes that make them real. Some might suggest that asking police to concern themselves with human rights is idealistic, but all talk of human rights is idealistic. There are circumstances in which police participating in these debates may expose themselves to danger, but police have rarely been accused of lacking courage. Both as citizens of their nations and as enforcers of the law, they have every right to take part in the conversation, and their voices are sorely needed.

REFERENCES

- Bracey, D. H. (2002). Human rights. In D. Levinson (Ed.), *Encyclopedia of crime and punishment*. Thousand Oaks, CA: Sage.
- Cohen, R. (1989). Human rights and cultural relativism: The need for a new approach. *American Anthropologist*, *91*, 1014-1017.

- Dembour, M.-B. (1996). Human rights talk and anthropological ambivalence. In O. Harris (Ed.), *Inside and outside the law: Anthropological studies of authority and ambiguity* (pp. 19-40). London: Routledge.
- Herskovits, M. (1947). Statement on human rights. *American Anthropologist*, 49, 539-543.
- Lauren, P. G. (1998). *The evolution of international human rights*. Philadelphia: University of Pennsylvania Press.
- Messer, M. (1993). Anthropology and human rights. *Annual Review of Anthropology*, 22, 221-249.
- Policy Publications. (1999, December). *Anthropology News*, p. 29.
- Renteln, A. (1988). Relativism and the search for human rights. *American Anthropologist*, 90, 56-72.
- Wilson, R. (Ed.). (1997) *Human rights, culture and context: Anthropological perspectives*. Sterling, VA: Pluto.

Dorothy H. Bracey is a professor at John Jay College of Criminal Justice, City University of New York (CUNY) and CUNY's Ph.D. program in criminal justice. She has a Ph.D. from Harvard University, a Master of Studies from Yale Law School, and a BA from the College of William and Mary. She has been editor of Police Studies: The International Review of Police Development and the Journal of Criminal Justice Education. She was 1985-1986 president of the Academy of Criminal Justice Sciences. She was a visiting professor at the University of Illinois at Chicago and the South Australian Institute of Technology; visiting fellow at Australia's National Police Research Institute, England's National Police College, the Netherlands Police Study, and the American University; and the George Beto Professor at Sam Houston State University. She is on the board of the State University of New York's Institute for Human Rights and Law Enforcement.