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**Rethinking police accountability and transparency within the EU:
reconciling national and supranational approaches**

PhD Thesis

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Abstract

The new terrain of increasing interaction between national and supranational legal systems within the European Union presents new challenges for conventional approaches to police accountability and transparency. Each EU Member State is responsible for policing within its jurisdiction, and the EU institutions are increasingly responsible for enhancing the conduct of police cooperation between the Member States. The thesis explores the challenges of reconciling national approaches in the international sphere by conducting a critical analysis of ‘how and to what extent national legal and administrative norms on police accountability and transparency are informing the concept, design and operation of EU cross-border policing instruments’.

Building on the work of Peter K. Manning, Geoffrey Marshall and David Bayley amongst others, the thesis develops a pragmatic typology of police accountability through which to view the evolution and adequacy of national and supranational approaches. The typology contains three key dimensions, namely codes, co-option and complaint. Using the typology to critique conventional approaches in the UK, Ireland and Denmark, the thesis identifies legal and procedural anomalies and challenges at both the national and supranational level since the traditional elements of police accountability were originally formulated within the confines of national legal, political, historical and cultural constraints.

Employing the typology to both elucidate problems and suggest methods of internalisation, the thesis argues that the EU should follow the lead of the Member States’ legislatures by seeking to regulate a wider range of policing processes through more expansive procedural ‘codes’ which facilitate police discretion and co-option. The thesis shows that it is not sufficient for the EU to prioritise its post-Lisbon policy of ‘co-decision’ in order to remedy its democratic deficits but that it must oversee the establishment and enhancement of parliamentary committees, inspectorates and other oversight bodies in the interest of police accountability. A number of recommendations are made for police reform at both the national and supranational levels to this end. More particularly, the research indicates that additional treaty changes are needed beyond the Lisbon Treaty in order to adequately reconcile national and supranational approaches to police accountability.

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Introduction

The European Union's relentless development of procedural instruments and frameworks for police cooperation is unprecedented and appears to suggest that a paradigm shift has occurred towards more enlightened, cosmopolitan thinking about issues of sovereignty, cross-border policing and police accountability in Europe. It can be anticipated that the development of common transnational measures and the challenges that they raise have been met by drawing upon and reconciling the Member States' long-standing national approaches to police accountability which are rooted in constitutional, legal and administrative traditions and values. However no major academic studies have been carried out to determine the precise effect of the emerging EU regime, partly because the EU competency is relatively new, complex and continuously evolving.

The thesis explores the precise nature of the EU cross-border policing project and, more particularly, critically analyses 'how and to what extent national legal and administrative norms on police accountability and transparency are informing the concept, design and operation of EU cross-border policing instruments'? The thesis will show that the EU regime has introduced a number of cross-border policing measures without making appropriate accommodation for police accountability. Due largely to the EU's lack of concern for police accountability many of its measures are considered to be unworkable and superficial by police officers while its policy officials have been allowed to prioritise political ambition over practical needs. The thesis draws upon national approaches and international best practice to mould constructs which could theoretically enhance the transparency and accountability of EU cross-border policing in line with conventional legal and administrative values.

Chapter outline

As a point of departure, the analysis requires a basic understanding of police accountability so that national and supranational approaches can be consistently analysed and evaluated. To clear the ground around the concept of police accountability the thesis draws together extant academic literature and policy documents to develop a pragmatic typology or hypothesis of police accountability which can be applied to the national and supranational policing systems. The thesis will use the literature review to show that there is no extant conceptualisation or theory of police accountability which adequately captures the range of factors, phenomena and distinctive characteristics of the scientific object. More particularly, it will argue that major police reforms in recent years have rendered popular definitions of police accountability outdated as they are rooted in more traditional legal and administrative processes and perceptions. Following the development of the hypothetical framework the thesis will strive to give definition to the shape and form of the emerging EU project before proceeding to conduct the primary critical analyses.

Chapters 1 to 5 are concerned primarily with the application of the hypothetical framework of police accountability to national and supranational policing systems. Chapters 1 and 2 focus on the comparative analysis of a select number of jurisdictions, namely England (and Wales), Ireland and Denmark, in order to test the soundness of the typology and, most importantly, to elucidate the similarities and

differences in approaches to police accountability between the respective jurisdictions. The typology of police accountability elucidated within the literature review' contains three primary dimensions, namely 'codes', 'co-option' and 'complaint'. Chapter 1 will focus on the issues of codes and co-option and Chapter 2 will focus on the dimension of complaint on the national level. The comparative analysis will show that there is a significant degree of commonality across the respective jurisdictions due largely to a culture of 'knowledge transfer' between national policing systems. Subsequently, Chapters 3 to 5 are concerned with applying the typology to the maturing EU regime for cross-border police cooperation. The EU's approaches and deficiencies will be considered in light of comparable national approaches to police accountability.

Literature review

A number of key publications address various aspects of police accountability within the modern nation-state but none have striven to critically analyse the philosophy of police accountability in Europe from either a national or a broad transnational perspective. Geoffrey Marshall's *Police and Government*, published in 1965, and Laurence Lustgarten's work on *The Governance of Police* both focused acutely on political oversight and control of police forces in the UK at the expense of tangential legal and internal mechanisms of accountability.¹ More recently, PAJ Waddington's compendium on *Policing Citizens* represented a modern analysis of various dimensions of police governance but with specific regard to protest policing and public order maintenance over and above the accountability of other areas of public policing such as counter-terrorism.² Steven Savage's *Police Reform*, published in 2006, paid acute attention to political and managerial forms of accountability, focusing in particular on recent policy drivers such as privatisation, marketization and new public management as well as contextual drivers such as globalization but left other areas of police accountability largely untended, particularly systems of complaint and internal discipline.³

Beggs and Davies' recent compendium on *Police Misconduct, Complaints and Public Regulation* in England suffers the opposite problem. It largely re-produces the extant disciplinary and performance codes of conduct in order to elucidate and explain the internal, external and legal mechanisms of accountability but without addressing parliamentary oversight.⁴ Reiner and Spencer's *Accountable Policing* is one of the few edited collections on the distinct subject of police accountability but like the aforementioned unitary publications it too adopts a narrow focus, examining the issue of political control in light of the new public management strategies adopted by the UK government in the 1990s.⁵ Similarly, Samuel Walker's *The New World of Police Accountability* outlines a number of management reforms introduced since the 1990s to hold police organisations more accountable for the conduct of their officers but it

¹ Geoffrey Marshall, *Police and Government: The Status and Accountability of the English Constable* (Methuen London 1965); Laurence Lustgarten, *The Governance of Police* (London Sweet and Maxwell 1986)

² PAJ Waddington, *Policing Citizens* (Routledge 1999)

³ Steven Savage, *Police Reform* (OUP 2007)

⁴ John Begg and Hugh Davis, *Police Misconduct, Complaints and Public Regulation* (OUP 2009)

⁵ Robert Reiner and Sarah Spencer (eds), *Accountable Policing* (Institute for Public Policy Research 1993)

focuses particularly on performance targets and efficiency rather than local and national democratic accountability, and is USA rather than Europe-specific.⁶

Dermot Walsh's *The Irish Police* is one of the few seminal publications to comprehensively address the issue of police accountability in its entirety within a single jurisdiction. Walsh's volume thoroughly examines the mechanisms of police accountability, covering issues of internal disciplinary accountability, external civilian review, legal accountability, democratic accountability and concomitant axioms of police discretion, operational independence and democratic constitutionalism.⁷ Neil Walker's *Policing in a Changing Constitutional Order* is the English publication most comparable to Walsh's jurisdiction-specific approach but it focuses predominantly on one area of police accountability, namely political control largely at the expense of internal and managerial forms of accountability.⁸

Other seminal books which strive to provide an overview of public policing within a single jurisdiction such as Whitaker's *The Police in Society*, Brady's *Guardians of the Peace*, Emsley's *The English Police* and Conway's *Policing 20th Century Ireland* tend to take a historical perspective and a descriptive approach to policing and the police function rather than engaging in a specific analysis of police accountability.⁹ Taking a more comparative approach to the issues of police governance and accountability, David Bayley's *Patterns of Policing* examined the peculiar management structures, functions and political oversight of police forces across Europe, North America and Asia but without focusing intimately on modes of legal and disciplinary accountability.¹⁰ In contrast, Maurice Punch's more recent *Police Corruption* addressed matters of disciplinary and legal accountability in the context of police deviance and the handling of police corruption across the UK, North America and the Netherlands throughout the 20th and early 21st Centuries but without attending to mechanisms of local or democratic accountability.¹¹ Peter K Manning conveyed in 2012 that although the problem of police accountability remains widely discussed it is evident that it is not being deeply researched.¹²

Conceptualizing a framework of police accountability

Peter K Manning suggests that there is a marked reluctance within academia to habitually define police accountability due to the perceived complexity of the subject matter.¹³ He observes that, instead of engaging with the subject of police accountability, academics prefer instead to colour their commentaries on various

⁶ Samuel Walker, *The New World of Police Accountability* (Sage 2005)

⁷ Dermot Walsh, *The Irish Police: A legal and constitutional perspective* (Roundhall Sweet and Maxwell 1998)

⁸ Neil Walker, *Policing in a Changing Constitutional Order* (Sweet and Maxwell 2000)

⁹ Ben Whitaker, *The Police in Society* (Eyre Methuen London 1979); Conor Brady, *Guardians of the Peace* (Gill and Macmillan 1974); Clive Emsley, *The English Police: A Political and Social History* (2nd edn, Longman London 1996); Vicky Conway, *Policing Twentieth Century Ireland* (Routledge 2014)

¹⁰ David Bayley, *Patterns of Policing: A Comparative International Analysis* (Rutgers University Press 1985)

¹¹ Maurice Punch, *Police Corruption: Deviance, accountability and reform in Policing* (Routledge 2009)

¹² Peter K Manning, 'Trust and Accountability in Ireland: The case of An Garda Síochána' (2012) 22: 3 *Policing and Society* 347

¹³ Peter K Manning, *Democratic Policing in a Changing World* (Paradigm Publishers 2010) 23 - 37

dimensions of police work by inserting the term as a flattering but largely abstract adjective.¹⁴ For Lustgarten, the term ‘police accountability’ is usually employed as a ‘weasel word’.¹⁵ He argues that what is usually at issue is the degree of control over the police that the public and its political representatives have and, more particularly, to imply the degree of control that they ultimately desire.¹⁶

Elucidating the meaning of ‘police accountability’, Bayley argues convincingly that control and accountability are symbiotic in a policing context since the terms are largely interchangeable when applied to the public policing system since both refer to processes which aim to bring the behaviour of the police into conformity with the requirements and demands of society.¹⁷ He conveys that the symbiosis of control and accountability is exemplified not least by the hierarchical police organisation which exists to issue daily instructions to its members, to keep them under regular supervision and to maintain a constant, rigorous and uniform military-style of discipline.¹⁸ Reiner observes that it is because of the connotations of control that policing scandals are invariably followed by calls for greater police accountability.¹⁹

However Bittner points out that although control and accountability mean much the same thing in a policing context both words can have different connotations and applications.²⁰ He notes that the idea of ‘control’ can be used to suggest an onus on police supervisors for the quality of direction and supervision from the top-down whereas the concept of accountability is often used to imply that responsibility for police behaviour lays primarily at the feet of the police officer in the first instance, potentially alleviating the supervisor of blame depending on their ability to divert responsibility elsewhere.²¹ Bittner warns that the use of the term ‘accountability’ risks placing the onus squarely on police officers to account for their actions *post factum* instead of holding senior police administrators responsible for the degree of supervision and direction exerted.²²

Stenning has since attempted to theoretically separate control and accountability. He argues that some professions can have accountability without control such as the medical and teaching professions, the judiciary and even private policing, which tend to afford their members a degree of autonomy coupled with a high degree of answerability.²³ However he ultimately concluded that such a distinction could not be made in a public policing context due largely to the presence of the hierarchical bureaucratic system of command.²⁴ Many pre-eminent authorities, not least JQ Wilson, Albert J Reiss, Samuel Walker and David Bayley, have found that ‘police professionalism’ does not equate to the more traditional ‘professional status’

¹⁴ *ibid* 23 - 37

¹⁵ Laurence Lustgarten, *The Governance of Police* (Sweet and Maxwell 1986) 1, 2

¹⁶ *ibid* 1, 2

¹⁷ Bayley (n10) 160

¹⁸ *ibid* 160

¹⁹ Robert Reiner ‘Counting the Coppers: Antinomies of Accountability in Policing’ in Philip C Stenning (ed), *Accountability for Criminal Justice* (University of Toronto Press 1995) 75 - 85

²⁰ Egon Bittner ‘Legality and Workmanship’ in Maurice Punch (ed) *Control in the Police Organisation* (MIT Press 1983) 3 - 7

²¹ *ibid* 3 - 7

²² *ibid* 3 - 7

²³ Philip Stenning (ed), *Accountability for Criminal Justice* (University of Toronto Press 1995) 5 - 7

²⁴ *ibid* 5 - 7

bestowed upon the medical and teaching professions due largely to the fact that the most ‘professional’ police departments are those in which junior officers are subjected to the highest degree of supervision.²⁵ Differentiating ‘police professionalism’ from ‘the professions’ is the feature of ‘control’ which is considered to be a central component of ‘police professionalism’ because of the likelihood of police deviance coupled with the proven inability of police managers to self-regulate their subordinates.²⁶ This issue will be explored in significant depth in Chapter 2.

Accountability, to all intents and purposes, has colloquial connotations of the simple conveyance of answers or accounts. The *Sage Dictionary of Policing* 2009 holds that police accountability requires police officers and the institutions to which they belong to explain, justify and answer for their conduct through internal, external and political mechanisms which apply the rule of law, due process and human rights protections.²⁷ Similarly the *United Nations Handbook on Police Accountability, Oversight and Integrity* 2011 defines police accountability as a system of internal and external checks and balances aimed at ensuring that police carry out their duties properly and are held responsible if they fail to do so.²⁸ More particularly, it explains that internal police accountability should be premised predominantly on strong leadership, supervision, evaluation and the independent oversight of complaints.²⁹ It holds that legal accountability should operate in full accordance with the rule of law and that democratic accountability should prioritise the needs of local communities.³⁰

The *Routledge Dictionary of Policing* 2008 is notable for its focus on some of the more thorny issues of police accountability, particularly the need for mechanisms of individual, legal and local accountability to capture the wrongdoing of the ‘individual’ as well as broader mechanisms to scrutinise the ‘policy’ institution.³¹ Similar issues are reflected in the pre-eminent Council of Europe *Code on Police Ethics 2001*. Although the *Code on Police Ethics* does not strive to define police accountability it advocates the delivery of police accountability through independent administrative complaints mechanisms, independent legal processes in the civil and criminal courts and through the elected representatives of government.³² Likewise, it conveys that the police, when performing police duties in civil society, should be under the responsibility of civilian authorities and that it must always be possible to challenge any act, decision or omission affecting individual rights by police before the judicial authorities.³³

A number of common strands can be deduced from the various definitions. The need for clearly discernible mechanisms of complaint and inquiry across internal, external, legal, local, political and democratic modes is obvious. Moreover, the importance of the rule of law, due process and human rights protections are also touched upon.

²⁵ James Q Wilson, *Varieties of Police Behaviour* (Harvard University Press 1968) 29, 30; Bayley (n10) 13, 47 - 51

²⁶ *ibid*

²⁷ Alison Wakefield and Jenny Fleming (eds), *The Sage Dictionary of Policing* (Sage 2009) 1

²⁸ United Nations, *Handbook on Police Accountability, Oversight and Integrity* (Criminal Justice Handbook Series 2011) 5 - 19

²⁹ *ibid* 9 - 13, 75 - 79

³⁰ *ibid*

³¹ Tim Newburn and Peter Neyroud (eds), *Dictionary of Policing* (Routledge 2008) 1 - 3

³² Council of Europe, *The European Code on Police Ethics* (Rec [2001]10) 59 - 62

³³ *ibid* 8 - 15, 59 - 62

However the various definitions are extremely vague, without pinpointing the precise form, application and mechanisms for the delivery of police accountability in practice. For instance, the *Code on Police Ethics* vaguely enumerates a number of long standing policing principles, not least the proviso that the police should enjoy sufficient operational independence from other State bodies in carrying out its given police tasks for which it should be fully accountable but it does not attempt to comprehensively tie such concepts together to form a basic concept of police accountability.³⁴ Similarly, the *UN Handbook on Police Accountability, Oversight and Integrity* 2011 covers numerous issues ranging from the need for legislation which specifies police processes and powers to the need for the public to be able to voice their concerns through robust mechanisms of internal, legal and democratic accountability but it does not attempt to link the two distinct recommendations.³⁵ Reiner suggests that it is due in part to this lack of clarity and legal precision that no jurisdiction appears to be satisfied that it has established adequate structures and processes to comprehensively deliver police accountability in practice.³⁶ Similarly, Manning stated in 2010 that, because of relatively scant attention from policy makers and academics, the mechanisms of police accountability remain conceptually ambiguous and poorly conceived, leaving them ‘in every way weak, erstwhile and ineffectual’.³⁷

The lack of clarity apparently emanates in part from the fact that there is no one mechanism for police accountability.³⁸ Far from being a mere tautology, the concept of police accountability is complicated by the fact that different types of complaint or inquiry are made in different environments and require different considerations and outcomes.³⁹ As Walsh eloquently conveys, police accountability is concerned with multiple processes and procedures through which police policies, strategies, practices, acts and omissions can be questioned with a view to securing redress for harm done or to effect change.⁴⁰ Samuel Walker draws an uneven line between individual action and policy matters, explaining that holding officers to account for the quality of their individual actions and holding agencies accountable for the quality of service are not one and the same, often requiring very different processes.⁴¹ However Reiner and Spencer observe that, although different mechanisms exist to address the relatively distinct matters of individual officer decision-making on the street and the wider issue of general policy decision-making by police management, policy decisions will generally have a discernible impact on shaping specific individual conduct and vice versa.⁴²

Broadly speaking, the various mechanisms of complaint and inquiry can be condensed into three largely distinct environments through which complaints and inquiries about police conduct can be addressed. The various dimensions can be loosely conceived as

³⁴ *ibid*

³⁵ UN (n28) iv, v, 5 – 9, 77 - 79

³⁶ Reiner (n19) 75

³⁷ Manning (n13) 15

³⁸ Bayley (n10) 171

³⁹ Peter K Manning, *Police Work* (MIT Press 1977) 13 - 15

⁴⁰ Dermot PJ Walsh, *Human Rights and Policing in Ireland* (Clarus Press 2009) 307

⁴¹ Walker (n6)7, 8

⁴² Reiner and Spencer (n5)1 - 14

disciplinary, legal and democratic.⁴³ ‘Disciplinary accountability’ pertains to the role of the modern hierarchical police organisation which exists partly for the purposes of ensuring that police officers behave in a disciplined manner so that breaches of the procedural codes or the criminal law are negated to the greatest extent possible. The internal hierarchy of senior police officers, administrators and managers play a key role in not only supervising, amending and sanctioning the conduct of police officers but, most importantly, handling complaints made by members of the public about officer conduct. Within the rubric of disciplinary accountability the internal administrative system has been augmented in recent years by mechanisms of external independent civilian oversight and investigation in order to engender greater transparency and objectivity in the disciplinary process.

The realm of ‘legal accountability’ refers primarily to the role of the criminal and civil courts in holding police officers to account for their actions or omissions in accordance with the rule of law. Police officers who overstep their unique powers of arrest, search and seizure and detention should, according to the rule of law, be subjected to the full force of the criminal law in a fashion no different to civilians to ensure that they do not abuse their position of privilege and authority. Separately, ‘democratic accountability’ is normatively provided by forums which typically exist within the national parliament and increasingly at regional and community levels which facilitate the airing of complaints, concerns, questions and simple misunderstandings by members of the public about the propriety of police actions or omissions. The mechanisms of democratic accountability should ensure that political representatives take steps to amend the conduct of the police force through the conveyance of advice, the issuance of directions or even the establishment of new regulatory or statutory standards.⁴⁴ Stenning observes that police scandals are invariably followed by public demands of parliament to introduce new legislative formulas and procedural codes that serve to limit police powers and behaviour as well as demands for the statutory establishment of more robust mechanisms of oversight and complaint.⁴⁵

Marshall explains that accountability should ultimately entail a boundless capacity to require information and answers from an ‘explanatory and cooperative’ police force across all of the mechanisms of complaint and inquiry.⁴⁶ The Patten Commission conveys that it is necessary to maintain robust, transparent and effective mechanisms across the respective areas so that a police force can be held accountable in a relatively fulsome manner.⁴⁷ Reiner states that the ability of the mechanisms of accountability to consistently deliver across each of the various dimensions in principle and in practice is fundamental to the concept of police legitimacy in a liberal constitutional democracy.⁴⁸

⁴³ Dermot PJ Walsh, *The Irish Police: A legal and constitutional perspective* (Roundhall Sweet and Maxwell 1998) xv

⁴⁴ Patten Commission, *A New Beginning: Policing in Northern Ireland* (The Report of the Independent Commission on Policing for Northern Ireland 1999) 22

⁴⁵ Stenning (n23) 3 - 5

⁴⁶ Geoffrey Marshall, ‘Police Accountability Revisited’ (1978) in Tim Newburn (ed), *Policing: Key Readings* (Routledge 2005) 633

⁴⁷ Patten Commission (n44) 22

⁴⁸ Robert Reiner, *Politics of the Police* (Whitsheaf Books 1985) xii – 4, 51, 52, 181

However cases can be made against the colloquial and analytical accuracy of the terminology of ‘disciplinary accountability’, ‘legal accountability’ and ‘democratic accountability’. There are no firmly established labels for the three areas due largely to the diverse nature and form of the actual mechanisms which exist within them. The ‘disciplinary’ dimension is frequently denoted by the alternative terms of internal, administrative, managerial or organisational accountability amongst others.⁴⁹ The label of ‘internal accountability’ was relatively popular throughout the late 20th Century but the more recent arrival of ‘external civilian oversight’ has undermined the sufficiency of the term as a label of substance. Similarly, although the concept of ‘legal accountability’ is perhaps the most stable of the terms it is often supplanted by the terms criminal, civil and judicial accountability. The use of the term ‘legal’ is not without its flaws either since the disciplinary and democratic mechanisms of accountability are propagated by legal instruments and standards. The quality and effectiveness of the regulatory and statutory standards underpinning all of the mechanisms of accountability could theoretically be evaluated under a broad interpretation of ‘legal accountability’. On the other hand, the idea of judicial accountability appears even less suitable due to the implication that one may be speaking about the accountability of the judges themselves.

Similar arguments can be made about the ‘democratic’ dimension of police accountability. The label is often replaced by terms such as political, public, popular, community, local, national and central accountability since each of the terms denote rules and processes which generally have their origins in the political will of civil society.⁵⁰ In a similar fashion to the interpretative flexibility of the concept of legal accountability, Reiner conveys that almost all forms of police work in constitutional democracies can be considered to be democratic, political, public or popular since the statutory offences that the police enforce and the manner in which they enforce them are a major source, symbol and determinant of social conduct and the quality of political civilization.⁵¹

The three dimensions of disciplinary, legal and democratic accountability clearly play a central role in the delivery of police accountability but they are conceptually flexible and beset with overlapping applications. More particularly, the three dimensions are not conducive to evaluating legal standards such as the rule of law and human rights protections which should guide such mechanisms. The issue of legal standards and human rights protections could potentially be discussed under one or all of the labels with some creative interpretation, covering the same organisational, judicial and political issues. Instead of structuring the thesis entirely around the traditional dimensions of police accountability, a rudimentary typology developed by Robert Reiner in 1985 for the purposes of legislative analysis appears at face value to be concerned with capturing the pertinent issues in a more precise manner.

Reiner’s particular typology essentially conveyed that policing legislation, particularly the Police and Criminal Evidence (PACE) Act 1984, must serve ‘constitutional’,

⁴⁹ Maurice Punch, *Police Corruption: Deviance, accountability and reform in Policing* (Routledge 2009) 200

⁵⁰ Ben Bowling and Janet Foster, ‘Policing and the Police’ in Mike Maguire et al (eds) *The Oxford Handbook of Criminology* (3rd edn, OUP 2002) 1016 - 1018

⁵¹ Reiner (n48) 2, 17, 182

‘cooptive’ and ‘communicative’ functions.⁵² The ‘constitutional’ dimension holds that policing legislation must respect the rule of law and the values and norms of due process. The ‘cooptive’ function demands that legislation must take account of the working practices and cultural values of police officers which ultimately determine the nature of their engagement with legal rules and norms. Lastly, the ‘communicative’ dimension holds that new procedural rules must be subjected to signalling mechanisms or channels of complaint which register the need for change.⁵³

Although Reiner’s typology was designed for the purposes of legislative analysis, it appears to address the primary issues of ‘police accountability’ in modern society, namely who should be required to give accounts, about what and to whom. The analytical device effectively encourages academics and legislators to consider the ‘ends’ of law using three separate lenses. The first requirement is to focus on the legal precision and constitutionality of procedural statutes. The second requirement is to address the challenges of co-option and the final prerequisite is to accommodate communicative mechanisms for complaint and inquiry. The typology is designed as a cyclical process, moving from complaint back to legislative action as problems are identified and remedied.

Further academic support for the development and application of such an approach can also be found in the works of Manning and Maguire. Manning observes that police forces typically struggle with their political neutrality across three interconnected levels.⁵⁴ The first area concerns their statutory mandate or code which is defined according to political values and ends.⁵⁵ The second concern is that their conduct or culture may be coloured by systemic prejudice against minority or marginalised social groupings.⁵⁶ The final political influence lies in the degree and nature of their accountability to local or national political authorities.⁵⁷ To a similar extent, Maguire conveys that the drawing up of a more prescriptive code of conduct, the improved supervision of police conduct and the establishment of effective systems of complaint and inquiry at the national level are the three strategies advocated most often to militate against police malpractice in the aftermath of a policing scandal.⁵⁸

It is anticipated that the delineation of the constituent issues could help to clarify the issue of police accountability to a much greater extent. Instead of gearing the critical analysis wholly around the dimensions of disciplinary, legal and democratic accountability, it appears that it would be more prudent to separate out the components of statutory procedural law, co-option and complaint. In other words, the basic mechanisms of disciplinary, legal and democratic accountability will be considered as the final elements of a broader cyclical process of police accountability. The cyclical nature of the typology, which encourages legislative action on foot of relevant complaints, also appears to be more attuned to the ethos of police accountability. As Kleinig conveys, police accountability should not be considered as

⁵² *ibid* 178 - 190

⁵³ *ibid*

⁵⁴ Mike Maguire ‘Complaints against the Police’ in Andrew Goldsmith (ed) *Complaints Against the Police* (Clarendon Press 1991) 178, 179

⁵⁵ Manning (n39) 200 - 202

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ Maguire (n54) 178, 179

a normative demand that can be made but should be thought of as a structural condition that depends upon the quality of the mechanisms and measures that underpin it.⁵⁹

Recasting Reiner's rudimentary framework to focus on the issue of police accountability the thesis will proceed to examine the quality of police accountability using the lenses of 'codes', 'co-option' and 'complaint'. 'Codes' effectively represents the legislative rules, standards and human-rights protections against which police policies, strategies, acts and omissions can be measured. 'Co-option' represents the invariable gap between legal statutes and practice, capturing cultural, judicial, political and administrative influences such as police discretion. The last limb, communicative 'complaint', effectively represents the role and function of signalling mechanisms for redress and improvement, specifically those designed to deliver accountability in the disciplinary, legal and democratic fora. Where the extant definitions of police accountability are ambiguous and piecemeal, the analysis aims to be clear, cohesive and rigorous.

The dimensions of EU cross-border policing

Like the literature on police accountability, the evolving EU regime on police cooperation suffers a similar dearth of comprehensive conceptual analyses not only in the area of police accountability but across other areas of policing more generally. There are no more than half a dozen major texts which seek to substantively address the EU cross-border policing regime. Malcolm Anderson's *Policing the World* provided a pretext in 1989 by analysing multilateral, regional and bilateral forms of police cooperation across Europe and America at a time when the EU project was still only an abstract, embryonic subject.⁶⁰ Ethan Nadelmann's *Cops across Borders*, published in 1993, subsequently evaluated cross-border police cooperation through an acutely biased American lens, focusing particularly on the relationship between the US police institutions and police forces in South America and Europe at the start of the emerging EU project.⁶¹ The first major works to conceptually address the emerging EU project were Benyon et al's *Police Cooperation in Europe*, Bill Heberton and Terry Thomas' *Policing Europe* and Malcolm Anderson et al's equally cogent *Policing the European Union*.⁶² The authors of the respective titles were concerned predominantly with developing dynamic political and legal frameworks which could explain the nature of and relationships between the emerging EU structures, institutions and arrangements for cross-border police cooperation.

By and large, the seminal European publications sought first and foremost to understand and contextualise the emerging EU regime as a singular and peculiar construct. At the time, many of the constituent policing measures were merely abstract concepts without form or function so the undertaking of serious critical

⁵⁹ John Kleinig, *The Ethics of Policing* (Cambridge University Press 1996) 210 - 213

⁶⁰ Malcolm Anderson, *Policing the World: Interpol and the Politics of International Police Cooperation* (OUP 1989)

⁶¹ Ethan Nadelmann, *Cops Across Borders* (Pennsylvania State University Press 1993)

⁶² John Benyon et al, *Police Cooperation in Europe: An Investigation* (Centre for the Study of Public Order, University of Leicester 1993); Bill Heberton and Terry Thomas, *Policing Europe: Cooperation, Conflict and Control* (St Martin's Press 1995); Malcolm Anderson et al, *Policing the European Union* (OUP 1995)

analyses was impossible. Applying functionalist and socio-political theory, Anderson et al conveyed somewhat ominously that the emerging EU regime was not conducive to a general theory in 1995 since the project was a hazy, contested and non-linear spillover of economic integration with no clear indication of purpose or trajectory.⁶³ Benyon et al commendably tried to categorise developments into a three-tiered typology of macro, meso and micro initiatives which delineated government interaction at the 'macro' end and practitioner engagement at the 'micro' end.⁶⁴

To a similar end, Hebenton and Thomas compiled a number of conceptual spectrums which positioned the emerging measures between various opposing poles. The poles could be normatively described as horizontal to vertical, decentralised to centralised, loosely structured to highly integrated, state centric to communal and intergovernmental to supranational.⁶⁵ The spectrums were largely compiled from the work of three authorities, namely Piet van Reenen who formulated a horizontal-vertical spectrum in 1989, Malcolm Anderson's 'decentralised and centralised' spectrum also published in 1989 and Neil Walker's 'loosely structured to vertically integrated' model advanced in 1993.⁶⁶ The rudimentary heuristic devices were useful in loosely framing the nascent developments but they were not designed to withstand serious academic analysis. The simple act of conceptualising measures as profiles on a spectrum was typically awkward and untidy since the constituent parts frequently contained elements which belonged further along a spectrum or on alternative spectrums altogether.⁶⁷

Remarkably, the early titles published between 1993 and 1995 continue to represent the most considered and reasoned theses on EU police cooperation even though they were produced in the very early years of the embryonic EU project. More recently, John D. Occhipinti's *The Politics of EU Police Cooperation* focused on the peculiar development of Europol and the legislative agenda of the Justice and Home Affairs Council in the years following the 11 September terrorist attacks in the United States.⁶⁸ To a similar extent, Ludo Block's *From Politics to Policing* focused predominantly on the policy drivers and negotiations behind the major EU policing instruments.⁶⁹ These well researched publications are significantly valuable due to their focus on the nature and drivers of the EU policy agenda but they do not seek to address broader forms of cross-border policing within the EU or the specific problem of police accountability more generally.

In addition, a number of useful texts focus on non-EU dimensions of cross-border police cooperation which help to indirectly contextualise the EU policing project. Deflem's *Policing World Society* largely eschewed the EU developments altogether by focusing acutely on international police cooperation between the 1850s and 1960s,

⁶³ Malcolm Anderson et al, *Policing the European Union* (OUP 1995) 39 - 100

⁶⁴ John Benyon et al, *Police Cooperation in Europe: An Investigation* (University of Leicester Centre for the Study of Public Order 1993) 11 - 13

⁶⁵ Bill Hebenton and Terry Thomas, *Policing Europe: Cooperation, Conflict and Control* (St Martin's Press 1995) 38, 39

⁶⁶ *ibid*, see also Piet Van Reenen, 'Policing Europe after 1992' (1989) 3:2 *European Affairs Journal* 45 - 53

⁶⁷ Jean Paul Brodeur (ed), *Comparisons in Policing: An International Perspective* (Ashgate 1995) 8, 9

⁶⁸ John D Occhipinti, *The Politics of EU Police Cooperation* (Lynne Rienner Publishers London 2003)

⁶⁹ Ludo Block, *From Politics to Policing* (Eleven International, The Hague 2011)

with a particular emphasis on Germany and the USA.⁷⁰ Sheptycki's *In Search of Transnational Policing* represents a case study of English and French cross-border police cooperation between 1968 and 1996.⁷¹ Andreas and Nadelmann's *Policing the Globe* adopted a particularly partisan approach by viewing international police cooperation from an American criminological perspective, focusing particularly on global prohibitions and the criminalisation of drugs, tobacco, alcohol, immigration and piracy and the concomitant crime control strategies adopted and advocated by the USA around the world.⁷²

A number of Irish-based research projects have focused on police cooperation across the Irish land border, the most commendable being a 2002 report published by Dunn et al at the University of Limerick which evaluated numerous home-grown and EU policing measures from a transparency perspective.⁷³ A more recent AHRC Research Project on North-South responses to organised crime in Ireland published by Tom Obokata in 2014 focused acutely on drug and human trafficking offence legislation and concomitant police powers of investigation with only vague reference to EU policing measures.⁷⁴ Ben Bowling and James Sheptycki have admirably tried to inject a fresh round of theorizing and conceptualization into the academic discourse on cross-border policing through their joint publication on *Global Policing* but their relatively short publication focuses predominantly on the deployment of police liaison officers across the Americas, Asia, Africa and Europe at the expense of other areas of cross-border police cooperation.⁷⁵

Furthermore, various authors have painstakingly collated the full gamut of extant EU policing measures into single publishable volumes but as part of much larger research projects. Steve Peers's *EU Justice and Home Affairs Law*, for example, provides a broad overview of the policies and measures introduced across EU fields of police cooperation, judicial cooperation, immigration, asylum and others, offering only a cursory degree of commentary and analysis.⁷⁶ Mitsilegas et al's *The European Union and Internal Security* strived to conceptualise the broader 'internal security' field as a single EU construct, treating the issue of cross-border police cooperation as one of a number of broadly abstract components.⁷⁷ Similarly, Loader and Walker's *Civilizing Security* conceptualized the nation-state as a realist participant in cooperative security regimes for the purposes of providing internal and external security as a 'thick public good' which they considered crucial to the idea of common political community.⁷⁸ Markus Dubber's *The Police Power* took a similar approach to the development of internal security within the USA, focusing on the peculiar functions and approaches of the American federal government.⁷⁹ Although the general focus of these expansive

⁷⁰ Matthieu Deflem, *Policing World Society* (OUP 2002)

⁷¹ James Sheptycki, *In Search of Transnational Policing* (Ashgate 2002)

⁷² Peter Andreas and Ethan Nadelmann, *Policing the Globe* (OUP 2006)

⁷³ S Dunn et al, *Cross-Border Police Cooperation in Ireland* (Centre for Peace and Development Studies University of Limerick 2002)

⁷⁴ Tom Obokata, North South Irish responses to Transnational Organised Crime (AHRC Research Project 2014)

⁷⁵ Ben Bowling and James Sheptycki, *Global Policing* (Sage 2012)

⁷⁶ Steven Peers, *EU Justice and Home Affairs Law* (3rd edition OUP 2011)

⁷⁷ Valsamis Mitsilegas, Monar J and Rees W, *The European Union and Internal Security* (Palgrave Macmillan 2003)

⁷⁸ Ian Loader and Neil Walker, *Civilizing Security* (Cambridge University Press 2007) 112 - 139

⁷⁹ Markus Dubber, *The Police Power* (Columbia University Press 2005)

publications is much broader than public policing, extending to concepts of security, governmentality and the *raison d'Etat*, their perceptive observations arguably help to inform and contextualise any analysis of the emerging EU policing regime.

Despite the clear need for regular analyses of the modern EU regime for police cooperation, comprehensive publications have remained few and far between. Guille suggested in 2010 that not only was the extant research on European police cooperation devoid of substantial theoretical exploration but that researchers were not even showing a particular interest in the conduct of police officers in practice, preferring instead to produce bland descriptions of the legal frameworks introduced by the EU.⁸⁰ Edited texts, which do not demand fulsome accounts of the subject matter, have instead become the primary staple of cross-border and comparative policing research. Popular edited works on various dimensions of cross-border police cooperation include Fijnaut's *The Internationalization of Police Cooperation in Western Europe*;⁸¹ Anderson and Den Boer's *Policing Across National Boundaries*;⁸² Sheptycki's *Issues in Transnational Policing*;⁸³ Anderson and Apap's *Police and Justice Cooperation and the New European Borders*;⁸⁴ Lemieux's *International Police Cooperation* and Fijnaut and Ouwerkerk's *The Future of Police and Judicial Cooperation in the European Union* amongst others.⁸⁵

Edited collections which take a more specific rather than a thematic approach include Conny Rijken and Gert Vermeulen's volume on *Joint Investigation Teams in the EU* which focuses predominantly on the establishment of one operational joint investigation team between the UK and the Netherlands.⁸⁶ Other edited texts which focus on policing structures from a comparative perspective but without a dominant cross-border dimension include Brodeur's *Comparisons in Policing*,⁸⁷ Otwin Marenin's *Policing Change, Changing Police*,⁸⁸ Brewer et al's *The Police Public Order and the State*,⁸⁹ Mawby's *Policing Across the World* and Eterno and Das' *Police Practices in Global Perspective* amongst others.⁹⁰

Although many of the edited publications are thoughtfully conceived and propagate fresh perspectives on public policing, the absence of comprehensive theses means that

⁸⁰ Laure Guille, 'Police and Judicial Cooperation in Europe' in Frederic Lemieux, *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010) 25, 26

⁸¹ Cyrille Fijnaut (ed), *The Internationalization of Police Cooperation in Western-Europe* (Kluwer Law 1993)

⁸² Malcolm Anderson and Monica Den Boer (eds), *Policing across National Boundaries* (Pinter London 1994) 24, 25

⁸³ James Sheptycki (ed), *Issues in Transnational Policing* (Routledge 2000)

⁸⁴ Malcolm Anderson and Joanna Apap, *Police and justice cooperation and the new European Borders* (Kluwer Law 2002)

⁸⁵ Frederic Lemieux, *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010); Cyrille Fijnaut and Jannemieke Ouwerkerk (eds), *The Future of Police and Judicial Cooperation in the European Union* (Martinus Nijhoff 2010)

⁸⁶ Conny Rijken and Gert Vermeulen (eds) *Joint Investigation Teams in the European Union: From Theory to Practice* (TMC Asser Press 2006)

⁸⁷ JP Brodeur (ed), *Comparisons in Policing: An International Perspective* (Ashgate 1995)

⁸⁸ Otwin Marenin (ed), *Policing Change, Changing Police: International Perspectives* (Garland Publishing New York 1996)

⁸⁹ John Brewer et al, *The Police, Public Order and the State* (2nd edn, Palgrave Macmillan 1996)

⁹⁰ Rob Mawby (ed), *Policing Across the World* (UCL Press 1999); John Eterno and Dilip Das (eds), *Police Practices in Global Perspective* (Rowman and Littlefield 2010)

there are very few publications that even attempt to provide a factual account of the whole range of factors or phenomena that make up the subject of EU police cooperation let alone its constituent parts. As Deflem succinctly observes, edited texts are not conducive to ‘theoretical explorations’.⁹¹ Without comprehensive analyses the policy implications for international, national and local policing systems remain obscure and poorly understood. The voluminous edited collections effectively mask the remarkable dearth of comprehensive academic analyses in the areas of cross-border policing and police accountability.

The modern approach to police epistemology, particularly the preference for bland edited collections over analytical theses and the dominance of vague evaluations of legal instruments over and above conceptual socio-legal studies, sits in sharp contrast to the cutting-edge approaches adopted by policing scholars of the 1960’s and ‘70s. The effect of law and policy on the conduct of police officers was the subject of a rich mosaic of academic research from the 1960s but such concerns do not appear to have transferred to the modern regime of cross-border police cooperation, arguably due to its increasingly complexity. Dramaturgical field observations and ride-alongs undertaken by a number of select police researchers in the 1960s and ‘70s contributed to a significant, albeit largely anecdotal, body of knowledge around various trenchant working practices and characteristics of the public police. Police discretion, in particular, was found to be a dominant and necessary feature of police work. Most importantly, this crucial feature did not have statutory underpinnings and was only recognised by the academic community following targeted socio-legal research.

Michael Banton’s *The Policeman in the Community*,⁹² James Q Wilson’s *Varieties of Police Behaviour*,⁹³ Egon Bittner’s *The Functions of the Police in Modern Society*,⁹⁴ Jerome Skolnick’s *Justice Without Trial*,⁹⁵ William K Muir’s *Streetcorner Politicians* and Peter K Manning’s *Police Work* all helped to elucidate the dynamics between the criminal law, organisational control and police practice in the 1960s and ‘70s.⁹⁶ The researchers showed that there was a significant gap between criminal codes and police conduct, generally indicating that mechanisms of police accountability played a crucial role in ensuring that the police conducted themselves in the spirit of the law. Remarkably, this body of knowledge does not appear to have been applied in any substantial fashion to the EU regime. It would appear that no modern academic publication can claim to have subjected the EU to a comparable degree of scrutiny and inquiry. As a result, the issue of whether and to what extent disparities exist between EU measures, police conduct and the concomitant mechanisms of police accountability have remained unaddressed.

Instead of addressing the complexities of the EU regime, the current cabal of policing theorists appear to have turned their gaze to the issue of donor police assistance or ‘security sector reform’ of weak and failed States in Asia, Africa and South America.

⁹¹ Deflem (n70) 28

⁹² Michael Banton, *The Policeman in the Community* (Tavistock Publications London 1964)

⁹³ James Q Wilson, *Varieties of Police Behaviour* (Harvard University Press 1968)

⁹⁴ Egon Bittner, *The Functions of the Police in Modern Society* (Centre for Studies of Crime and Delinquency, National Institute of Mental Health Maryland 1970)

⁹⁵ Jerome Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society* (John Wiley and Sons New York 1966)

⁹⁶ William Ker Muir, *Police: Streetcorner Politicians* (University of Chicago Press 1977); Peter K Manning, *Police Work* (MIT Press 1977)

The EU apparatus for cross-border police cooperation, albeit fundamentally under-researched, is considered to be comparably advanced. Bayley's seminal *Changing of the Guard* inspired much of current interest, denoted not least by Ryan's *Statebuilding and Police Reform*, Ellison and Pino's *Globalization, Police Reform and Development* and Goldsmith and Sheptycki's edited volume on *Crafting Transnational Policing*.⁹⁷ Ellison and Pino suggest that much of the academic research is inspired by the fact that police reform discourse and NGOs on the ground in the developing world promote an illusory concept of 'democratic policing' without any clear understanding of what it means.⁹⁸ It is submitted that a similar claim can be made about the EU's approach to police accountability. James Sheptycki appeared to be all too aware of the precarious condition of police epistemology when he stated in his contribution to *Crafting Transnational Policing* that the internal security field was in 'utter disarray', comparing the policy field to 'boats floating rudderless on the sea of insecurity'.⁹⁹

The thesis ultimately aims to build upon the work of Marshall, Banton, Bittner, Walsh, Lustgarten, Walker and others to develop a modern appreciation of transnational police accountability. The thesis focuses not only on the institutional and legal frameworks dominating the national and the international arenas but on the conduct of police officers on the ground and the effectiveness of the relevant mechanisms for accountability in practice. The project is distinctive because of its critical focus on the practical relationship of the EU instruments to the domestic legal arrangements and administrative practices for police accountability in the Member States. Although the extant literature on police accountability is largely piecemeal in nature the broad spectrum of scholarly insights and empirical and analytical research will substantively inform the thesis.

As a point of departure, there appears to be nothing to substantially suggest that police accountability cannot take a relatively uniform and common shape and form across the increasingly fragmented post-modern world in a similar fashion to the widely embraced structures of democratic government, free market economics and human rights protections.¹⁰⁰ Bayley's extensive comparative research suggests that although there is considerable variety across police forces around the world, ranging from armed to unarmed, centralised to decentralised, authoritarian to democratic and specific crime policing to general crime policing, the same basic mechanisms for ensuring police accountability should apply.¹⁰¹ This thesis represents an invaluable addition to modern epistemology as it addresses largely virgin territory by critically analysing a number of nascent legal, constitutional and administrative issues around police accountability across both national and supranational levels.

⁹⁷ David Bayley, *Changing the Guard* (OUP 2006); Barry Ryan, *Statebuilding and Police Reform: the freedom of Security* (Routledge 2011); Graham Ellison and Nathan Pino, *Globalization, Police Reform and Development* (Palgrave Macmillan 2012); Andrew Goldsmith and James Sheptycki (eds), *Crafting Transnational Policing* (Oxford Hart 2007)

⁹⁸ Graham Ellison and Nathan Pino, *Globalization, Police Reform and Development* (Palgrave Macmillan 2012) 1 - 3

⁹⁹ James Sheptycki, 'The constabulary Ethic and the Transnational Condition' in Andrew Goldsmith and James Sheptycki (eds), *Crafting Transnational Policing* (Oxford Hart 2007) 45, 46

¹⁰⁰ See Mark Findlay, *The Globalisation of Crime* (Cambridge University Press 1999) 1 - 10

¹⁰¹ Bayley (n10) 217, 218

Conceptualizing EU supranationalism

Sovereignty, which represents the ability of a government to establish exclusive legal, administrative and social control over the inhabitants of a finite geographical area, thereby giving form to its *raison d'Etat*, has clearly been affected by the EU regime on cross-border policing.¹⁰² The EU institutions can introduce binding policing measures on a 'supranational' basis across the majority of EU policing objectives. Walker argues that the ceding of some policing competencies, traditionally a prized preserve of statehood, 'upwards' suggests that the idea of State sovereignty is being eroded as European nation-states are becoming 'more nation and less state', since statehood implies territorial jurisdiction.¹⁰³ Similarly, Sheptycki suggests that the ideas of sovereignty and policing are increasingly becoming 'de-territorialized' within the EU.¹⁰⁴ However, police forces within the Member States continue to derive all of their basic police powers and functions from the nation-state and the State continues to claim a monopoly on the legitimate use of force which theorists such as Hobbes and Weber denote as a distinguishing feature of statehood.¹⁰⁵

To give the relationship between the Member States and the EU regime a degree of definition and clarity, Walker has more recently described the emerging EU system as a 'relational legal order' or a form of 'constitutional pluralism' wherein Member States continue to be sovereign in some areas but not others, particularly those areas pertaining directly to international cooperation.¹⁰⁶ In this sense, he remarks that public policing can no longer be described wholly as an element of 'state constitutionalism' but nor does it belong to the emerging realm of EU 'supranational constitutionalism' since domestic policing belongs to the former and some cross-border policing matters have been ceded to the latter.¹⁰⁷ He proffers instead a more dynamic label of 'meta-constitutionalism' to accommodate both streams.¹⁰⁸ Similarly, Deflem postulates that national and cross-border policing dimensions effectively exist side by side as relatively distinct policy dimensions, only the latter of which is subject to supranational EU competency.¹⁰⁹ Various academics have used the creative labels of 'European supranational non-State' and the 'post-Hobbesian State' amongst others to describe the dichotomous condition.¹¹⁰

More substantively, Anthony Anghie indicates that the idea of treating nation-states as sovereign in some policy matters but not others is, in fact, largely in line with the

¹⁰² Malcolm Anderson, *Frontiers* (Policy Press Cambridge 1996) 189

¹⁰³ Neil Walker, 'Policing the European Union: the Politics of Transition' in Otwin Marenin (ed), *Policing Change, Changing Police: International Perspectives* (Garland Publishing New York 1996) 271 – 273

¹⁰⁴ James Sheptycki, 'Accountability Across the Policing Field: Towards a General Cartography of Accountability for Post-Modern Policing' (2002) 12:4 *Policing and Society* 323 – 338

¹⁰⁵ Neil Walker, 'European integration and European policing: a complex relationship' in Malcolm Anderson and Monica Den Boer (eds), *Policing across National Boundaries* (Pinter London 1994) 24, 25

¹⁰⁶ Neil Walker, 'Late sovereignty in the European Union' in Neil Walker (ed), *Relocating Sovereignty* (Ashgate 2006) 522 – 533

¹⁰⁷ Neil Walker, *Policing in a Changing Constitutional Order* (Sweet and Maxwell 2000) 282 - 288

¹⁰⁸ *ibid*

¹⁰⁹ Deflem (n70) 26, 27

¹¹⁰ Walker (n105) 23 - 35

original purpose of sovereignty.¹¹¹ Anghie points out that the concept of sovereignty depends not only on a constituent citizenry recognising the authority of their territorial government but that it also requires the government's authority and jurisdiction over a specific territory to be recognised by other nation-states, exemplified not least by the Peace of Westphalia 1648.¹¹² Supporting this observation, he argues convincingly that the marauding and conquering expeditions of European State-backed armies to the Americas, Asia and Africa in the 16th and 17th Centuries did not recognise the foreign tribal governments, villages and townships as 'sovereign' or afford them a sovereign status regardless of whether they were deserving of it.¹¹³ The concept of sovereignty was a privilege of international law that was considered to exist only among the European monarchies premised upon their particular brand of monarchical political government, economic systems, legal systems, systems of property ownership and, most importantly, inter-governmental diplomacy.¹¹⁴ Further evidence of the relational nature of sovereignty can be found in Theodore Roosevelt's corollary to the Monroe Doctrine when he stated in 1904 that 'chronic wrong-doing or impotence which results in a general loosening of the ties of society may in America or elsewhere ultimately require intervention by some civilised nation and ... in flagrant cases of such wrong-doing or impotence, to the exercise of an international police power'.¹¹⁵

The notion of 'sovereignty' therefore appears to represent a transnational condition that is established and maintained by a system of States working together rather than any particular governmental entity acting independently. For Rijken the renegotiation of the doctrine of sovereignty in order to hive off some marginal dimensions to a supranational body is entirely logical and acceptable if it strengthens and enhances the ability of the national government and the State's judicial and policing apparatus to maintain effective systems of justice and economic and social activity.¹¹⁶ Walker and Loader convey that the competencies that have been ceded upwards to the supranational level could be considered in cosmopolitan-universalist terms to be 'global public goods' which the wider international community has an interest in facilitating in the interests of peace, prosperity and justice.¹¹⁷ Anderson describes the emerging 'pluralist' arrangement as a novel 'security community'.¹¹⁸ Finding out what this national/ EU dichotomy means for the issue of police accountability is one of the fundamental aims of this research.

To elucidate the shape and form of the EU project, it is crucial to understand the evolving nature of the EU's substantive objectives and competencies in the area of cross-border police cooperation. This task is daunting considering the fact that four different treaties have served to substantially alter the face of the EU competency for cross-border police cooperation in criminal matters within the last twenty years. Four seminal treaties were introduced between 1992 and 2012, namely the Maastricht, Amsterdam, Nice and Lisbon Treaties, all of which affected the policy area of cross-

¹¹¹ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005) 5, 6, 47 - 58

¹¹² *ibid* 5, 6, 47 - 58

¹¹³ *ibid* 7 - 26, 116 - 175

¹¹⁴ *ibid*

¹¹⁵ Goldsmith and Sheptycki (n99) 6, 7

¹¹⁶ Conny Rijken, *Trafficking in Persons: Prosecution from a European Perspective* (TMC Asser Press 2003) 244 - 271

¹¹⁷ Loader and Walker (n78) 119 - 134

¹¹⁸ Malcolm Anderson, 'The agenda for police cooperation' in Anderson and Den Boer (n105) 6 - 8

border police cooperation in a number of ways. The Treaties, let alone the legislative and policy measures introduced pursuant to them, represented a major transformation and acceleration of EU involvement, and even governmental interest, in matters of cross-border police cooperation within a remarkably short period of time.

The objectives and rationales espoused within the Treaties must serve as the rational point of departure for understanding and conceptualising the nature of the EU project and its concomitant effects on police accountability. The Lisbon Treaty 2009, which represents the most recent restatement of the EU's objectives in the area of cross-border police cooperation, states first and foremost that the EU 'shall establish police cooperation' in relation to the prevention, detection and investigation of criminal offences.¹¹⁹ In doing so, it has 'shared competency', which means that the Member States can legislate and adopt legally binding acts in the area pursuant to the principle of subsidiarity but only to the extent that the Union has not exercised its competence.¹²⁰ Broadly speaking, the Lisbon Treaty outlines five primary objectives which it considers necessary to establish or enhance police cooperation throughout the EU area.¹²¹

First and foremost, the Treaty outlines the Union's aim to establish measures concerning 'the collection storage, processing, analysis and exchange of relevant information', in particular through the EU's European Police Office (Europol).¹²² Despite the EU's competency lying squarely in the realm of police cooperation, the objective holds clear and immediate inferences that police structures and processes on the ground in the Member States, which may have little or nothing to do with cross-border cooperation, could potentially be affected. For instance, robberies, shootings, money laundering and prostitution are often drug-related and may indirectly form part of a broader cross-border criminal case. Any efforts to change police processes for the collection, storage, processing and analysis of information and intelligence related to drug crime could easily interfere with standard operating procedure. The measures introduced by the EU pursuant to this objective raise immediate issues of police accountability. Checks and balances clearly need to be established to ensure that the rule of law, human rights standards and civilian and policing needs are met both below and above the national level.

The second policy objective is much less contentious, concerning the introduction of measures to 'support' staff training, staff exchange, equipment use and research.¹²³ Although the first and second objectives found various iterations in the Maastricht and Amsterdam Treaties, the third objective outlined in the Lisbon Treaty represents a considerably new addition to the EU's policing competencies. The third objective concerns the EU's intention to introduce measures concerning 'common investigative techniques' in relation to the detection of serious forms of organised crime.¹²⁴ The introduction of 'common investigative techniques' within the ambit of police cooperation is undoubtedly designed to assist the mutual admissibility of evidence and

¹¹⁹ Consolidated Version of the Treaty on the Functioning of the European Union [2010] OJ C83/83
Title V art 87.1

¹²⁰ *ibid* Title 1 art 2 - art 4

¹²¹ *ibid* Title V art 87 & art 88

¹²² *ibid*

¹²³ *ibid*

¹²⁴ *ibid*

the mutual recognition of judgments by virtue of establishing common standards and processes.

Although new to the specific dimension of police cooperation, the establishment of common investigative standards is not entirely new to the broader EU policy area of Freedom, Security and Justice (Title V) as it is closely related and almost inextricably linked to key elements of the policy area of judicial cooperation in criminal matters. The chapter on judicial cooperation in criminal matters, which directly precedes the chapter on police cooperation, requires the mutual recognition of ‘all forms of judgments and judicial decisions’.¹²⁵ It establishes EU competencies to approximate laws and regulations and establishes minimum rules concerning the mutual admissibility of evidence, the rights of individuals in criminal procedure, the rights of victims of crime and the definition of criminal offences and sanctions for serious crimes with a cross-border dimension.

The introduction of ‘common investigative techniques’ would appear at face value to have major ramifications for the conduct of policing on the ground in the Member States. Like the procedures for information collation and analysis, the domestic investigative techniques used in relation to the detection of serious forms of organised crime are typically used across the investigative spectrum ranging from local aggravated robberies to terrorism. Although the EU’s objective is to develop measures strictly in the area of ‘police cooperation’ the fact that cases with a cross-border dimension are built upon local structures and codes of procedure means that the exercise of the EU’s competencies can potentially affect a police force’s standard operating procedures in general. The same is largely true of the connected area of judicial cooperation. EU measures introduced to establish minimum rules concerning the admissibility of evidence and the rights of individuals within the criminal process risks rewriting a police force’s basic standard operating procedure for evidence gathering and questioning. The thesis has already outlined that the quality of police accountability depends substantively on the nature of these very codes, rules and human-rights protections. Moreover, the EU can introduce such measures in accordance with the ‘ordinary legislative procedure’ which means that the representatives of a particular State could vote against a measure but still see it passed by ‘qualified majority vote’ thereby undermining some key qualities of democratic accountability.¹²⁶

The fourth objective outlined in the Lisbon Treaty is to ‘establish measures concerning operational cooperation’ between the relevant police authorities.¹²⁷ Although the Treaty does not elaborate on the contents of ‘operational cooperation’, various measures introduced under the previous Treaties suggest that operational cooperation denotes the movement of police officers across borders in possession of some police powers in order to continue the ‘hot pursuit’ or surveillance of a suspect, to participate in a property search or to assist in a major incident amongst other scenarios. Due in part to the fact that the accommodation of foreign police officers raises acute legal issues in the event of individual misconduct, the EU can only introduce such measures at the behest of the EU Council acting unanimously through

¹²⁵ *ibid* Title V art 82.2 and 83; See also Title V art 67.3

¹²⁶ *ibid*; See also Title V art 82.1

¹²⁷ *ibid* art 87.3

the ‘special legislative procedure’.¹²⁸ The Lisbon Treaty states that the Council must explicitly lay down the conditions and limitations under which the competent authorities of the Member States may operate in the territory of another Member State in liaison and in agreement with the authorities of that State.¹²⁹

The fifth and final principal objective of the EU project concerns using Europol in other operational ways. The Lisbon Treaty provides that Europol’s mission is to support and strengthen action by the Member States’ police authorities in preventing and combating terrorism, serious crime affecting two or more Member States and other forms of crime of a common interest.¹³⁰ More particularly, Europol must coordinate, organise and implement investigative and operational action jointly with the Member States, using joint investigation teams where appropriate.¹³¹ To dispel fears over the development of a federal-style EU policing regime, the Treaty holds that any operational action involving Europol must be carried out in liaison and in agreement with the authorities of the Member States concerned and that the application of coercive measures shall remain the exclusive responsibility of the competent national authorities.¹³² This broad objective is not new to the EU policy area of cross-border police cooperation, finding previous enunciation in the Amsterdam Treaty.¹³³ Viewed from an accountability and transparency perspective, the central position and functions enjoyed by Europol raise acute concerns, particularly whether and to what extent Europol is accountable with respect to its own structures, processes, tasks and activities and whether and to what extent it holds the Member States’ police forces to account for the quality of their cooperation.

Although most of the EU competencies raise important issues of police accountability, no substantive mention is made of police accountability under Title V of the Lisbon Treaty. Nevertheless, a strong argument can be made that the Lisbon Treaty Preamble and various disparate provisions imply that the EU institutions should be actively enhancing the qualities of police accountability. For instance, the Treaty Preamble affirms the EU’s ‘attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law’.¹³⁴ The Preamble also outlines the EU’s ambition ‘to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen’.¹³⁵ Moreover, it conveys the desire of the Member States ‘to deepen the solidarity between their peoples while respecting their history, their culture and their traditions’.¹³⁶

Many of the same principles are reiterated in Articles 1 through Article 3 of the Treaty.¹³⁷ In addition the recognition of the Charter of Fundamental Rights of the European Union 2000, the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and the explicit right to the protection of personal

¹²⁸ *ibid* art 87.3

¹²⁹ *ibid* art 89

¹³⁰ *ibid* art 88.1 and 88.2b

¹³¹ *ibid*

¹³² *ibid* art 88.3

¹³³ Treaty of Amsterdam amending the Treaty of the European Union [1997] art 30.2

¹³⁴ Consolidated Treaty on European Union [2010] OJ C83/15, C83/16, C83/18 Preamble

¹³⁵ *ibid*

¹³⁶ *ibid*

¹³⁷ *ibid* Title 1 art 1 - art 3

data processed pursuant to EU instruments and measures are enumerated.¹³⁸ Echoing the spirit of democratic accountability, Articles 10 and 11 explicitly state that the EU institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society and that the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.¹³⁹ Similar expressions were made in the Preamble and opening articles of the Maastricht Treaty 1992 and Amsterdam Treaty 1997.¹⁴⁰ The thesis will proceed to examine whether and to what extent the EU cross-border policing regime reflects these values and realises the qualities of police accountability in principle and practice.

Methodology

The analysis is conducted primarily through a combination of the traditional legal method, the comparative method and critical analysis of secondary literature and materials. The extant legal frameworks at the national level are evaluated by way of statutory interpretation and case law analysis of relevant legislation and distinctive institutional and administrative frameworks. Three jurisdictions are used for comparison, namely England, Ireland and Denmark. The thesis focuses in particular on England as a constituent member of the United Kingdom of Great Britain and Northern Ireland (referred to herein as the UK) in order to accommodate the fundamental legal and administrative differences between the police forces of England (and Wales), Scotland and Northern Ireland. From a legal perspective, England and Ireland are both common law jurisdictions with close historical, political and legal connections whereas Denmark has a unique hybrid legal system. From an accountability standpoint, England has one of the most decentralised policing systems in Europe whereas Ireland and Denmark are considered to be among the most centralised.¹⁴¹ With respect to cross-border police cooperation, the Irish police force has long cooperated with police forces in Northern Ireland. English police forces are heavily involved in a much lauded Channel Tunnel policing initiative with France as well as a Cross Channel Intelligence Conference with France, Belgium and the Netherlands. Danish police districts on the other hand cooperate extensively with police forces from Sweden and Norway through a well-respected regional Nordic policing framework. Danish police districts also interact with police forces from Northern Germany on a day-to-day basis.

By focusing on England, Ireland and Denmark, the thesis captures a broad and diverse array of policing systems and cross-border policing constructs. Moreover, the UK, Ireland and Denmark were the only EU Member States to insert unique opt-out clauses into the Maastricht, Amsterdam and Lisbon Treaties while the UK and Ireland are the only two Member States that do not participate fully in the policing framework of the Schengen Acquis. As a result, the three jurisdictions represent a rich mosaic of distinctive legal and administrative characteristics and approaches to police accountability and cross-border police cooperation, arguably unrivalled by any other individual Member States of the European Union.

¹³⁸ *ibid* Title I art 6; Lisbon Treaty (n78) art 16 (data protection)

¹³⁹ *ibid* Title II art 11

¹⁴⁰ Treaty on European Union [1993] Preamble and art B and F

¹⁴¹ Benyon et al (n64) 54

Evaluating the various jurisdictions through the three critical lenses of codes, co-option and complaint should ultimately enable the thesis to ascertain if there is enough evidence of similarity between the three jurisdictions to validate the proposed theoretical framework. The selection of Denmark as a jurisdiction of interest is particularly important as it practices a hybrid legal system which would suggest that it is both an amalgam of best practice from across Europe and, more particularly, that the relevant features of its legal system are not hugely different from neighbouring States such as Sweden and Germany. A five-month research trip to the University of Copenhagen, Denmark was undertaken in Autumn 2012 to access and translate relevant legal codes, reports, parliamentary debates and secondary literature.

In regard to matters of EU cross-border policing, the application of the three lenses to the EU's activity in the area of cross-border police cooperation should crucially enable the thesis to deduce whether and to what extent the EU is incorporating the Member States' conventional legal and administrative approaches to police accountability. The history, development and current state of EU law and practice on cross-border police cooperation is scrutinised by relying primarily on the application of the traditional legal methods of statutory interpretation and case law analysis to relevant sources. These include the Lisbon Treaty and the Schengen, Prüm and Mutual Assistance Conventions; EU legislation such as the Framework Decision on Joint Investigation Teams, the Europol Decision and decisions of the European Court of Justice amongst others. The legal analysis will be supplemented by the critical analysis of associated national and EU parliamentary debates; institutional reports published by the relevant police forces and departments of justice; EU Council and Commission documents, media reports and secondary literature. A number of off-the-record interviews with key personnel from various police forces and Europol were undertaken to inform and shape the research. Informal interviews were carried out at Europol Headquarters in The Hague in October 2012, at the Danish National Police Headquarters in Copenhagen in November 2012 and at the Irish Police Headquarters in February 2013. Ethics approval was secured in 2011 for these interviews (Reference: FAHSS_REC448).

Ch. 1 Codes and co-option within the Member States

“Accountability involves the presentation and reception of an account to certain codes”.¹⁴²

Drawing on the work of Bayley, Reiner, Bittner, Walsh and Stenning amongst others, the thesis has suggested that an overly narrow and obscure treatment or interpretation of police accountability has been casually adopted by the *Sage Dictionary of Policing* (2009), the *Routledge Dictionary of Policing* (2008) and the *UN Handbook on Police Accountability, Oversight and Integrity* (2011). The thesis has outlined that the vague definitions obscure the qualities of police accountability and largely disregard comprehensive academic examination and conceptual precision. The analysis will commence by considering whether the concept of police accountability can be better elucidated through the lenses of codes, co-option and complaint. The typology is based in part on Maguire’s observation that the three strategies advocated most often to militate against police malpractice in the aftermath of a policing scandal include the drawing up of a more prescriptive code of conduct, the improved supervision of police conduct and the establishment of effective systems of complaint and inquiry at the national level.¹⁴³

The chapter will focus on the first hypothetical lens. It will argue that ‘codes’ play a central and fundamental role in police accountability since they set the standards against which police policies, strategies, acts and omissions must be measured. The chapter will show that the traditional conceptualisation of police accountability has become severely outdated as radical legal reforms over the past 30 years have dramatically amplified the importance of codes as a key defining feature of police accountability, particularly in common law jurisdictions. Furthermore, it will show that procedural codes have not only radically re-defined the standards against which police conduct must be measured but that they have also made significant inroads into the problem of police ‘co-option’. The chapter will focus on relevant legal reforms at the national level across England, Ireland and Denmark.

The importance of ‘codes’

Bittner observed as early as 1970 that codes are fundamental to the idea of police accountability for the simple reason that without an abstract formulated standard we would not know what kind of police conduct to look for.¹⁴⁴ Most importantly, from a juridical perspective, Dicey’s highly regarded formula for ‘the rule of law’ demands the absolute supremacy of clearly-defined regular law to prevent the State from wielding arbitrary power.¹⁴⁵ One of the basic tenets of constitutional law and international human rights law is that fundamental human rights, not least the right to liberty, shall not be encroached upon by agents of the State save in accordance with the law.¹⁴⁶ One famous component of constitutional law and ‘legalism’ is the maxim

¹⁴² Anderson et al (n63) 273

¹⁴³ Maguire (n54) 178, 179

¹⁴⁴ Egon Bittner, *The Functions of the Police in Modern Society* (Centre for Studies of Crime and Delinquency, National Institute of Mental Health Maryland 1970) 5

¹⁴⁵ Walsh (n43) 300, 301 citing *Albert V Dicey, Introduction to the Study of Law of the Constitution* (10th edn, Macmillan 1965) 187 – 202

¹⁴⁶ Walsh (n40) 17

of *nullum crimen, nulla poena sine lege*, which applies to both criminal and administrative law, holding that there can exist no crime and no punishment without a pre-existing law.¹⁴⁷

Reiss remarks that it is the principle of legality which effectively underpins the legitimacy of police powers and interventions.¹⁴⁸ Constitutional and statutory laws, secondary regulations and internal guidelines effectively determine the domain of competence of the police by establishing the basis for and the limitations to police powers and functions.¹⁴⁹ The thesis uses the term ‘codes’ broadly to refer to all of the legal and administrative standards against which police conduct can be measured, encompassing not only the formal rules and regulations which are formally labelled ‘codes’, such as the PACE Codes of Practice or the Danish Criminal Code, but any significant statute or juridical or administrative framework which underpins the exercise of police powers, duties and practice.

From an accountability perspective, ‘codes’ effectively underpin one of the basic questions of accountability, ‘what for?’¹⁵⁰ ‘Codes’ set the standard against which police policies, strategies, acts and omissions are measured.¹⁵¹ The chapter will show that the concept of police accountability was traditionally focused predominantly on the development of internal administrative codes of discipline and the criminal law but that more intricate procedural codes have become increasingly popular since the late 20th Century, representing a discernible paradigm shift. More particularly, it will show that State legislatures traditionally assumed that the statutory establishment of the police organisation, concomitant police powers and disciplinary infractions through individual and piecemeal policing and criminal laws was sufficient to ensure a highly programmatic and disciplined police force but a number of policing scandals in the 20th Century suggested otherwise. The thesis will convey how a major paradigm shift occurred in the 1980s, particularly within common law jurisdictions, which led to the popular development of highly formulaic and programmatic codes of procedure to minimise police malpractice and enhance human rights protections. It will convey that this paradigm shift is crucial to any modern conception of police accountability for it not only changed the landscape considerably but various jurisdictions have not yet fully completed this evolutionary step and remain somewhat tied to the outdated ideologies of the 19th Century.

A major paradigm shift: from ‘disciplinary codes’ to ‘procedural codes’

England’s modern public policing model was originally defined predominantly by an internal system of accountability which revolved around a proscriptive set of disciplinary infractions. Reith conveys that all of the major organisational features of the English model, developed in the early 19th Century, could be considered derivative, drawn predominantly from the army’s system of hierarchical control.¹⁵²

¹⁴⁷ Bittner (n20) 3, 4

¹⁴⁸ Albert J Reiss, *The Police and the Public* (Yale University Press 1971) 2

¹⁴⁹ Egon Bittner, ‘Florence Nightingale in Pursuit of Willie Sutton: a theory of the police’ in Newburn (n48) 152 - 154

¹⁵⁰ Jean Paul Brodeur ‘Accountability: The Search for a Theoretical Framework’ in Errol P Mendes et al (eds), *Democratic Policing and Accountability* (Ashgate 1999) 125 - 152

¹⁵¹ See Bittner (n144) 5

¹⁵² Charles Reith, *A New Study of Police History* (Oliver and Boyd London 1956) 121, 122

His in-depth analysis of the key influences behind the establishment of the London Metropolitan Police in 1829, from Rowan's military influences to Pitt's failed Police Bill, convincingly shows that the seminal organisational features, procedures and practices of the new police were almost exclusively and intentionally drawn from the tried and tested military organisational structures for directing, supervising and disciplining a large body of subordinates.¹⁵³

Like the traditional military style of leadership and management, the system revolved around a code of conduct and a concomitant proscription of disciplinary infractions which served to ensure that subordinates carried out their instructions within specific parameters or face punishment for misconduct. The original General Instructions issued by the first London Police Commissioners to the London Metropolitan Police required police officers to remain well-tempered and unresponsive to personal insult at all times, to behave with courtesy, impartially and without prejudice and to use only the most minimal and justifiable force necessary in accordance with common law, amongst other prerequisites.¹⁵⁴ The formal proscription of General Instructions was considered to be crucial for ensuring that police officers would strive to resolve any and all conflicts by using the utmost restraint, persuasion and moral authority, resorting only to the most minimal force absolutely necessary to affect an arrest.¹⁵⁵ The original London Police Commissioners stated in 1830 that each member of the police force must show 'the most perfect civility at all times to the public, of whatsoever class, as any man who acts otherwise cannot be allowed to remain in the force'.¹⁵⁶ The General Instructions were designed to ensure that police officers would act not as emotional men but behave according to an 'institutional personality'.¹⁵⁷ Officers were expected to behave as an 'institution rather than a man'.¹⁵⁸ The Commissioners considered that breaches of the 'code of conduct' risked undermining the 'institutional image' of the police service and, by extension, its public consent and legitimacy.¹⁵⁹

Regularly updated as new situational exigencies came to the attention of successive police chiefs and commissioners, by the middle of the 20th Century disciplinary regulations for police forces across England and Ireland typically contained a relatively uniform list of infractions.¹⁶⁰ Infractions which aimed to regulate police-civilian interactions included 'abuse of authority' which encompassed the improper or excessive use of force, 'neglect of duty' such as a failure to act in response to a reported crime, 'discreditable conduct' which could tarnish the public's confidence in the officer or the force and a number of prohibitions pertaining to criminal conduct such as corruption, falsehood and prevarication.¹⁶¹ Infractions which aimed to facilitate strict internal hierarchical control by commanding officers included 'disobedience of orders' or insubordination, 'misconduct' towards another member of

¹⁵³ *ibid*

¹⁵⁴ Wilbur R Miller, *Cops and Bobbies* (University of Chicago Press 1977) 62

¹⁵⁵ Bittner (n144) 37 - 45

¹⁵⁶ Reith (n152) 141

¹⁵⁷ Miller (n154) 15 - 25

¹⁵⁸ *ibid*

¹⁵⁹ Rob Mawby, *Policing Images: Policing, communication and legitimacy* (Willan 2002) 2 - 6, 53 - 62

¹⁶⁰ Irish Garda Síochána (Designations, Appointments and Discipline) Regulations 1924; Garda

Síochána (Disciplinary) Regulations 1989

¹⁶¹ *ibid*

the force and ‘untidiness’ amongst others.¹⁶² The proscription of infractions has changed little over the course of the 19th and 20th Centuries. England’s most recent Police (Conduct) Regulations 2008 categorises its enumerated infractions under the headings of reasonable, proportionate and necessary use of force; honesty and integrity; respect and courtesy; equality; diligent exercise of duties; discreditable conduct; data protection and the requirement to report improper conduct, amongst others.¹⁶³

The general instructions and disciplinary infractions effectively represented a ‘code of ethics’ which defined how police officers were to engage with civilians, demanding that they act as paragons of dignity, honesty, openness, compassion and restraint or face sanction and punishment by the internal hierarchical regime. Neyroud and Beckley group these ethical responsibilities of police officers into four primary categories of theoretical ethics, namely ‘duty’ which encompasses taking responsibility for protecting and respecting human rights in a dignified manner, ‘virtue’ which encapsulates the honesty of the individual, ‘utility’ which connotes justiciable consequences and ‘care’ which places a premium on needs and emotions rather than laws and rules.¹⁶⁴ They succinctly convey that ethics are concerned predominantly not with the outcome of an action but with the way an action is taken, in other words with means rather than ends.¹⁶⁵

Alderson comments that ethical standards of discipline are as important as the legal standards of criminal behaviour for public policing since the manner in which they are applied play a significant role in shaping police conduct and are just as likely to create a sense of injustice if abused.¹⁶⁶ As Kleinig observes ‘legal accountability’ is concerned with process and not with character.¹⁶⁷ The disciplinary regime on the other hand is designed to deal not only with legal rights and wrongs but with the ethics of good and better. It is about regulating behaviour such as rudeness, indifference and aggression which are common to civilian conduct but short of the ethics expected of the policeman.¹⁶⁸ The codes of police ethics effectively serve to ensure that the normative expectations of police behaviour are ultimately higher than the normative expectations of civilian conduct.¹⁶⁹

Most importantly, adherence to the General Instructions and the concomitant disciplinary infractions was to be guaranteed by the military-style hierarchical police organisation which existed in part for that very purpose.¹⁷⁰ It was clearly the belief and intention of the original Home Secretary and Police Commissioners in England that the military-esque organisational structures and processes would deliver a highly disciplined professional force, largely free of deviant and corrupt behaviour.¹⁷¹ ‘Professional’ ethics were prioritised and underpinned by the recruitment and training of officers according to specific standards in line with other more traditional

¹⁶² *ibid*

¹⁶³ Police (Conduct) Regulations 2008

¹⁶⁴ Peter Neyroud and Alan Beckley, *Policing ethics and human rights* (Willan 2001) 40 - 49

¹⁶⁵ *ibid* 38, 39

¹⁶⁶ John Alderson, *Policing Freedom* (MacDonald and Evans 1979) 14 - 16

¹⁶⁷ Kleinig (n59) 8

¹⁶⁸ Punch (n49) 18 - 31

¹⁶⁹ *ibid* 18 - 31

¹⁷⁰ Reith (n152) 121, 122

¹⁷¹ Miller (n154) 1 - 4

‘professions’.¹⁷² However unlike the traditional professions, such as medicine and teaching, the hierarchical police organisation existed to ensure that police officers functioned as part of an integrated, coordinated and highly disciplined organisation, as opposed to an unwieldy body of individuals.¹⁷³ To facilitate close direction, control and supervision, police constables were grouped into units or squads headed by a sergeant, loosely modelled on the army platoon.¹⁷⁴ Units were grouped into stations or departments headed by a superintendent, akin to the army company. Stations were grouped into ‘divisions’ headed by a chief superintendent or an assistant police chief, much like the army battalion, and divisional headquarters were overseen by a force headquarters headed by a police chief, akin to the office of army general.¹⁷⁵ The police ‘division’, referred to more recently as the Basic Command Unit (BCU), was expected to be capable of handling any and all occurrences within its geographical territory in a similar fashion to the army battalion.¹⁷⁶

The fact that the internal hierarchical police organisation was capable of ensuring discipline and delivering police accountability more generally was largely taken for granted on the basis of the historical success of the military model of direction and control. More particularly, the simple existence of a hierarchical police organisation armed with a suite of disciplinary infractions was considered to be a vast improvement on traditional policing practices. The Watch and Ward and thief-taking systems which existed in the 18th Century were widely considered to be prone to corruption and deviance due to the lack of regimental oversight and poor pay.¹⁷⁷ Poor working class neighbourhoods, which could not afford a robust Watch or the costly services of thief-takers, were reportedly racked with violent brawling, drunkenness, pick-pocketing, burglaries and general lawlessness on a daily basis, leading to regular outcry from local residents and entrepreneurs.¹⁷⁸ Violent and armed robbers reportedly acted with impunity since they could easily bribe watchmen and thief-takers to escape apprehension.¹⁷⁹ Fielding, a London magistrate, had advocated the amalgamation of all of the disparate London Watches into a single unitary force in 1749, largely akin to the Parisian Guard, and even tried to develop a formal information system between the thief-takers in order to aid the tracking of fugitives, but failed considerably on both counts.¹⁸⁰ London’s population had proceeded to almost double in size between 1750 and 1820, through rural and foreign immigration, which contributed significantly to growing levels of property crime and street theft.¹⁸¹

Furthermore, although the heavily armed English Army and Yeomanry were usually effective at dispersing crowds rioting over food shortages, unemployment rates and tenant rights amongst other complaints, their methods were occasionally

¹⁷² Bayley (n10) 13, 47 - 51

¹⁷³ Walsh (n43) 16

¹⁷⁴ Reith (n152) 121, 122

¹⁷⁵ Rob Mawby and Alan Wright, ‘The police organisation’ in Tim Newburn (ed), *Handbook of Policing* (2nd edn, Willan 2011) 224 - 234

¹⁷⁶ PAJ Waddington, *Policing Citizens* (Routledge 1999) 242, 243

¹⁷⁷ TA Critchley, *A History of Police in England and Wales* (Constable Press, London 1978) 18 - 34

¹⁷⁸ Clive Emsley, *The English Police: A Political and Social History* (2nd edn, Longman London 1996) 15 - 20

¹⁷⁹ Miller (n154) 4 - 7

¹⁸⁰ Emsley (n178) 32

¹⁸¹ Clive Emsley, ‘The history of crime and crime control institutions’ in Maguire et al (n50) 206 - 212

disproportionate and unnecessary leading to the massacre of innocents.¹⁸² Notable massacres include the killing of upwards of 300 at the anti-Catholic Gordon Riots in 1780, the slaughter of some 50 protestors and injuring of more than 300 in Hexham in 1781, and the death of 11 civilians and the injuring of more than 400 gathered at Peterloo in 1819.¹⁸³ The fact that the hierarchical police organisation was established to replace the policing functions of the Watches and the Army was considered to be a major political and social breakthrough. A Police Bill had been unsuccessfully tabled earlier in 1785 and six parliamentary committees had considered the establishment of a police force in London between 1812 and 1822 in an effort to address growing discontent.¹⁸⁴ Although various segments of London society were in favour of retaining the extant systems of crime control, the new modern public policing model gained support primarily on the assumption that it would bring greater discipline to the processes of street patrol, thief taking and riot control.¹⁸⁵

The overarching consensus was that the 'new' system would engender a more disciplined, accountable, unitary system of crime control by blending together the basic functions of the watch, the thief takers and public order maintenance within one organised, professional and disciplined public organisation.¹⁸⁶ Although the organisational structure of the new police was similar in nature to the British Army its functions were almost entirely different to the Army, which was tasked to operate from barracks and trained to engage a hostile citizenry using heavy weaponry and overwhelming force.¹⁸⁷ To appease a sceptical general public many of the basic features of the traditional policing systems were integrated into the 'new' police.¹⁸⁸ The patrol function traditionally carried out by the Watch and Ward would continue to be the primary function of the public police who, by virtue of their discernible uniforms and constant vigilance would work to deter crime largely through a simple 'scarecrow effect'.¹⁸⁹ Emsley remarks that the patrol 'beat' system adopted by the new police constables was familiar to most Londoners as similar patrols had traditionally been carried out by members of the Watch and Ward.¹⁹⁰ Likewise, the Bow Street Runners employed by the Fielding magistrates from 1748 were considered to be particularly astute at investigating local reports of crime by relying on a network of informants, eventually leading to the establishment of a detective bureau within the London Metropolitan Police.¹⁹¹ The intention was that the hierarchical police organisation would be able to deliver a highly disciplined, professional body of police officers who could preserve public order by virtue of their moral correctness and authority rather than by overwhelming coercive force of arms.¹⁹² There was evidently little reason to believe that the hierarchical police organisation would have any effect other than ensuring a highly disciplined and professional force.¹⁹³

¹⁸² Critchley (n177) 35 - 37

¹⁸³ Mike Brogden, 'The emergence of the police – the colonial dimension' in Newburn (n46) 70

¹⁸⁴ Reiner (n48) 1 - 14

¹⁸⁵ Michael Ignatieff, 'Police and people: the birth of Peel's blue locusts' in Newburn (n46) 25 - 27

¹⁸⁶ Bittner (n144) 31 - 34

¹⁸⁷ Brogden (n183) 76, 77

¹⁸⁸ Philip Rawlings, 'Policing before the Police' in Newburn (n175) 47 - 66

¹⁸⁹ Miller (n154) ix - 3, 32, 33

¹⁹⁰ Emsley (n178) 24, 25

¹⁹¹ Emsley (n181) 206, 207

¹⁹² Walsh (n43) 8 - 10

¹⁹³ Bowling and Foster (n50) 982 - 984

Unfortunately the capacity of the internal hierarchical regime to deliver police accountability in practice did not attract close scrutiny until the spiking of academic interest with the publication of Michael Banton's *The Policeman in the Community* in 1964. It became common consensus thereafter that the General Instructions and disciplinary infractions served as a useful proscription of 'what not to do' rather than providing police officers with a relatively fulsome guidance on 'what to do' when exercising their police powers.¹⁹⁴ Basic police processes were largely outlined in piecemeal internal administrative police manuals such as the crime investigation manual and the charging manual which only covered a few basic police processes.¹⁹⁵ Breathnach, writing in the 1970s, described the Irish *Garda* Code, which largely collated the major criminal offence definitions, laws and statutes, as the 'bible' for Irish police officers.¹⁹⁶ Wilson outlined how the guidance issued to police officers was essentially far more inhibitory than explanatory and that there was significant scope to provide patrolmen with greater guidance on best practice in various scenarios or situations whilst still enabling them to deal with incidents with flexibility and discretion.¹⁹⁷

A major problem with the original regime was that the prevailing disciplinary codes were evidently far too narrow. Criminal statutes such as the Vagrancy Act 1824, Offences Against the Person Act 1861, Poaching Prevention Act 1862, Public Stores Act 1875 and Explosives Act 1875, which restated old prohibitions and offences as well as enumerating new ones, merely outlined concomitant police powers and responsibilities such as stop and search upon reasonable suspicion without going into extensive detail about how processes, such as a stop and search, should be conducted. The legislature evidently operated under the assumption that such matters were of little concern to the body politic since the hierarchical police organisation applied a stringent code of ethics espousing courtesy, dignity and minimal force amongst other ethical standards. However, even the original London Commissioners were well aware of the limitations of the disciplinary regulations and General Instructions. The latter was prefaced with the caveat that:

'the following General Instructions for the different ranks of the police force are not to be understood as containing rules of conduct applicable to every variety of circumstance that may occur in the performance of their duty; something must necessarily be left to the intelligence and discretion of individuals; and according to the degree in which they show themselves possessed to the qualities and to their zeal, activity and judgement, on all occasions'.¹⁹⁸

The judiciary was essentially expected to act as the final external check on any unlawful or unconstitutional police practice. Principles such as the formulation of reasonable suspicion before conducting a stop and search, minimal use of force, the right of access to a solicitor during detention, the prohibition of oppressive questioning during interrogation, the requirement for voluntary confessions and the provision of comfort, refreshment and sleep during police detention were all

¹⁹⁴ Wilson (n25) 64 – 67

¹⁹⁵ Walsh (n43) 154

¹⁹⁶ Seamus Breathnach, *The Irish Police* (Anvil Dublin 1974) 154, 155

¹⁹⁷ Wilson (n25) 64 – 67

¹⁹⁸ Reith (n152) 135, 136

announced at common law throughout the 19th Century.¹⁹⁹ The seminal Judges Rules of 1912, for instance, formally outlined many of the basic processes for police detention and interrogation and underwent periodical update throughout the 20th Century.²⁰⁰ Miller observes that it was not uncommon for magistrates to throw out cases in the 19th Century if it was found that an officer had arrested an individual without reasonable suspicion even where the suspect had assaulted the officer during the course of the arrest.²⁰¹

Not only did the judiciary strive to elucidate police procedures since the extant suite of disciplinary infractions and General Instructions failed to provide procedural guidance across all police processes but the nature and content of police powers changed considerably over the course of the 20th Century without commensurate changes being made to the mechanisms of police oversight and complaint. When the system was originally designed in the early 19th Century, the range of police powers bestowed upon constables was not at issue since the Home Secretary had designed the new London constables to be little more than ‘citizens in uniform’ who were simply modern versions of the ancient office of civilian tithingman and peace officer who enjoyed broadly the same range of powers as civilians, albeit as part of a more rigid hierarchical regime.²⁰² The government was apparently at pains to convey that the powers and functions of the new police were in fact not new but ancient in order to garner the acquiescence of a sceptical public. However by the 1970s, police officers could no longer be considered to be ‘citizens in uniform’ for their powers had evolved considerably over the preceding hundred years.

Voluminous numbers of criminal offence statutes had been introduced in England throughout the 20th Century such as the Public Order Act 1936, Sexual Offences Act 1956, Homicide Act 1957, Theft Act 1969, Misuse of Drugs Act 1971, Protection of Children Act 1978, and Forgery and Counterfeiting Act 1981, many of which attached police powers in a piecemeal manner. Not only were the statutes considerably vague or relatively unconcerned about how the concomitant police powers would be exercised in practice but some powers such as stop and search and property searches without warrant were attached to some criminal offences but not others.²⁰³ Haphazard anomalies and ambiguities were not only hindering police investigations but enabling defence lawyers to get their defendants off on technicalities.²⁰⁴

Most importantly, it was increasingly acknowledged towards the end of the 20th Century that neither the internal regime of disciplinary oversight nor the criminal courts were capable of safeguarding civil liberties to the fullest extent. Breaches of the Judges Rules were reportedly endemic partly because they were not considered to be clear disciplinary infractions.²⁰⁵ Reiner conveys that the reports of coerced confessions in a number of high profile cases and the absence of legal advice prior to or during the questioning of a number of juveniles in the *Confait* case raised major

¹⁹⁹ Ben Whitaker, *The Police in Society* (Eyre Methuen London 1979) 319 - 326

²⁰⁰ Reiner (n48) 63 - 69

²⁰¹ Miller (n154) 56 - 58

²⁰² Michael Banton, *The Policeman in the Community* (Tavistock Publications London 1964) 6 - 8; Walsh (n43) 50 - 53, 144 - 154

²⁰³ *ibid* 142 - 153

²⁰⁴ *ibid*

²⁰⁵ Reiner (n48) 63 - 69

public ire and caused a discernible ‘haemorrhage’ of public confidence in the police in the 1980s.²⁰⁶ Doreen McBarnet commented in 1981 that suspects’ rights had become little more than rhetoric, widely trampled upon in practice.²⁰⁷ Walker remarks that the police were widely perceived, particularly among disadvantaged minority communities, as a threat to their civil liberties rather than the guardian and vindicator of those rights.²⁰⁸

Only in the 1980s, after numerous miscarriages of justice and Royal Commissions of Inquiry, did the Parliament and legislature realise that it had incrementally introduced disparate police powers without introducing commensurate checks and balances. The Royal Commission on Criminal Procedure (RCCP), sitting in 1981, signalled the need for a radical paradigm shift to reconstruct the onus of police accountability to include not only the hierarchical police organisation and the judiciary but to foster a clear responsibility within the legislature itself for the formulation of procedural guidance.²⁰⁹ It recommended the introduction of clearer, rationalised and more human-rights compliant police processes to address pervasive police malpractice and growing public discontent together with more robust signalling mechanisms for complaint and inquiry.²¹⁰

On foot of the Commission’s recommendations, the landmark Police and Criminal Evidence (PACE) Act was introduced in 1984.²¹¹ It essentially rationalised general police powers, applying them to all indictable offences, such as the power to stop and search with reasonable suspicion,²¹² the entry of private property in certain instances,²¹³ and the search of private property without a warrant immediately upon a suspect’s arrest to locate valuable evidence, amongst other basic processes.²¹⁴ Most importantly, the Act incorporated detailed guidance on how stop and searches, arrests, bodily searches, property searches, detention, interrogation and the taking of forensic bodily samples amongst other processes should be carried out in order to comply with long-standing constitutional human rights standards.²¹⁵ The relevant traditional principles of common law, the Judges Rules and ECtHR jurisprudence were effectively rationalised in a similar fashion to the police powers.²¹⁶

In addition to the statutory provisions themselves, the Act also required the Home Secretary to introduce secondary instruments under the Act in the form of new codes of practice to ensure that the provisions were given clear and useful effect in practice.²¹⁷ Unlike the traditional Judges Rules, a breach of any of the codes would

²⁰⁶ Robert Reiner ‘Myth vs Modernity: Reality and Unreality in the English Model of Policing’ in Brodeur (n67) 30

²⁰⁷ Robert Reiner, *Politics of the Police* (4th edn, OUP 2010) 117 citing McBarnet (1981) 5

²⁰⁸ Clive Walker, ‘Miscarriages of Justice in Principle and Practice’ in Clive Walker and Kier Starmer (eds) *Miscarriages of Justice: A Review of Justice in Error* (Blackstone Press 1999) 31 - 52

²⁰⁹ Reiner (n48) 168 - 185

²¹⁰ *ibid*

²¹¹ Andrew Ashworth and Mike Redmayne, *The Criminal Process* (3rd edn, OUP 2005) 61 – 66

²¹² Police and Criminal Evidence Act 1984 s 1

²¹³ *ibid* s 17 & s 32

²¹⁴ *ibid* s 18 & s 32

²¹⁵ Reiner (n48) 168 - 186

²¹⁶ Walsh (n40) 33

²¹⁷ Michael Zander, ‘The Act in the Station’ in John Benyon and Colin Bourn (eds), *The Police: Powers, Procedures and Proprieties* (Pergamon Press 1986) 123, 124

generally be deemed to constitute a disciplinary infraction.²¹⁸ The Home Office introduced eight Codes of Practice labelled A to H which addressed as distinct and individual processes the conduct of stop and search, property search, arrest, detention and questioning and the taking of bodily samples. The Codes provided relatively clear guidance on issues such as ‘reasonable suspicion’ and the ‘reasonable use of force’.

The modern significance of ‘procedural codes’

To evoke legal and procedural clarity and human-rights compliance, the Act and the concomitant Codes effectively represented a step by step procedural guide from arrest to charge. At the pre-arrest stage, the Act held that stop and searches, which are highly uncomfortable and insulting if items of crime are not found, must only be undertaken with a reasonable suspicion premised upon the factual presence of information, intelligence or suspect behaviour. Clear guidance was provided on a number of specific situational exigencies such as the stop and search of someone with religious head coverings. It was conveyed that the purpose of detention was to prevent the person causing harm to others or to facilitate the prompt investigation of an offence not as a form of punishment in itself, advocating the use of ‘street bail’ as an alternative for minor offences if feasible.²¹⁹

The Act and the concomitant Codes were highly programmatic. During arrest, detainees were to be notified of the reasons for arrest, were to be brought to the station as soon as practicable and a subsequent ‘custody record’ of the arrest must be made at the police station outlining the reasons for, location and time of arrest, the degree of force used and the ethnicity of the detainee amongst other information.²²⁰ Bodily samples required for forensic analysis were to be restricted to non-sensitive samples such as fingerprints, mouth swabs or a strand of hair unless the detainee consented to more sensitive blood and semen samples.²²¹ One of the most important areas regulated by the Act was the conduct of interviews and detention which had previously been regulated by the Judges Rules. Interviews were to be recorded by audio and visual means unless impracticable and were only to be undertaken for the purposes of securing enough information to charge, affording the suspect access to immediate independent legal advice by phone or in person, regular refreshments and comfortable seating and sleeping arrangements.²²² Police interviewers were to notify interviewees of their legal rights and obligations and were prohibited from making oppressive or threatening statements.²²³ Statements were to be recorded by hand by either the detainee or a police officer who was required to outline all of the incriminating and exculpatory evidence to the greatest extent possible. Interpreters were to be provided if appropriate and a person known to the detainee notified of the arrest unless such notification may lead to evidence being destroyed or accomplices being warned.²²⁴

Moreover, detention without charge could only be extended beyond 6 hours if an inspector unconnected to the investigation was of a reasonable belief that continued

²¹⁸ Police and Criminal Evidence Act s 67

²¹⁹ *ibid* s 24 & s30

²²⁰ *ibid* s 24 - s 39

²²¹ *ibid* s 55 – s 64

²²² *ibid* s 37 – s 40

²²³ *ibid*

²²⁴ *ibid*

detention was proportional and necessary in the furtherance of the criminal investigation.²²⁵ The inspector was required to record such reasons in the custody record and must review the case every 9 hours thereafter.²²⁶ Detention for any longer than 24 hours could only be approved by a superintendent acting as the reviewing officer. Detention for any longer than 36 hours required the intermittent approval of a district court magistrate, up to a possible total of 7 days under the Misuse of Drugs Acts or up to 28 days under the Terrorism Acts.²²⁷ Furthermore, PACE provided that as soon as the reviewing or custody officer was satisfied that there was a satisfactory minimum amount of evidence on which to bring a charge on indictment, the file must immediately be transmitted to the independent Director of Public Prosecutions (DPP) so that a charge could be considered.²²⁸ Upon charging, the suspect should be released on 'police bail' if release would not immediately hinder the investigation and prosecution or else the detainee must be brought to the magistrates court for a preliminary bail hearing as soon as practicable.²²⁹

PACE and its associated secondary Codes of Practice extensively outlined the form and nature of basic police processes in a manner that was entirely unprecedented. Echoing the pronouncements of Rene Descartes in the 17th Century, it was belatedly realised that a single legal framework which was strictly observed would engender a better ordered State than a multiplicity of laws which could furnish excuses for vice.²³⁰ It was a watershed for police accountability for there had never before been such a clear and publicly accessible codified standard of police procedure against which police conduct could be measured.²³¹ It was only in the 1980s, more than 150 years after the creation of the English policing model, that the assumptions around the adequacy of the internal hierarchical regime as the prime producer of disciplinary guidance were examined and found to be remarkably short-sighted.

The paradigm shift towards explanatory codes of procedure and practice in England did not go unnoticed in Ireland. Like its neighbouring jurisdiction, the Irish Government had introduced a plethora of haphazard, piecemeal and anomalous criminal laws throughout the 20th Century, facing many of the same legal and procedural challenges as England in the 1970s and '80s.²³² In the absence of a highly formulaic regime for arrest, detention and interrogation, a 'heavy gang' of detectives who were skilled in the art of coercing confessions through oppressive and threatening means reportedly operated with impunity in the 1970s, regularly breaching the Irish Judges Rules.²³³ All too aware of the recommendations of the English Royal Commission on Criminal Procedure 1981, the Irish government took similar steps to rationalise its basic police powers and processes. The Irish Criminal Justice Act 1984 was ideologically similar to the PACE Act. Police 'powers' such as stop and search, the entry of private property and detention without charge were rationalised whilst police 'processes' such as the conduct of stop and searches, arrests, bodily searches, property searches, interrogation, the taking of forensic bodily

²²⁵ *ibid*

²²⁶ *ibid* s 40

²²⁷ *ibid* s 41 – s 44

²²⁸ *ibid* s 37 – s 47

²²⁹ *ibid*

²³⁰ Rene Descartes, *A Discourse on the Method* (OUP 2006) 40

²³¹ Ashworth and Redmayne (n211) 29, 61 - 66

²³² Walsh (n43) 140 – 150, 262 - 265

²³³ *ibid* 260 - 265

samples and the approval of extended detention were enumerated in accordance with long-standing human rights standards.²³⁴ Analogous to the supplementary English Codes of Practice, the Irish Minister for Justice introduced similarly expansive regulations, not least the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Stations) Regulations 1987 and the Criminal Justice Act 1984 (Electronic recording of interviews) Regulations 1997 amongst others.

Viewed from a continental perspective, the major paradigm shifts in England and Ireland can be viewed as significantly belated. Not only did it take the UK and Irish Governments until the 1980s to realise the obvious weaknesses inherent in their policing systems, their negligence is particularly stark considering the fact that most police forces in continental Europe were already being held to account according to highly formulaic and programmatic codes of procedure, a feature that many European countries shared dating back to the Napoleonic era.²³⁵ Police powers and functions in Denmark, for instance, had long been rationalised in the 'Retsplejeloven' or Administration of Justice Act 1916 (AJA). The key long-standing principles of reasonable suspicion, the reasonable use of force, the right of access to legal advice during detention and regular custody reviews were not unique to the common law systems of England and Ireland but had long been outlined in specific chapters of the Danish AJA.²³⁶ Distinct chapters of the AJA pertain to bodily search, property search with and without a warrant, arrest, detention and interrogation amongst others.²³⁷ In fact, various principles are even more extensive than the PACE equivalents such as the requirement that defence counsels must be given immediate and unrestricted access to a detained suspect throughout the interrogation and identification processes.²³⁸ Criminal offence definitions and sanctions, on the other hand, were codified in a separate Criminal Code 1930 under various headings such as attempt and complicity, offences against the public peace, offences of violence against the person, offences against privacy, sexual offences and property offences amongst others.²³⁹ Both the AJA and the Criminal Code have been amended regularly over the course of the 20th and 21st Centuries.

It is submitted that in light of the longstanding approach to police accountability in continental Europe, the English and Irish paradigm shifts would appear to bring their policing systems closer into line with their European counterparts. A consensus has clearly emerged that the establishment of a clear procedural standard against which police conduct can be measured is most readily achieved by way of a codified statutory framework. Nothing in the analysis would suggest that this major harmonisation of policing procedure and police accountability has been affected by European supranational pressures. The evidence would suggest that the major weaknesses in the traditional system of internal hierarchical accountability coupled with the limitation of external judicial checks and balances reached a crescendo within England and Irish courtrooms in the 1970s leading to development of the

²³⁴ Criminal Justice Act 1984 s 4 – s 19

²³⁵ Cyrille Fijnaut, 'International Policing in Europe: Its present situation and future' Brodeur (n67) 118 - 120

²³⁶ Lars Langsted et al, *Criminal Law in Denmark* (3rd edition, Kluwer Law International 2011) 126 - 169

²³⁷ Administration of Justice Act (Retsplejeloven) s 740 – s 792

²³⁸ *ibid* s 745

²³⁹ Marlene Jensen et al, *The Principal Danish Criminal Acts* (3rd ed, DJOF Publishing 2006) 13 – 73, 120 – 141

respective frameworks. To the same extent that Ireland internalised many of the key recommendations of the Royal Commission, the members of the Royal Commission undoubtedly looked to other countries for inspiration in order to address the prevailing problems of police procedure and accountability. The continental penchant for codified police procedure more than likely had a bearing on the Commission's recommendation to adopt a similar codified framework to enhance procedural clarity and, by extension, police accountability.

Anderson conveys that the remarkable similarity of policing and criminal statutes between countries that are a considerable geographic distance apart is far from surprising since there has always been a high degree of 'knowledge transfer' between jurisdictions and police forces.²⁴⁰ Representative police officers and prosecutors have long been discussing new structural, procedural and technical innovations at regular international conferences such as the International Police Exhibition of 1851 and more recently at Interpol conferences.²⁴¹ Many of the features of the 'new' London Police were reportedly copied by the cities of Boston, New York, Stockholm and Vienna amongst others in the 19th Century.²⁴² Den Boer notes that States tend to look to processes and practices in other jurisdictions for inspiration particularly in times of crisis.²⁴³ Bayley comments that in more recent times it is not unusual for police forces to have their own research, planning and professional standards units which periodically undertake research trips to foreign police forces, particularly to the 'flagship' police forces in London, New York and Los Angeles.²⁴⁴

The future of 'codes' as a source of police accountability

The PACE Act 1984, the Irish Criminal Justice Act 1984 and the Danish Administration of Justice Act rationalised and clarified many of the key standards and procedural formalities against which police conduct can be measured. PACE, for its part, has been updated more than 200 times since its introduction in 1984.²⁴⁵ Issues such as data protection have demanded substantial amendments of various PACE provisions following high profile cases and tangential statutes such as the Protection of Freedom Act 2012. Nevertheless, the original English and Irish statutes are far from comprehensive. Two other major areas of public policing have since undergone attentive codification, namely the conduct of protest policing and covert surveillance.

The matter of protest policing in England was subject to PACE-like regulation in the Public Order Acts of 1986 and 1994 which enumerated a number of steps that police commanders must take to engage with protestors both before and during a protest in order to minimise the possibility of disorder.²⁴⁶ The 1986 Act was introduced in part to mitigate growing public concern about the increasing frequency with which police forces across England were using force to disperse and arrest groups of protestors,

²⁴⁰ Malcolm Anderson, *Policing the World: Interpol and the Politics of International Police Cooperation* (OUP 1989) 12

²⁴¹ Ethan Nadellmann, *Cops Across Borders* (Pennsylvania State University Press 1993) 82 - 88

²⁴² SH Palmer, *Police and Protest in England and Ireland 1780 – 1850* (Cambridge University Press 1988) 542 - 544

²⁴³ Monica Den Boer 'Internationalization: a challenge to police organisations in Europe' in Rob Mawby (ed), *Policing Across the World* (UCL Press 1999) 59, 60

²⁴⁴ David Bayley, *Police for the Future* (OUP 1994) 148

²⁴⁵ Ashworth and Redmayne (n211) 29, 61 - 66

²⁴⁶ Public Order Act 1986 s11 – s 13; Public Order Act 1994 s 60

particularly miners protesting over changed pay and working conditions.²⁴⁷ With a presumption in favour of protest, once notified of a planned protest police commanders must enter into pre-protest negotiations with protestors to arrange venues, routes and times so that the police force can facilitate a protest while ensuring the safety of the protestors and the local population and property.²⁴⁸ Subsequent case law has elucidated that specially-dressed and equipped riot police should only be dispatched on the basis of credible information and intelligence.²⁴⁹ Riot police are to be subjected to strict supervision and direction by their supervising officers, normally sergeants, on the ground to ensure that they remain disciplined and calm in the face of hostility and danger.²⁵⁰ Any cordons imposed which restrict the movements of civilians must be justifiable and must be lifted as soon as practicable.²⁵¹ From a comparative perspective, the ethos of the Public Order Act 1986 did not find shape or form in Ireland for nearly ten years. Ireland's Criminal Justice (Public Order) Act 1994 largely mimicked the 1986 Act, prescribing the basic police powers of direction, cordon and arrest and the connected offences of breach of the peace, threatening language, obstruction, affray and riot amongst others.²⁵²

The increasing importance of procedural codes is particularly well reflected in the respective approaches of the legislatures to the regulation of covert surveillance. TPACE was followed by the Interception of Communications Act 1985 but, much like PACE, the statute was not introduced as part of some noble effort to engender police accountability but rather in response to another police scandal. The ECtHR ruled in 1984 that the interception laws, which were largely enunciated at common law, did not indicate with reasonable clarity the scope and limitations of police powers.²⁵³ In response, the 1985 Act outlined relatively descriptive procedures for the interception of postal mail and communications. However, as communication and surveillance technologies rapidly advanced beyond the scope of the Act, the ECtHR once again reached a similar conclusion in 1999 about the clarity of the measures.²⁵⁴ Fijnaut and Marx observed at the time that emerging mobile telephone and computer technologies which enabled police officers to remotely tap telephones and computers had served to tear asunder conventional notions of privacy which had not been adequately addressed.²⁵⁵ The Legislature appeared to be operating behind the curve, beckoning the same perils that inflicted police procedure and accountability prior to PACE. Rules and regulations in place had become outdated and unfit for purpose long before the legislature took action to remedy the prevalent legislative gap.

Moreover the 1985 Act dealt primarily with one specific area of covert surveillance, largely ignoring the issues of undercover police officers and informants. Undercover police officers at the time were reportedly routinely engaging in activities which amounted to complicity in crime to protect their cover or were involved in unfairly

²⁴⁷ Reiner (n48) xii, 56, 57

²⁴⁸ Public Order Act 1986 s11 – s 13

²⁴⁹ *Austin and Others v UK* (2012) ECHR 459; Mike King and David Waddington, 'Coping with disorder? A critical analysis of the Burnley Riot' (2004) 14 Policing and Society 118 – 135

²⁵⁰ *ibid*

²⁵¹ *ibid*

²⁵² Criminal Justice (Public Order) Act 1994 s 8 & s 9

²⁵³ *Malone v UK* (1984) 7 EHRR 4

²⁵⁴ *Hewitt and Herman v UK* (1999) 14 EHRR 657

²⁵⁵ Cyrille Fijnaut C and Gary Marx (eds) *Undercover Police Surveillance in Comparative Perspective* (Kluwer Law 1995) 14, 15

‘entrapping’ criminals by actively encouraging criminal behaviour.²⁵⁶ Nadelmann contends that many controversial investigative methods were inspired and encouraged by the American Drug Enforcement Agency (DEA) which was reportedly pressurising all major West European police forces to disrupt the international drug networks as part of America’s global ‘War on Drugs’ in the 1980s.²⁵⁷ Ultimately, it was not until 2000 that the English legislature took steps to rectify the stark absence of statutory guidance and legislative gaps by introducing the Regulation of Investigatory Powers Act 2000 (RIPA) which repealed the 1985 Act.

The RIPA Act 2000 effectively introduced a PACE-style ethos to the area of covert surveillance for the first time. It provided that in urgent circumstances intrusive surveillance, which generally constitutes planting audio or video surveillance equipment in a private dwelling, could be independently authorised by a deputy or assistant chief constable for up to 72 hours.²⁵⁸ Long-term intrusive surveillance could be authorised by chief police officers for up to 3 months or by the Home Secretary for up to 6 months.²⁵⁹ Most importantly, like the ethos of recording and review applied throughout the PACE Act, almost all authorisations under the Act required notice to be given to a Surveillance Commissioner appointed by the Home Secretary who had to independently review all actions either *post factum* or upon application.²⁶⁰ In a similar fashion to PACE, the Home Secretary was required to introduce detailed secondary codes of practice. They now include the Regulation of Investigatory Powers (Interception of Communications Code of Practice) Order 2002; the Regulation of Investigatory Powers (Covert Surveillance and Property Interference Code of Practice) Order 2010 and the Regulation of Investigatory Powers (Covert Human Intelligence Sources) Order 2010.

A major concern from the perspective of police accountability is that it ultimately took the legislators until 2010 to realise the basic PACE-style ethos of procedural clarity across the broader range of police powers and processes. Most importantly, the legislature’s experience with the Interception of Communications Act 1985 shows that law makers cannot afford to rest on their laurels but must continuously strive to ensure that the relevant statutory procedures and standards are commensurate to emerging technologies and evolving police practices. The evolving jurisprudence of the ECtHR suggests that codes of procedure remain far from perfect, finding against the UK in recent years for maintaining substandard legislation that enabled the largely unfettered and unnecessary retention of DNA samples in the case of *S and Marper* as well as the use of routine stop and search cordons without reasonable suspicion in the case of *Gillan and Quinton*.²⁶¹ Although its suite of measures evidently requires constant improvement, the legislature appears to have comprehensively embraced the fundamental importance of procedural codes as a crucial source and standard for police accountability.

²⁵⁶ Michael Levi ‘Covert Policing and the Investigation of Organised Fraud: The English Experience in International Context’ in Fijnaut and Marx (ibid) 196 – 210

²⁵⁷ Nadelmann (n241) 193 - 214

²⁵⁸ Regulation of Investigatory Powers Act s 28 – s 34

²⁵⁹ ibid s 32

²⁶⁰ Karen Bullock and Paul Johnson, ‘The Impact of the Human Rights Act 1998 on Policing in England and Wales’ (2012) 52 British Journal of Criminology 635 - 644

²⁶¹ *S and Marper v United Kingdom* [2008] ECHR 1581; *Gillan & Quinton v United Kingdom* [2010] ECHR 28

In comparison, Ireland appears to have fallen considerably behind the curve. Aside from its responsive legislative action in 1984, Ireland not only waited ten years to introduce a lacklustre Criminal Justice (Public Order) Act 1994 but the UK's Interception of Communications Act 1985 and more substantive RIPA Act 2000 only found favour in Ireland belatedly through the Interception of Postal Packets and Telecommunications Messages Act 1993 and the more substantive Criminal Justice (Surveillance) Act 2009 respectively. Walsh suggests that Ireland's lacklustre approach to procedural clarity and international 'best practice' is due largely to the fact that the Irish Government does not carry out major inquiries into police structures and procedures with the same regularity and rigour as the English Parliament.²⁶² He observes that although numerous disparate and piecemeal reports and reviews by various consultants and committees have been commissioned by the Irish Government over the past number of decades, concerning narrow administrative subjects such as pay, working conditions, reorganisation of resources and station closures, the Irish police has never been subject to a comprehensive root and branch review similar to those conducted by the Royal Commissions.²⁶³

Although Denmark's Administration of Justice Act was already highly programmatic, the benchmark procedural standards of the AJA were also afflicted with severe inadequacies as emerging technologies began to facilitate previously unregulated police practices. Evidence presented by Danish detectives in court which was derived from the interception of communications, electronic surveillance and undercover work was increasingly being challenged by defence lawyers on the basis that suspects' constitutional rights were being unlawfully breached in the absence of a statutory framework for covert surveillance.²⁶⁴ The inadmissibility of evidence was particularly problematic for Danish police districts which were increasingly engaging in covert surveillance to investigate a 'biker war' between the Hells Angels and Bandidos in the early 1990s.²⁶⁵ The gangs were reportedly engaging in widespread aggravated assault, burglary, drug trafficking and human trafficking amongst other serious offences.²⁶⁶

Mirroring the developments in England, new codified measures concerning the interception of communications measures were added to the AJA in 1985.²⁶⁷ For instance, the new suite of measures provided that, in cases of urgency, senior police officers could engage in covert surveillance and retrospectively apply for a court order within 24 hours.²⁶⁸ The Danish measures were updated and augmented by substantial measures concerning electronic surveillance, undercover and covert property searches in 1995 and '96 at the height of the 'biker' war.²⁶⁹ In various respects, the new Danish

²⁶² Walsh (n43) xii, xiii

²⁶³ *ibid*

²⁶⁴ Karin Cornils and Vagn Greve 'Denmark on the Road to Organised Crime' in Cyrille Fijnaut and Letizia Paoli (eds), *Organised Crime in Europe: Concepts, Patterns and Control Policing in the European Union and Beyond* (Springer 2004) 866, 867

²⁶⁵ *ibid* 860 - 866

²⁶⁶ Peter Kruize, 'Denmark' in Monica Den Boer, *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* (European Institute of Public Administration Maastricht 2002) 159, 160

²⁶⁷ Administration of Justice Act Book 4 Ch 71; Flemming Balvig, 'When Law and Order Returned to Denmark' (2005) 5:2 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 169 – 184

²⁶⁸ *ibid*

²⁶⁹ *ibid*

provisions arguably facilitated even greater transparency and accountability than the comparable English measures. Communications interceptions and to a lesser extent undercover operations required a special attorney to be appointed unknown to the suspect to represent the suspect's interests and rights during *in camera* petitions for warrants, continuance and non-disclosure of information pursuant to the measures.²⁷⁰

The experience of the three jurisdictions shows that legislatures now routinely rely on procedural statutes to regulate police procedure. Although the common law jurisdictions were previously concerned largely with the issue of police 'powers', leaving the responsibility of guiding police 'process' to the internal hierarchical police organisation, they have belatedly realised the importance of clear procedural guidance and the fundamental role the legislature must play in formulating and implementing it. The extension of the 'codification' ethos to protest policing and, more particularly, to the conduct of covert investigations in recent years shows that highly programmatic and formulaic codes of procedure are increasingly becoming a necessity across all facets of police procedure. Most importantly, the belated introduction of legislation and secondary regulations to regulate the conduct of covert investigations in the 2000s shows that legislators must remain responsive to the emergence of previously unregulated forms of police practice.

The comparative analysis shows that although legislators have evidently recognised the importance of introducing and maintaining procedural police guidance there are clear discrepancies in standards across England, Ireland and Denmark. The three jurisdictions may have comparable statutes in place at present but they vary in detail. Moreover, they were introduced in a piecemeal manner across time and place. One jurisdiction had a highly programmatic and formulaic framework in place when another did not. None of the jurisdictions could claim to maintain a rigorously high standard of procedural guidance at all times. The situation indicates the need for more robust signalling mechanisms within the States and perhaps more rapid 'knowledge transfer' between the States. The European Union would appear to be an appropriate construct to stimulate and facilitate such cooperation.

The issue of 'co-option'

"The police view the law with profound cynicism, both as a code they are expected to enforce upon others and as a set of constraints under which they must conduct themselves".²⁷¹

Although statutory and administrative 'codes' are an important source or engine for police accountability, they are not introduced and applied in a vacuum.²⁷² Police forces are characterised by a number of entrenched ideologies, processes and practices which significantly determine the nature of their engagement with legal rules and norms. Herbert Packer conveys the problem eloquently when he comments that 'there are two kinds of problems that need to be dealt with in any model of the criminal process. One is what the rules shall be. The other is how the rules shall be

²⁷⁰ *ibid* s 780 – s 788

²⁷¹ Waddington (n176) 133

²⁷² Stenning (n23) 3 - 6

implemented.²⁷³ Similarly, Anderson states that policy makers cannot simply introduce new measures to satisfy the expectations of the public but they must take account of the extant law enforcement practices that determine whether and to what extent such measures are given effect.²⁷⁴ For Loader and Mulcahy, many of these values, norms and institutional practices are deeply rooted or entrenched in the institutional memory, myths, meanings and symbolism attached to the idea of policing.²⁷⁵

The concept of police ‘co-option’ denotes the social and cultural space that exists between law and practice, the often complex social and cultural factors that shape and define the application of legal codes and principles in practice. Although the criminal law typically consists of defined prohibitions and offences which are technically without equivocation, common convention is that police officers must interpret the true intention of criminal laws to ‘fit’ legal rules and principles to highly dynamic and unique cases.²⁷⁶ Police officers are expected to use their own intuition, communal values, sensibilities, pragmatism and ‘common sense’ to meet the ends of justice and order rather than zealously adhering to the letter of the law in many cases.²⁷⁷ Manning comments that since the law does not and indeed cannot define the dense web of social values, meanings and actions that a police officer must navigate, the law must be considered to be a ‘crude’ instrument.²⁷⁸ The crude nature of the criminal law is largely why common law jurisdictions tend to ‘frame’ legislation according to legal principles that can be fitted to innumerable scenarios.²⁷⁹ Banton conveys that policing is ultimately more about popular morality than black letter law.²⁸⁰

The examination of ‘co-option’ should play a fundamental role in any consideration of police accountability since it requires the relevant social, cultural and administrative factors to be examined and potentially approved or remedied by appropriate mechanisms of oversight. The examination of police practice should shed light on the issues of whether and to what extent legal statutes and principles are being appropriately interpreted and applied by police officers on the ground. In the absence of appropriate oversight, police officers could be mis-interpreting the law according to deviant personal or institutional values and sensibilities which are not widely shared by the broader community.²⁸¹ Alternatively, police officers could be systemically avoiding onerous processes out of simple inertia due to a lack of managerial oversight. Moreover, police officers could be actively avoiding certain statutory requirements which are unpopular with local communities.²⁸² An appreciation of the relevant social, cultural and administrative factors should ultimately enable legislators and wider civil society to approve of their police forces’ systemic interpretation and application of the law, thereby giving a degree of legitimacy and public consent to

²⁷³ Herbert Packer, ‘Two Models of the Criminal Process’ (1964) 113:1 University of Pennsylvania Law Review 21

²⁷⁴ Anderson (n240) 7

²⁷⁵ Ian Loader and Aogan Mulcahy, *Policing and the Condition of England* (OUP 2003) 303

²⁷⁶ Loader and Walker (n78) 101

²⁷⁷ Reiner (n48) 113 to 116

²⁷⁸ Manning (n39) 198 - 200

²⁷⁹ Wilson (n25) 31

²⁸⁰ Banton (n202) 146, 147

²⁸¹ See also David Smith and Jeremy Gray, *Police and People in London* (Avebury, 1985) 441

²⁸² See Wilson (n25)

police practice.²⁸³ Deviant practices might signal that clearer legal provisions or perhaps more flexible legal frameworks are required. The fact that the law often passes through a number of social, cultural and administrative filters before it is applied by the police officer in practice signals the fundamental importance of mechanisms of complaint and inquiry, which should serve to monitor and legitimise this interpretative process.

The chapter focuses on one particular entrenched feature of modern public policing that has a significant bearing on the application of statutory and administrative 'codes', namely police discretion. Police discretion essentially affords police officers significant leeway to make decisions about the merits of a case. It allows for the fact that there are a variety of ways for police officers to conduct themselves morally, particularly when faced with conflicting circumstances.²⁸⁴ Lustgarten notes that discretion is exercised where the administrative limits on a police officer's power leave him free to make a choice amongst possible courses of action or inaction.²⁸⁵ Reiner conveys that the exercise of discretion has played a large part in shaping the 'values, norms, perspectives and craft rules' that inform the conduct of police officers and give shape to the global idea of 'police culture'.²⁸⁶ It is well established that the feature of police discretion not only has a significant bearing on the conduct of police officers in common law jurisdictions like England and Ireland but also in civil law and hybrid systems like Denmark.²⁸⁷

The principle of police discretion occupies an ambiguous but highly important position in police theory. Since the publication in 1964 of Michael Banton's ground-breaking study of the activities of police officers within a number of Scottish and American police forces in *The Policeman in the Community*, it has become common convention that police forces spend only a small proportion of their time actually enforcing the law and arresting offenders.²⁸⁸ This is due largely to the fact that violent crimes such as aggravated assault, rape and homicide typically represent a relatively small proportion of all reported crime.²⁸⁹ Maguire's research in 2000/01, which pertained strictly to England and Wales, indicated that only 12 percent of all recorded offences pertained to violence against the person.²⁹⁰ The vast majority of instances that a police force must deal with typically concern relatively minor crime or the simple resolution of conflicts between couples, neighbours, business partners, drunks and assisting persons in emergencies or life-threatening situations.²⁹¹ Bittner comments that the police work is concerned predominantly with people in trouble and troublesome people, not serious offenders.²⁹²

²⁸³ Bittner (n144) 3, 4, 107, 108

²⁸⁴ Michel Foucault, *Security, Territory and Population* (Palgrave Macmillan 2009) xxiii

²⁸⁵ Lustgarten (n15) 10, 11

²⁸⁶ Reiner (n48) 51 – 54, 85, 86

²⁸⁷ Lars Holmberg, 'Discretionary Leniency and Typological Guilt: Results from a Danish Study of Police Discretion' (2000) 1 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 179-194

²⁸⁸ Bayley (n244) 16, 17

²⁸⁹ *ibid*

²⁹⁰ Maguire et al (n50) 339

²⁹¹ Bayley (n244) 141 - 143

²⁹² Bittner (n149) 161, 162

The anomaly of police discretion is a major feature of police work for the simple fact that the resolution of a domestic or business dispute, an altercation between inebriated persons or drunks on the street, the unintentional harm of a child by a parent or accidental property damage is often best served by police officers imparting advice or issuing a caution instead of arresting the transgressor with a view to prosecution.²⁹³ Reiner remarks that the arrest of a person for noisiness, public disturbance, loitering and 'victimless' crimes such as street commerce and public alcohol consumption may clearly not serve the interests of justice where a warning or advice may be more proportionate and fair.²⁹⁴ Waddington observes that warnings or advice carry significant weight because of the very real underlying threat of the enforcement of law if the advice is not followed.²⁹⁵ Banton conveys that since police officers frequently 'under-enforce' the law by imparting advice rather than executing an arrest, only specialised detectives tasked with investigating the small proportion of serious and violent crime can actually be described as routine 'law enforcers'.²⁹⁶

Goldstein conveys that the majority of police officers in democratic societies ultimately do not deal primarily with criminal codes but with the residual problems of society.²⁹⁷ Punch describes statutory codes and legal rules as little more than 'rhetoric', somewhat removed from the informal 'operational code' that is applied in practice.²⁹⁸ Walker comments that the General Instructions effectively represented a police force's interpretation of the extant laws and regulations coupled with lessons learned from the poor application of police powers compiled into a single set of 'management rules' which give shape and context to the often obscure principled legislation and case law.²⁹⁹ Muir's ground-breaking research described patrolmen as 'streetcorner politicians' to reflect the nexus of informal agreements that police patrolmen formed and maintained with the drug users, prostitutes, drunks, vagrants and loitering youths on their beat.³⁰⁰ Bayley and Bittner indicate that the 'informal' operational code may involve a soft tone of voice to calm an aggressor, a strict tone to assert authority, separating couples and addressing each one individually, avoiding belittling aggressors at all costs or employing humour and banter to encourage individuals to comply with instructions instead of resorting to coercive force.³⁰¹ Similarly, Goldstein gives little credence to the role of formal legal rules, regulations and codes of procedure as standard-bearers for police conduct, commenting that they are normally trumped in practice by the officer's own 'working rules' to address or defuse specific situational contexts.³⁰² Waddington suggests that by virtue of the fact that police officers frequently threaten to enforce the law without actually doing so, the law should be considered to be the police officer's servant rather than his master.³⁰³

²⁹³ William Ker Muir, *Police: Streetcorner Politicians* (University of Chicago Press 1977) 204 - 212

²⁹⁴ Reiner (n48) 114, 115, 170

²⁹⁵ Waddington (n176) 14 - 16

²⁹⁶ Banton (n202) 6, 7, 127, 132

²⁹⁷ Herman Goldstein, 'Improving Policing: a problem-orientated approach' in Newburn (n48) 396

²⁹⁸ Punch (n49) 2 - 6

²⁹⁹ Walker (n107) 26, 27

³⁰⁰ Muir (n293) 62, 63

³⁰¹ David Bayley and Egon Bittner, 'Learning the skills of Policing' (1984) 47 *Journal of Law and Contemporary Problems* 35 - 50

³⁰² Goldstein (n297) 401, 402

³⁰³ Waddington (n176) 1 - 10, 36 - 39

Nevertheless, it is well established in legal jurisprudence that the exercise of police discretion must meet a number of key criteria.³⁰⁴ Walsh notes that the landmark *Wednesbury test* formulated at common-law indicates that police officers must call their attention to matters which they are bound to consider and to exclude from their considerations matters which are irrelevant or inappropriate for the making of an impartial rational decision.³⁰⁵ Failure to do so may render any subsequent action unlawful.³⁰⁶ Similarly, choosing to ignore a reported offence is not an option and can give rise at the very least to disciplinary action or a civil suit on the basis of negligence. Waddington notes that the exercise of discretion ultimately requires a police officer to take all relevant factors into consideration, weigh the options, consider the merits and arrive at the most appropriate and pragmatic conclusion.³⁰⁷

Furthermore, Muir's research indicates that the avoidance of complaint is a major factor impinging on a police officer's discretionary decision-making process.³⁰⁸ He observed that a police officer will typically ensure that the victim is reasonably satisfied with the outcome and that if the use of force is required, the target will not complain about overwhelming or disproportionate force.³⁰⁹ Wilson remarks that forefront at the officer's mind is generally the issue of whether an arrest will improve the situation, will anyone be unjustly deprived if no arrests are made and will there be a complaint if there is no arrest.³¹⁰ Manning found that police officers are most likely to pursue a course of action which is unlikely to be challenged or more importantly reach public attention.³¹¹ Punch remarks that the avoidance of complaint ultimately requires police officers to become 'chameleons' instinctively changing colours to fit the arena and the audience.³¹²

The common convention of discretion can be found at English law as an implicit tenet of early internal guidance to the public police, within the *obiter dicta* of tangential criminal and civil cases and more recently within the College of Policing Code of Ethics.³¹³ The Preface to the General Instructions issued in 1829, for instance, outlined that police officers must be cautious not to interfere idly or unnecessarily and to act with friendship when dealing with innocent civilians, vulnerable people and human suffering.³¹⁴ Rawlings conveys that discretionary conduct has always been a fundamental tenet of policing and can be traced back to the ancient Norman constable of the Middle Ages who regularly employed discretion when dealing with public order disturbances, informal street trade, the regulation of ale houses, vagrants and prostitution amongst other offences.³¹⁵ The principle of discretion can also be found in the continental civil law systems wherein police officers are not required to refer

³⁰⁴ Walsh (n43) 155, 332

³⁰⁵ *ibid* 330 – 334 referring to *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* (1984) 1 KB 223

³⁰⁶ *ibid*

³⁰⁷ Waddington (n176) 38

³⁰⁸ Muir (n293) 175 - 178

³⁰⁹ *ibid*

³¹⁰ Wilson (n25) 84

³¹¹ Manning (n39) 199, 200

³¹² Punch (n49) 3

³¹³ Code of Ethics (College of Policing 2014) 5.5

³¹⁴ Muir (n293) 186, 187

³¹⁵ Rawlings (n188) 49 – 54, 59 - 62

decisions to their commanding officers and are encouraged to use their discretion to decide whether a purported criminal action is worthy of punishment.³¹⁶

The exercise of police discretion clearly has major ramifications for police accountability for it enables police officers to choose when, if and how to enforce the criminal law.³¹⁷ The exercise of discretion effectively means that the full potential of criminal laws, whether old or new, can be significantly diluted in practice.³¹⁸ The effect of new tougher legislative sanctions or prohibitions can potentially be reduced to nil if police officers choose not to enforce the relevant offence on a case by case basis thereby undermining the influence of the legislature as a law making body.³¹⁹ More particularly, the exercise of discretion essentially enables police officers to unilaterally decide the ends of justice and dispose of a case on the street.³²⁰ Reiss and Bordua observe that the exercise of discretion effectively usurps the role of the rule-orientated judiciary.³²¹ Reiner remarks that the exercise of discretion enables the police to decide both the content of the law as well as the judicial function.³²²

Banton's pioneering work of 1964 attracted serious academic attention to the issue of police discretion largely for the first time. It served to bring into focus the importance and, more particularly, the capacity of the internal hierarchical system of police oversight and discipline to monitor this peculiar area of 'low visibility'.³²³ A particular concern was that due to the lack of visibility the internal police hierarchy was largely incapable of monitoring and swiftly addressing the erroneous exercise of discretion or, even more controversially, the prejudiced exercise of discretion on the basis of a police officer's own sexist or racist views.³²⁴ Lustgarten comments that a constable's discretion is paradoxically greatest when he chooses not to invoke the law for it will seldom come to his superiors notice.³²⁵ Skogan remarks that where no arrest is made, the quality of a police officer's decision to 'under-enforce' the law is almost impossible for the internal hierarchical regime to evaluate after the fact due to the lack of a record.³²⁶ Wilson famously observed that police forces have the special property that discretion actually increases as one moves down the hierarchy due to the unpredictable nature of police work and the difficulties of administrative supervision.³²⁷

Lustgarten notes that although the principle of discretion has been used as a semantic sponge to refer colloquially to the capacity of police administrators to decide which resources to apportion to which investigations or which local crime strategies to pursue over others, police discretion in its analytical sense pertains primarily to the

³¹⁶ Holmberg (n287) 179

³¹⁷ Wilson (n25) 7

³¹⁸ Lustgarten (n15) 25, 26

³¹⁹ Bittner (n144) 28 – 30, 107

³²⁰ *ibid*

³²¹ Albert Reiss and David Bordua, 'Environment and Organization: A Perspective on the Police' in David Bordua, *The Police: Six Sociological Essays* (John Wiley Publishers New York 1967) 33

³²² Robert Reiner, 'The Politicization of the Police in Britain' in *Punch* (n20) 128 – 130

³²³ Banton (n202) 132 - 146

³²⁴ Jerome Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society* (John Wiley and Sons New York 1966) 80 - 86

³²⁵ Lustgarten (n15) 12

³²⁶ Wesley Skogan, 'Why reforms fail' (2008) 18:1 *Policing and Society* 23 – 34

³²⁷ Wilson (n25) 7

issue of whether and to what extent an officer should evoke the criminal law during police-civilian interactions.³²⁸ It was clearly obvious to almost all of the early commentators that more transparent mechanisms of supervision and complaint were needed to keep the exercise of discretion under review.³²⁹ Reiss states that regardless of the benefits of police discretion, police officers cannot be permitted to act with impunity and must be held accountable for their actions across all areas of police work.³³⁰ Bayley remarks that a failure of the internal hierarchical organisation to vigorously evaluate the exercise of police discretion in the context of domestic disputes, emergencies and juvenile altercations is like not evaluating a school on whether children can read or write by simply assuming they can do so out of mere social matriculation.³³¹ Effective and transparent signalling mechanisms of complaint and inquiry are clearly needed to determine whether and to what extent the 'low visibility' or *sub rosa* exercise of police discretion complies with police ethics and legal standards.³³²

Making inroads into police discretion

Clearly there is a significant degree of variance between law and practice heralding the importance of mechanisms of complaint and inquiry so that the appropriateness of police conduct can be actively measured against a clear procedural standard. Before examining the traditional mechanisms of police accountability in the form of disciplinary, legal and democratic measures, it is submitted that modern 'codes of procedure' have actually made significant inroads into police discretion in recent years. When theorists such as Reiner, Punch and Waddington refer to statutory codes and criminal laws as 'crude instruments' that are 'trumped' in practice by informal 'working rules' they are clearly referring by and large to the criminal law.³³³ The criminal law pertains largely to criminal offences on the statute book such as the indictable offence of possessing illicit drugs or summary offences such as vagrancy. The purpose of police discretion is to ensure that instead of charging every person found in such situations according to a rationale of full enforcement or zero tolerance, police officers can instead use their own intuition, communal values and sensibilities to deduce whether it is appropriate, fair and constructive to pursue a prosecution in each case. It is submitted that while this ethos applies to 'criminal codes', it does not apply to modern 'procedural codes' of police procedure and the complementary internal disciplinary regime to nearly the same extent.

It is submitted that a police officer's relationship to the criminal law concerns *decision* and *choice* whereas their relationship to the statutory codes of procedure and the complementary internal disciplinary regime concerns *process* and *behaviour*. The internal disciplinary regimes are designed, for the most part, to ensure that police officers' conduct themselves in an ethical manner whether or not they decide to invoke the criminal law, focusing predominantly on *behaviour* rather than the matter

³²⁸ Lustgarten (n15) 19 - 24

³²⁹ Bittner (n144) 3, 4

³³⁰ Reiss (n148) 193, 194

³³¹ David Bayley, 'Knowledge of the Police' in Punch (n20) 22 - 33

³³² Andrew Goldsmith, 'Necessary but not sufficient: the role of public complaints procedures in police accountability' in Stenning (n23) 112, 113

³³³ See Reiner (n48) 85, 86, 174, 175

of *decision*. Police officers can choose not to invoke the criminal law but they should not flout the ethics of *behaviour* by acting unethically.

More recently, modern statutory codes have focused on regulating the key *processes* before and after any decision is taken to invoke or not to invoke the criminal law.³³⁴ In other words, police discretion enables police officers to choose whether or not to invoke the criminal law for drug possession in an appropriate case but they cannot choose whether or not to follow the statutory processes circumscribed for a stop and search under the ‘codes of procedure’ or whether or not to be courteous to the drug user under the internal code of ethics. In the aftermath of the civil rights disorders in the USA in the late 1960s, Breatnach lamented that there were police guidelines for the wearing of uniforms but not for how to intervene in a domestic dispute, for the cleaning of a revolver but not when to fire it, for the use of departmental property but not when to break up a public altercation, for handling stray dogs but not for handling field interrogations.³³⁵ Modern ‘procedural codes’ have clearly addressed many of these issues. Matters of *behaviour* and *procedure* are increasingly finding elucidation in statute, leaving only the matter of *decision* to the realm of police discretion. As Loader cogently conveys, modern legal rules and codes of procedure appear to have significantly narrowed the ‘discretionary space’.³³⁶ The thesis will convey in latter chapters that the EU is trying to use codes of procedure to narrow the discretionary space of cross-border police cooperation in a similar manner.

Conclusion

Following prolific policing scandals throughout the mid to late 20th Century, caused partly by inherent weaknesses in the traditional internal regime for police accountability, it was clear that more programmatic processes were necessary to engender more human-rights compliant police processes and to facilitate greater police accountability. It was evident that the ‘constitutional paradox’ between the State’s obligation to deter and vindicate criminal harms and the State’s obligation to respect fundamental human rights could not be simply assumed or left to the hierarchical police organisation and the police officer on the ground to reconcile.³³⁷ Bullock and Johnson convey that the naïve assumption that police officers are both willing and capable of undertaking such reconciliations is highly impractical, illusory and considerably unfair on the public police.³³⁸ Programmatic and formulaic statutory codes are evidently needed to guide police procedure and to ensure that police conduct can be measured against a clear standard across all facets of police work.³³⁹

The modern evolution of national statutory codes marks a dramatic paradigm shift, particularly in common law jurisdictions. National legislatures have been forced to recognise the need for statutory guidance and have assumed relatively proactive roles in defining police procedure to an unprecedented extent. The need for highly programmatic and formulaic statutory codes of procedure has become so entrenched that the ECtHR now regularly holds that in order for police powers to be compatible

³³⁴ Kleinig (n59) 209, 210

³³⁵ Breatnach (n196) 181, 182

³³⁶ Ian Loader, *Youth, Policing and Democracy* (Macmillan 1996) 9, 10

³³⁷ Walker (n107) 4

³³⁸ Bullock and Johnson (n260) 631 - 644

³³⁹ Patten Commission (n44) 18 - 22

with the ‘rule of law’ they must not only be enunciated in law but must be formulated with sufficient precision to indicate with sufficient clarity the scope of any coercive powers conferred on public officials.³⁴⁰ As Walsh iterates, it is clear that the ‘rule of law’ now demands that police powers, procedures and concomitant human rights protections are elucidated and clarified through detailed statutory provisions and codes of practice which are publicly accessible and regularly updated.³⁴¹ This remarkable paradigm shift has taken place only within the last thirty years, a radical and relatively rapid development in the context of police history. Moreover, it appears to bring common law jurisdictions closer into line with their continental counterparts in Europe. As Loader and Walker argue, the neo-liberal school of thought around the perceived reduction of state involvement in criminal justice matters does not appear to transfer to the field of public policing which apparently needs continuous and perhaps even more enhanced regulation to define and limit the conduct of police officers, not less.³⁴² Waddington conveys that modern codes of procedure, such as PACE, should ultimately be conceptualised as engines for the improvement of police conduct.³⁴³

Of particular interest to this analysis is the fact that this remarkable evolutionary step has been taken by England, Ireland and Denmark largely in unison. There have been discrepancies across time and place but by 2009/ ’10 each of the three jurisdictions had a broadly similar suite of procedural codes regulating police powers and processes of stop and search, arrest, interrogation, detention, protest containment, covert surveillance, undercover work and the handling of informants. From a theoretical perspective, the evidence at hand would suggest that there are enough similarities across the three jurisdictions to draw the conclusion that statutory ‘codes of procedure’ have increasingly become a defining feature of policing systems, largely for the purposes of police accountability. In striving to engender procedural clarity, legal precision and human-rights compliance, the modern procedural codes together with the traditional suite of internal general instructions and disciplinary infractions establish a clear and legally precise standard against which police conduct can be measured. One of the basic questions of police accountability, namely ‘what for?’ has been answered emphatically in recent times by the national legislatures by way of highly programmatic and formulaic statutory codes. However, whether and to what extent the modern signalling mechanisms of complaint and inquiry ensure that police conduct remains in line with the procedural codes and, most importantly, whether the extant procedural codes are sufficient in their own right are crucial matters that will be addressed in the following chapter.

³⁴⁰ *Gillan and Quinton v UK* (2010) ECHR par 76&77; *S and Marper v UK* (2008) ECHR 1581 par 95

³⁴¹ Walsh (n40) 15, 30 - 36

³⁴² Loader and Walker (n78) 69 - 71

³⁴³ Waddington (n176) 183

Ch. 2 Complaint and inquiry within the Member States

'Language which is without embellishment, apparatus, construction or reconstruction, language in the naked state, is the language closest to truth and the language in which the truth is expressed'.³⁴⁴

The signalling mechanisms of complaint and inquiry are the constructs most readily associated with police accountability.³⁴⁵ Purported definitions typically convey that police accountability is concerned with requiring police officers, and the institutions to which they belong, to explain, justify and answer for their conduct through internal, external and political mechanisms. The previous chapter conveyed that 'codes', which set the standard for police conduct, are considerably important but thus far fundamentally underappreciated. From an accountability perspective, the previous chapter was concerned primarily with the issue of 'what for?' This chapter is concerned with the key issues of 'to whom?' and 'how?'.³⁴⁶

The chapter will proceed to analyse the three primary areas of complaint and inquiry, namely disciplinary, legal and democratic accountability in order to investigate whether there are sufficient commonalities across England, Ireland and Denmark from which to deduce a common framework of police accountability. The chapter will show that some mechanisms exist to reduce the gap between the codes of procedure and the exercise of police discretion, such as the respective independent police complaints commissions, whereas other constructs aim to regulate police discretion according to fluctuating political needs.

Disciplinary accountability

The police forces' basic internal systems for addressing police misconduct through a military-style system of discipline have not changed dramatically since the 19th Century.³⁴⁷ As outlined in the previous chapter, the regime of supervision and sanction was originally designed to identify, punish and deter unethical and unlawful behaviour according to a stringent code of ethics and practice.³⁴⁸ It was well appreciated as early as the 19th Century that police forces ran the same risk as private sector employers of attracting a multitude of characters ranging from authoritarian zealots to violent rule breakers, thrill seekers, misogynists, racists, opportunistic thieves, work avoiders and even cowards.³⁴⁹ The internal hierarchy of senior police officers, administrators and managers were expected to supervise, amend and sanction the conduct of police officers.³⁵⁰

Reports of police misconduct have traditionally taken one of three forms, informal and formal complaints from members of the public, informal and formal complaints by fellow police officers and informal and formal complaints emanating from supervising officers having witnessed or identified poor procedure. Once a complaint

³⁴⁴ Michel Foucault, *The Government of Self and Others* (Palgrave Macmillan 2010) 314, 315

³⁴⁵ Reiner (n48) 178 - 190

³⁴⁶ See Stenning (n23) 5, 6

³⁴⁷ Palmer (n242) 542 - 544

³⁴⁸ Reiner (n48) 100 to 107

³⁴⁹ Waddington (n176) 98 - 105

³⁵⁰ Reith (n152) 138 - 141

is made the primary actor is typically the police officer's superintendent. The superintendent is generally expected to instruct a sergeant or inspector to examine the complaint by speaking with the police officer involved, the complainant, any witnesses and by examining the officer's diary.³⁵¹ Citing the case of *Garvey v Ireland*, Walsh remarks that the principles of natural justice demand that a police officer must not only be questioned about a complaint pertaining to his conduct but that he must be unequivocally informed that a complaint has been made so that he can represent himself accordingly.³⁵²

Infractions of a minor nature were traditionally dealt with by way of advice, admonition or warning. England (and Wales), for example, amended its formal procedures for dealing with minor infractions as late as 2012, requiring the holding of an initial formal 'disciplinary meeting' wherein the officer is issued an 'action' for improvement instead of the more traditional sanctions of reprimand, caution or fine.³⁵³ The officer may also be asked to meet with the complainant so that both parties may air their grievances. Although the process, known as 'victim reconciliation', is quite popular with police supervisors and managers, Waddington reports that police officers dislike consenting to reconciliation as they see their attendance at a meeting as an admission of guilt even though they may have done nothing wrong.³⁵⁴ If there is little to no improvement in an officer's conduct a second disciplinary meeting should be held to issue a written warning followed by a third and final meeting for the purposes of a final warning, followed by possible dismissal. Although not formally acknowledged, Walsh states that in the event of persistent minor breaches, it is not unusual for police chiefs to use his or her power of general direction and control to transfer a police officer from one division to another or from a detective branch to a patrol unit as a more informal form of reprimand.³⁵⁵

The treatment of a complaint of a more serious nature is similar across England, Ireland and Denmark.³⁵⁶ When it appears to a superintendent that there may have been a serious breach of discipline, an officer of the rank of inspector or higher, who is unconnected to the complaint and the police officer's immediate unit, should be appointed as an investigating officer. Following the same protocol as more minor complaints, the complaint should be examined by the investigating officer by speaking with the police officer involved, the complainant and any witnesses. Depending on the gravity of the claim, the accused may be suspended by the police chief while the investigation is ongoing. Suspension has the unfortunate consequence of appearing to be a sanction in itself, even supporting the accusation of misconduct, even though it is designed to serve not as a sanction but to safeguard against any possibility that evidence might be tampered with or complainants and witnesses coaxed or intimidated, however remote.³⁵⁷ Suspension also serves to ensure that a community's confidence in the force is not undermined by the ongoing deployment of a police officer who is eventually found to be guilty of a serious infraction.

³⁵¹ Reiner (n48) 115, 186

³⁵² Walsh (n43) 208 citing *Garvey v Ireland* (1981) IR 75

³⁵³ Police (Complaints and Misconduct) Regulations 2012; Police (Conduct) Regulations 2012

³⁵⁴ Waddington (n176) 169,182

³⁵⁵ Walsh (n43) 174, 175, 260 - 264

³⁵⁶ Jensen et al (n239) 46 - 69; 150 - 154

³⁵⁷ Walsh (n43) 240 - 242

Once an investigation is complete, the investigating officer must typically submit the report along with a recommendation to the appointing officer who must decide if the complaint has merit. The investigation report should consist of an evaluation of all statements taken, setting out the chronological order of events before, during and after the incident, denoting the variations in the statements and offering an opinion on where the most plausible or truthful scenario lies.³⁵⁸ If it appears that a criminal offence may have occurred, all evidence and statements should be forwarded to the Prosecution Service in the respective jurisdictions so that criminal charges can be considered. Throughout the 19th and much of the 20th Centuries, in England and Ireland the decision to charge was typically taken by the police superintendent or police chief before the function was transferred to the independent national prosecution services to ensure greater propriety.³⁵⁹ Denmark's police chiefs can still institute criminal charges in theory but the function is generally carried out by special prosecutors under their supervision.

If however it appears to the appointing officer that serious malpractice may have occurred but that it does not amount to a criminal offence, a 'disciplinary hearing' should be established. The process is similar in many ways to a criminal trial whereby the suspect is entitled to full disclosure of charges and evidence, is entitled to be represented by an attorney or barrister, usually funded by the officer's representative association, and is permitted to cross examine witnesses and introduce exculpatory evidence. Civilians who may have evidentiary value to the inquiry can usually be compelled to attend under threat of summary conviction, a fine or contempt of court. If the panel finds in favour of the complainant, a number of sanctions are usually available to the panel depending on the gravity of the infraction, not least forced resignation or dismissal. In England, the decision to sanction is taken by the panel itself whereas in Ireland the panel makes a recommendation but the decision is ultimately taken by the police commissioner.

In a similar fashion to the normal criminal process, the possibility of appeal and judicial review can be pursued. Appeals are normally conducted by way of an administrative panel consisting not least of a senior judge or lawyer and the police chief or a senior delegate. Panels of appeal in England can also consist of a permanent secretary of the Home Office and a senior member of the police officer's representative association or union.³⁶⁰ The appeal panel typically has all of the same powers and procedures as the initial inquiry to examine evidence and can call witnesses and may affirm, vary or set aside the original finding. Walsh notes that although judicial review is available for cases of dismissal an applicant cannot simply challenge the constitutionality of the police chief's power to dismiss him which is clearly enshrined in statute and is one of the most fundamental powers of a police chief in order to maintain a disciplined force of police officers.³⁶¹

The need for external mechanisms of complaint

As outlined in the previous chapter, the appropriateness of the internal hierarchical regime for addressing police misconduct was largely unquestioned due to its para-

³⁵⁸ Walsh (n40) 326, 327

³⁵⁹ Prosecution of Offences Act 1974 (Ireland); Prosecution of Offences Act 1985 (England)

³⁶⁰ Police Act 1996 Schedule 6

³⁶¹ Walsh (n43) 229 – 232 referring to *Keady v Commissioner of An Garda Siochana* [1992] ILRM 312

military nature. Raymond Fosdick observed in 1915 that the integrity of the complaints systems was preserved by the simple ability of police chiefs to remove their subordinates for indiscipline.³⁶² Although somewhat naïve, this widely held assumption was underpinned by the fact that successive Police Commissioners in England and Ireland had dismissed numerous police officers for drunken, tardy and abusive behaviour throughout the 19th and 20th Centuries.³⁶³ Nevertheless, although the internal organisational system for addressing police complaints appeared at face value to be relatively robust, there were, and still are, a number of inherent weaknesses in the system.

One of the major inherent weaknesses concerns the issue of police discretion. Once an officer has considered the merits of a case, weighed up the options and dealt with the incident, one of the parties involved, whether victim or aggressor, is likely to feel aggrieved, embarrassed or humiliated by the decision.³⁶⁴ Although the decision may be considered to be the most appropriate by the police officer, decisions can often only be 'crude' at best as they must be made quickly, using conflicting or inaccurate information and normally without the full facts of the case.³⁶⁵ Moreover, as Skolnick observes, police officers are expected to operate in dangerous situations and resolve situations quickly and authoritatively so it is not unreasonable that their emotional anxiety should impinge upon their ability to act with a reasonable degree of impartiality.³⁶⁶

Goldsmith notes that the crude nature of the police officer's decision making ability invariably means that complaints should be treated as part and parcel of the policing function.³⁶⁷ He adds that complaints should be considered to be a crucial source of 'organisational feedback' which provides police forces with dynamic civilian perspectives on how and how well their officers are behaving on the street and, as such, should be embraced by police forces as an irrepressible source of institutional quality control, a tool through which the police force can reassure the public and promote public confidence in the police.³⁶⁸ Waddington comments that the very fact that people are willing to make a high volume of complaints should not lead observers to assume that the police are necessarily corrupt or over-zealous but that it may simply be a case of a healthy confidence in the complaints and disciplinary processes.³⁶⁹

The main weakness in the traditional internal hierarchical system lies primarily with the ability of the police officer's commanding officer or the investigating officer appointed to investigate the complaint. In a similar fashion to the way in which the police officer exercises discretion by considering the merits of a case, weighs up the options and decides whether and to what extent a clear offence has been committed, the police supervisor or investigator must also consider the merits of a complaint,

³⁶² Raymond Fosdick, *European Police System* (George Allen and Unwin London 1915) 370 - 377

³⁶³ *ibid*

³⁶⁴ Andrew Goldsmith, 'External Review and Self-Regulation' in Andrew Goldsmith, (ed) *Complaints Against the Police* (Clarendon Press 1991) 16, 17

³⁶⁵ Bittner (n144) 9, 12

³⁶⁶ Jerome Skolnick, 'A sketch of the policeman's working personality' in Newburn (n48) 265 - 276

³⁶⁷ Goldsmith (n364) 16, 17

³⁶⁸ Andrew Goldsmith, 'Better Policing, More Human Rights: Lessons from Civilian Oversight' in Mendes (n150) 35 - 51

³⁶⁹ Waddington (n176) 162

weigh up the options and decide whether and to what extent a clear infraction has been committed. It is submitted that three implicit factors substantially impinge upon the decision-making ability of the police supervisor or investigator. The factors include the difficulties experienced by the supervisor or investigator in securing statements from the officer's colleagues, the tendency of senior police officers to empathise with the circumstances of the accused, and the desire of the supervisors and managers to protect their own position and the institutional image of the force.

Firstly, the considerable difficulties experienced by police supervisors and investigators in securing evidence related to the complaint are premised upon a prevalent degree of empathy amongst police officers. Manning's research indicates that one of the primary elements underpinning this anomaly is the constant presence of uncertainty permeating the exercise of police discretion.³⁷⁰ Even though police officers are expected to apply 'common sense' in the public interest, by doing so, they must live with almost boundless uncertainty and stress over whether their exercise of discretion will generate a complaint which could significantly impinge upon or even end their career.³⁷¹ Skolnick states that the stress, danger and uncertainty of police work are part of the universal 'working personality' of police officers which generates empathy and loyalty amongst officers.³⁷² This prevalent sense of empathy amongst police officers ultimately generates a marked unwillingness of officers to provide supervisors or investigators with incriminating evidence about a colleague's character or his conduct on duty, whether spontaneously in the form of an internal complaint or as part of an investigation into a civilian complaint.³⁷³

Vollmer is often attributed with giving this long-standing problem the label of the 'blue wall of silence' or 'code of silence', describing it in such terms before the Wickersham Commission into police corruption in 1929.³⁷⁴ The social solidarity amongst officers essentially serves to reduce the degree of uncertainty that police officers would otherwise face on a day-to-day basis. Manning conveys that this blue wall of silence helps police officers to ensure the same day-to-day job security that most private sector employees take for granted.³⁷⁵ This feature of group loyalty or 'occupational solidarity' has become one of the central features of the common abstract concept of 'police culture'.³⁷⁶ Bayley remarks that it is somewhat ironic that police officers, who are typically classed as conservatives because they advocate swift and sure punishment for criminals, tend to excuse their fellow police officers whereas liberals, who are commonly associated with community activism, tend to show much greater empathy towards criminals but want the police to be held strictly accountable.³⁷⁷

Secondly, with respect to the empathy of the supervising or investigating officers, while senior police officers claim to approach each complaint in earnest, research indicates that police officers are reluctant to second guess the decisions taken by their

³⁷⁰ Manning (n39) 205

³⁷¹ *ibid*

³⁷² Skolnick (n324) 42 - 67

³⁷³ Waddington (n176) 105 - 111

³⁷⁴ Lawrence Sherman 'Police corruption control: Environmental Context Versus Organisational Policy' in David Bayley (ed), *Police and Society* (Sage 1977) 108 - 112

³⁷⁵ Manning (n39) 205

³⁷⁶ Waddington (n176) 99, 100

³⁷⁷ David Bayley, 'Getting Serious about Police Brutality' in Stenning (n23) 96

subordinates.³⁷⁸ While it is relatively easy for a police supervisor or manager to identify corrupt conduct or criminal offences which are intentional by definition, it is far from easy in practice for police supervisors to identify and sanction police conduct that is not corrupt or unlawful but simply unethical. The supervisor or investigator must consider whether the officer's conduct falls within the acceptable range of ethical actions that a reasonable police officer might take in light of the situation that confronts him or her. Waddington observes that deciding whether a crime has or has not been committed, whether harm was accidental or deliberate or whether punishment would be appropriate is often a considerable task.³⁷⁹ Research indicates that police administrators and investigators typically empathise with the fact that officers must make decisions without complete information when dealing with characters who are often highly emotional, aggressive, disrespectful or under the influence of drugs or alcohol and must do so without deferring the responsibility of decision-making to more senior officers.³⁸⁰ Police forces generally do not require their police officers to consult with their superiors before reaching decisions in most constitutional democracies across both common law and civil law jurisdictions.³⁸¹

Bittner conveys that because of this permanent uncertainty which afflicts police officers, the prevailing attitude of police supervisors is to instead engender loyalty by sparing their subordinates the stress and uncertainty of constant scrutiny.³⁸² Moreover, as Wilson observes, the police supervisor, who is responsible for the morale of his men and typically only has the word of the officer and that of the complainant, often an unsavoury character, is logically more inclined to believe the word of his officer.³⁸³ Walsh comments that a number of major tribunals in Ireland have identified that investigating officers, who are themselves police officers, are prone to attributing considerable weight and truth to the account of police officers instead of taking a more critical attitude and seeking out the objective truth.³⁸⁴

As Bittner outlines, the internal hierarchical system is effectively weakened in practice by the systemic tendency of police managers to breed loyalty through collusion and complicity rather than good leadership.³⁸⁵ Sanders and Young's research indicates that this detrimental feature of police oversight severely undermines the supposed hierarchy of police oversight, starting with the most basic role of custody officer who is central to the PACE provisions regulating detention procedures.³⁸⁶ Although the custody officer is expected to review the patrolman or investigator's reasons for and manner of arrest, custody officers reportedly defer largely to the judgement of the arresting officer, effectively turning the custody report into a rubber-stamping exercise. They argue that the lack of oversight by line managers and custody officers effectively leads to the erosion of basic principles of standards such as reasonable suspicion and the minimal use of force which are at once so fundamental to the idea of democratic policing.³⁸⁷ Kleinig succinctly conveys that

³⁷⁸ Waddington (n176) 99, 100

³⁷⁹ *ibid* 38, 128, 164

³⁸⁰ *ibid*

³⁸¹ Holmberg (n287) 179 - 194

³⁸² Bittner (n144) 59 - 65

³⁸³ Wilson (n25) 73 - 75

³⁸⁴ Walsh (n40) 327 - 334 referring to the Morris Tribunal, Barr Tribunal and the Rossiter Inquiry

³⁸⁵ Bittner (n144) 59 - 65

³⁸⁶ Andrew Sanders and Richard Young, 'From Suspect to Trial' in Maguire et al (n50) 1039 - 1056

³⁸⁷ *ibid*

although the processes of discipline and ethics were traditionally concerned as though all problems occur at the police-community interface, many of systematic problems have their genesis within the police organisation, starting particularly with police managers who often fail to discipline their subordinates for malpractice.³⁸⁸

The third issue, the desire of the supervisor to protect their own position and the institutional image of the force, is equally problematic. Roebuck and Barker suggest that police managers tend to avoid dealing with serious complaints, particularly those complaints concerning corruption, in order to present a good yet superficial image to their superiors and the general public with the aim of preserving the good standing of the force and, more critically, the longevity of their own position and tenure.³⁸⁹ Reiss observed as early as 1971 that police supervisors had a tendency to ‘manipulate’ complaints, to ‘cool’ citizens out of complaining by offering superficial reassurance that the officer would be dealt with.³⁹⁰ More recently, Goldsmith’s research indicates that supervising officers show a reluctance to record complaints in the first instance in order to militate against any investigation and future effort to substantiate the complaint.³⁹¹

Waddington observes that one tactic employed by police supervisors is to treat most complaints as minor infractions, resolving them by way of informal advice rather than formal and recorded admonishment.³⁹² Walsh notes that another typical tactic is to delay any inquiries until such time as the suggested misconduct becomes irrelevant.³⁹³ Marx outlines how police line-managers actually have a tendency to put further distance between themselves and a complaint the worse the complaint is.³⁹⁴ Complaints about the conduct of Special Branch detectives were reportedly often deflected by informing the complainant that the case was highly sensitive and that the police force was entitled to withhold information pertaining to the case even in a court of law.³⁹⁵ Punch notes that the famous Mollen Commission into police corruption in the US sharply stated that police supervisors appeared to fear the consequences of a corruption scandal more than the corruption itself.³⁹⁶ Muir remarks that this organisational ethos is not unique to police forces since in any organisation a tendency exists to displace the needs of its clientele for its own good.³⁹⁷ Anderson et al indicate that police administrators are typically more concerned with ‘getting the job done’ rather than how and how well it is carried out.³⁹⁸ Van Maanen observes that the police force in reality represents a ‘mock bureaucracy’, representing only the appearance of control but not the reality of it.³⁹⁹

³⁸⁸ Kleinig (n59) 2

³⁸⁹ Julian Roebuck and Thomas Barker ‘A typology of police corruption’ (1974) 21 *Social Problems* 423 – 437

³⁹⁰ Reiss (n148) 190 - 194

³⁹¹ Goldsmith (n364) 21 - 26

³⁹² Waddington (n176) 160, 161

³⁹³ Walsh (n43) 280

³⁹⁴ Gary Marx, ‘When the Guards Guard Themselves: Undercover Tactics Turned Inward’ in Fijnaut and Marx (n255) 214 – 218

³⁹⁵ Vicky Conway, *Policing Twentieth Century Ireland* (Routledge 2014) 141 - 151

³⁹⁶ Punch (n49) 69, 70

³⁹⁷ Muir (n293) 52

³⁹⁸ Anderson et al (n63) 84

³⁹⁹ John Van Maanen ‘The Boss’ in Punch (n20) 276, 277

Reuss-Ianni and Ianni argue that the approach to complaints by the police management has become so entrenched that it can be described as a discernible ‘sub-culture’ or ‘management culture’.⁴⁰⁰ They indicate that the tendency towards avoiding disciplinary action has become so entrenched that when senior officers do move to bring disciplinary charges against rank and file police officers that their subordinates feel that such efforts are being arbitrarily or unfairly undertaken for the purposes of laying the blame for a complaint further down the chain of command. They suggest that the prevailing ethos has engendered a confrontational street cop versus management cop narrative.⁴⁰¹ It is suggested that the rank and file police officers employ two informal codes, a code of loyalty towards other cops and a code of suspicion and distrust towards management.⁴⁰²

One of the most important facets of this organisational ethos, aside from the clear avoidance of police accountability, is that the complicity of fellow officers and managers can feed the impression that rule breaking is an acceptable or even a necessary part of policing.⁴⁰³ Roebuck and Barker’s research in 1974 indicated that not only will the unchecked corrupt actions of one officer effectively encourage and, in most cases require other officers in a unit to engage in corruption, but any newcomers to the team will be encouraged to abide by the team’s ethos, whether it involves frequently resorting to street justice, falsifying evidence, accepting bribes or stealing cash during property searches.⁴⁰⁴ The nonchalant institutional attitude effectively enables police officers to act corruptly, whether it is the patrolman on the street resorting to abusive ‘street justice’, the detective falsifying evidence in the name of ‘noble cause corruption’ or the police officer flagrantly stealing items or cash seized during a stop and search or a property search.⁴⁰⁵

‘Noble cause corruption’ or the ‘Dirty Harry syndrome’ which is often referred to as being ‘bent for the job’ generally entails a police officer acting unlawfully or unethically purportedly in the public interest.⁴⁰⁶ It may involve fabricating evidence, forcing falsified confessions through oppressive interrogation techniques, committing perjury through false testimony or using excessive or unwarranted force to administer punishment beatings in the knowledge that the ‘real’ evidence is insufficient to bring a prosecution or a substantial jail term for a deserving criminal.⁴⁰⁷ Roebuck and Barker draw a line between being ‘bent for the job’ and ‘bent for self’, conveying that the latter generally involves the selfish taking or receiving of money in the form of kickbacks, shakedowns, protection money or simple opportunistic theft.⁴⁰⁸ Westmarland’s research indicates that police officers generally have no difficulty

⁴⁰⁰ Elizabeth Reuss Ianni and Francis Ianni ‘Street Cops and Management Cops: The Two Cultures of Policing’ in *Punch* (n20) 253 - 255

⁴⁰¹ *ibid*

⁴⁰² *ibid* 260 - 269

⁴⁰³ Muir (n293) 178 - 182

⁴⁰⁴ Roebuck and Barker (n389) 425

⁴⁰⁵ *Punch* (n49) 4, 5

⁴⁰⁶ Jerome Skolnick, ‘Corruption and the Blue Code of Silence’ (2002) 3:1 *Police Practice and Research: An International Journal* 13 – 15

⁴⁰⁷ *ibid*

⁴⁰⁸ Roebuck and Barker (n389) 429 - 433

differentiating between minor infractions and serious misconduct, noble or selfish corruption, but will tend to remain empathetic and loyal to one another regardless.⁴⁰⁹

Sherman observed in 1977 that the degree of loyalty amongst police officers up and down the hierarchy of command and the managerial aversion to complaint meant that police corruption is typically not caused by the deviance of one particular corrupt patrolman or investigator but was more of 'a management problem'.⁴¹⁰ Reiss argues that systemic police corruption is directly attributable to the police management's aversion to investigating and sanctioning misconduct, so much so that the police management can invariably be considered complicit in police deviance and corruption.⁴¹¹ Punch conveys that police corruption is ultimately not individual but institutional.⁴¹² He argues that corrupt police officers are, by and large, 'not born but made' by the embedded institutional ethos.⁴¹³

To a similar extent, Bayley states that the organisational climate is ultimately the most important determinant of the extent or pervasiveness of police corruption.⁴¹⁴ Moreover, numerous criminal cases and major inquiries across Europe and the US throughout the 19th, 20th and 21st Centuries have found that entire units and departments have become complicit in systemic police corruption due to poor oversight and management.⁴¹⁵ These include the London Metropolitan Police drug and vice squads in the 1960s and '70s, the Knapp Commission of Inquiry into Allegations of Corruption within the NYPD in 1970 and the Rampart Inquiry into an LAPD anti-gang 'CRASH' unit in 2000 amongst others.⁴¹⁶

Punch notes that the sheer weight of case law suggests that detective bureaus which deal with cash seizures on a regular basis, whether it is small amounts of cash seized during vice raids or much larger amounts connected to drug crime, are particularly susceptible to systemic corruption.⁴¹⁷ He conveys that while drug and vice squads officers are often found to be bent-for-self, counter-terrorism officers are often found to be bent-for-the-job in their pursuit of enhancing national security.⁴¹⁸ Roebuck and Barker comment that the insular, protective environment that permeates the internal supervision and sanction of police detectives, or the lack thereof, has led to the depiction of police forces and constituent detective bureaus as unaccountable, secretive and authoritarian.⁴¹⁹

The Mollen Commission of Investigation into Allegations of Police Corruption within the NYPD in 1992 found that police officers continue to prioritise loyalty over integrity.⁴²⁰ As recently as 2007, in the Irish case of *Shortt v Commissioner of an*

⁴⁰⁹ Louise Westmarland, 'Police Ethics and Integrity: Breaking the Blue Code of Silence' (2005) 15:2 Policing and Society 154 - 163

⁴¹⁰ Sherman (n374) 117 - 123

⁴¹¹ Albert Reiss, 'The Policing of Organizational Life' in Punch (n20) 80 - 92

⁴¹² Punch (n49) 9 - 14, 18 - 29,

⁴¹³ *ibid* 3, 23, 33

⁴¹⁴ Bayley (n377) 94

⁴¹⁵ Reiner (n48) 64 to 67

⁴¹⁶ Punch (n49) 56 - 67 77, 78, 128 - 137

⁴¹⁷ *ibid* 70, 192

⁴¹⁸ *ibid* 155, 156

⁴¹⁹ Roebuck and Barker (n389) 427 - 429

⁴²⁰ Punch (n49) 69

Garda Siochana the presiding judge stated that the manner in which ‘members set about concocting evidence and subsequently persisted in trying to cover up their misdeeds, not entirely out of sight of their colleagues, displayed a worrying confidence on their part that they could get away with it’.⁴²¹ Similarly, the Irish Smithwick Tribunal in 2013 stated ‘there prevails a prioritisation of the protection of the good name of the force over the protection of those who seek to tell the truth, loyalty is prized over honesty’.⁴²² Each of these relatively modern cases concerns the attitudes and working practices of detective units and show that the inherent weaknesses in the internal hierarchical police regime remain. The thesis will convey in latter chapters that the suspicion of systemic corruption within detective bureaus is also a particularly important determinant of the quality of police cooperation across borders.

From an accountability and transparency perspective, the net effect is that the police force’s internal disciplinary regime is effectively trumped in practice by the police force’s own informal ‘blue code of silence’ that runs up and down the police hierarchy.⁴²³ Conway observes that after the Morris Tribunal, which sat between 2002 and 2006, the Irish government tried to make some headway into penetrating the blue wall of silence ethos.⁴²⁴ In order to address the finding that police officers refused to divulge information pertaining to their activities apparently without fear of sanction or regard for the integrity of the Inquiry, the new Garda Siochana (Disciplinary) Regulations 2007 introduced a new ‘duty to account truthfully for actions’ which made it a disciplinary infraction for an officer to refuse to divulge information pertaining to the officer’s actions or the actions of another police officer. However, the reluctance of police officers to provide evidence against their colleagues is only one part of the problem.

To address the ineptitude of police management, various academics have stressed that police supervisors, particularly sergeants, must adopt a more transformative leadership style and lead by example as ‘civic educators’.⁴²⁵ They must allow for discretion but consistently refuse to accept deviant, demeaning or even thoughtless behaviour under any circumstance. Reiner argues that the tendency to assess individual police performance in terms of negatives, not least the use of performance targets, must be replaced by an ethos that promotes performance in positive terms.⁴²⁶ One way to do so would be to focus not only on the outcome of interactions but on how a conflict was dealt with, in other words the means as well as the ends.⁴²⁷ Punch remarks that there should be no shame in rooting out corruption due to the simple fact that police officers, particularly detectives, will always be susceptible to corruption.⁴²⁸ He adds that the only shame is in not doing anything about it.⁴²⁹ He ultimately recommends that police supervisors and managers should adopt a three-pronged

⁴²¹ Conway (n395) 179 citing *Short v Commissioner of an Garda Siochana and Ors* (2007) IESC 9

⁴²² Peter Smithwick, Report of the Tribunal of Inquiry (2013) 154 - 159

⁴²³ Skolnick (n406) 7, 8

⁴²⁴ Vicky Conway, *The Blue Wall of Silence: The Morris Tribunal and Police Accountability in Ireland* (Irish Academic Press Dublin 2010) referring to Morris (2006) para 5

⁴²⁵ Bittner (n144) 59 – 65; Wilson (n25) 64 – 67, 227 - 235

⁴²⁶ Robert Reiner, ‘Process or Product?: Problems of Assessing Individual Police Performance’ in Jean Paul Brodeur, (ed) *How to Recognise Good Policing* (Sage 1998) 55 - 58

⁴²⁷ *ibid* 68 - 70

⁴²⁸ Punch (n49) 210, 235

⁴²⁹ *ibid*

ethos.⁴³⁰ Firstly, supervisors should reduce the opportunity for corruption by engaging in close scrutiny of the work of police officers, secondly they must mobilise and encourage citizens to report police deviance and thirdly they must actively sanction police deviance and corruption.⁴³¹ Bayley comments that, rather than cultivating loyalty, police supervisors must lead through respect which is cultivated through consistency and fairness, a far more potent and relevant emotion.⁴³²

England has taken some novel steps in recent years to enhance the ‘organisational responsibility’ of police management by introducing a set of Police (Performance) Regulations 2008 which contain a suite of new infractions such as a failure to perform duties to a satisfactory level as well as a requirement for line managers to write evaluation reports on the performance of their subordinates.⁴³³ As Beggs and Davis convey, the 2008 performance regulations aim to treat poor performance as a management issue rather than simple individual misconduct.⁴³⁴ The Regulations were introduced by and large in response to the findings of the Taylor Commission 2005 which found that, amongst other issues, the extant disciplinary regulations gave little or no encouragement to managers to deal swiftly with misconduct.⁴³⁵

Unfortunately such recommendations are only paper thin. It is well established that while a good transformational leader may effectively establish for their subordinates a ‘sense of permission’ or ‘perception of reality and purpose’ of what is possible and what is not based on moral and ethical standards, more often than not the sergeant will apply a less taxing and more adverse ‘sense of permission’ which is premised on deviance, secrecy, the covering up of mistakes and transactional loyalty.⁴³⁶ Skogan observes that police supervisors and management are generally not only complicit in police deviance and corruption but they are often the most active resisters of reform.⁴³⁷ Punch comments that police chiefs for their part have usually been operating within the system for so long that they have become ‘addicted’ to the trenchant practices.⁴³⁸ Moreover, Reuss Ianni and Ianni remark that even if a police chief adopts a transformational style of leadership, their power and authority typically gets lost or dissipates as it travels through layers of self-interested managers long before it reaches the operational ranks.⁴³⁹

The rise of external mechanisms of complaint

Nevertheless, as Chan indicates, although the police officer’s working environment or ‘habitus’ is defined by management attitudes and ethos, the attitudes and ethos of management are far from immovable.⁴⁴⁰ Just like the police officer who must work to meet the expectations of his or her sergeant, the conduct of the managers themselves

⁴³⁰ *ibid* 190, 191

⁴³¹ *ibid*

⁴³² Bayley (n377) 99

⁴³³ John Beggs and Hugh Davies, *Police Misconduct, Complaints and Public Regulation* (OUP 2009) 90 - 127

⁴³⁴ *ibid* 90 - 96

⁴³⁵ *ibid*

⁴³⁶ Van Maanen (n399) 276 – 308

⁴³⁷ Skogan (n326) 24 – 33

⁴³⁸ Punch (n20) xiv

⁴³⁹ Reuss Ianni and Ianni (n400) 252 - 254

⁴⁴⁰ Janet Chan, ‘Changing Police Culture’ (1996) 36:1 *British Journal of Criminology* 109, 110

can be regulated through routine supervision and review. More effective and transparent mechanisms of oversight, particularly for dealing with complaints, can work to ensure that police forces are not slaves to deviant leadership styles. The fundamental need for a third-party system of oversight to keep police forces' handling of complaints under review was regularly advocated over the course of the 20th Century, particularly in the aftermath of cases of police brutality.⁴⁴¹ Remarkably, no such mechanisms were established to complement the internal hierarchical systems for handling complaints in either England or Ireland until the 1970s.

Although police managers were widely considered to be unsuited to investigating complaints against their fellow police officers, there was significant opposition to the establishment of independent agencies to monitor or carry out the investigation of complaints. The prevailing argument, associated most commonly with US police chiefs August Vollmer and O.W. Wilson, was that civilians could not fully appreciate the nature and demands of police work, particularly the exercise of police discretion, and would only serve to punish police officers unfairly and arbitrarily, thereby heightening police officer notions of uncertainty and job insecurity.⁴⁴² Moreover, it was argued that if police investigators struggled to permeate the blue wall of silence, the civilian investigator could expect even less cooperation which would render the civilian system even less effective than the traditional internal one.⁴⁴³

The stark reality was that the traditional internal disciplinary system for handling complaints had almost always been considerably inept and would undoubtedly benefit from some measure of external scrutiny. Manning conveys that it was obvious from judicial *obiter dicta*, oral histories and subsequent police memoirs that the police organisation was a hotbed of malpractice throughout both the 19th and 20th Centuries.⁴⁴⁴ Whitaker reported that police complaints had effectively doubled in the ten years between 1968 and '77 alone.⁴⁴⁵ Reiss noted in 1971 that 42 percent of the complaints to a number of American police forces under review concerned issues of police brutality during arrest, 28 percent concerned discourteous behaviour and 22 percent concerned harassment.⁴⁴⁶ Goldsmith remarks that despite their rhetoric of 'professionalism', modern police forces were clearly never able to 'self-regulate' in a similar fashion to the established professions.⁴⁴⁷ Bittner stated rather forcefully in 1983 that the ability of the internal hierarchical police organisation to 'control' police work had long been 'condemned'.⁴⁴⁸

Bayley points out that it was somewhat bizarre that police officers objected to civilians overseeing police complaints since civilian juries in common law countries were not only deemed to be capable of determining guilt in serious criminal trials but they had a constitutional right to do so.⁴⁴⁹ Whitaker observes that English police chiefs had made similar arguments in the 1980s when moves were made to transfer the responsibility for bringing charges and conducting prosecutions away from the

⁴⁴¹ Punch (n49) 56 – 67 77, 78, 128 - 137

⁴⁴² Samuel Walker, *The New World of Police Accountability* (Sage 2005) 21 – 26

⁴⁴³ Robert Reiner, *Chief Constables* (OUP 1992) 287 - 296

⁴⁴⁴ Peter K Manning, 'Organizational Control and Semiotics' in Punch (n20) 169 – 173

⁴⁴⁵ Whitaker (n199) 249

⁴⁴⁶ Reiss (n148) 153, 154

⁴⁴⁷ Goldsmith (n364) 14 – 16

⁴⁴⁸ Bittner (n20) 1, 2

⁴⁴⁹ Goldsmith (n364) ix, x – Preface by David Bayley

police force to the Crown Prosecution Service in 1985.⁴⁵⁰ Senior police officers reportedly considered that the involvement of prosecutors was wholly unsuitable due to their lack of experience in criminal investigation and an absence of empathy for the policing job.⁴⁵¹

Ultimately little effort was made to test or brush aside Vollmer and Wilson's rhetoric until Banton's examination of police discretion in the 1960s inferred that police prejudices were significantly influencing the exercise of discretion, particularly in segregated States in the USA, without appropriate supervision or sanction.⁴⁵² Marshall remarks that there had been no concerted academic or political debate on police accountability prior to this point.⁴⁵³ Goldsmith observes that the calls for civilian oversight of police complaints quickly became a key feature of the demands of human rights protestors in segregated America.⁴⁵⁴ Civilian review held the promise of bringing the police closer to the communities they served and the ethics that they were supposed to adhere to.⁴⁵⁵ Reiss observed in 1971 that it was widely appreciated that an independent complaints body was needed to ensure that complaints were adequately addressed, not only to punish errant officers and to provide justice for victims but to ensure that the statutory and administrative rules governing police powers, procedure and discipline had substance.⁴⁵⁶ In 1972 the landmark Mollen Commission of Inquiry in New York officially recommended the establishment of mechanisms for civilian oversight and independent investigation of major complaints.⁴⁵⁷ The late 1970s eventually witnessed a number of external 'civilian review' boards established in a handful of American States with a mandate to ensure that police supervisors and managers were actively, routinely and appropriately addressing minor and serious complaints.⁴⁵⁸ Reiner remarks that an important paradigm shift ultimately took place, which shifted communal concerns from controlling crime to controlling the constable.⁴⁵⁹

The embryonic development of independent civilian bodies for the handling of police complaints gained traction in England, Ireland and Denmark in the 1980s. England first established a Police Complaints Board (PCB) on foot of the Police Act 1976. The new English system ensured that citizens with *locus standi* would no longer have to submit their complaints directly to the relevant police station but could complain directly to the Board.⁴⁶⁰ However the PCB was not bestowed with the power to independently investigate complaints, it simply received copies of investigation reports and the connected decision of the police chief for the purposes of *post hoc* review. The Board publicly recommended the employment of its own investigating officers to independently investigate cases of police assault as early as 1980.⁴⁶¹ The Board, alongside similar mechanisms in America, was almost universally criticised

⁴⁵⁰ Whitaker (n199) 170, 171

⁴⁵¹ *ibid*

⁴⁵² Manning (n39) 211

⁴⁵³ Marshall (n46) 625

⁴⁵⁴ Goldsmith (n368) 35 - 61

⁴⁵⁵ *ibid*

⁴⁵⁶ Reiss (n148) 189 - 203

⁴⁵⁷ Punch (n49) 74

⁴⁵⁸ *ibid* 67, 133, 198

⁴⁵⁹ Reiner (n19) 79

⁴⁶⁰ Reiner (n48) 190, 191

⁴⁶¹ *ibid*

for failing to challenge police investigations and for not publishing reasoned explanations behind the rejection of complaints and the sanctions handed down.⁴⁶²

A second round of civilian oversight boards emerged in the 1980s, addressing some of the extant issues. England replaced the PCB with a Police Complaints Authority (PCA) on foot of the PACE Act 1984. PACE was concerned not only with formalising, codifying and, in some cases, enhancing police powers and processes but since it was also concerned with incorporating concomitant human rights protections it made sense to improve and enhance the system of police complaints.⁴⁶³ The PCA had three crucial features that differentiated it from the earlier model. Unlike the PCB, the new Authority was to be notified of all complaints made to the police and was required to provide clear explanations for its decisions.⁴⁶⁴ The Chief Executive employed by the Board, along with his or her staff, was effectively responsible for determining the admissibility of each complaint. Crucially, the Chief Executive could issue directions to the investigating officer appointed by the police force as part of its new supervisory function.⁴⁶⁵ Secondly, and perhaps most importantly, the Chief Executive could conduct independent investigations but only in a limited array of cases. Lastly, if a complaint was of sufficient seriousness, the PCA could lead the disciplinary hearing, taking two of the seats on the three-person panel. Nevertheless, the construct continued to come in for severe criticism mainly because it suffered from a significant lack of resources and finances which meant that it could not hire adequate numbers of personnel to oversee the internal handling of complaints across the country.⁴⁶⁶

Somewhat controversially, Ireland, which had mirrored the English effort to codify police powers and processes through its own Criminal Justice Act 1984, did not provide for an external complaints body therein. By 1985 England had effectively established two different versions of a civilian complaints board whereas Ireland had yet to establish one. Walsh remarks that Ireland showed remarkable disregard for police accountability and human rights by not only failing to establish a civilian complaints body in line with the English and US efforts in the 1970s but by continuing to ignore calls to introduce one during the drafting and introduction of the 1984 Act which codified and in some cases controversially enhanced police powers.⁴⁶⁷ Ireland's first civilian complaints body, the Irish Police Complaints Board, was eventually established on foot of the Garda Síochána (Complaints) Act 1986 but only in the aftermath of another major policing scandal in the form of the Kerry Babies case.⁴⁶⁸

Walsh notes that the Irish PCB had several characteristics that could be considered improvements on the English model but also some fundamental weaknesses.⁴⁶⁹ One subtle improvement was that the investigating officer appointed by the police force was required to report more regularly to the Chief Executive to facilitate close

⁴⁶² Marshall (n46) 633, 634

⁴⁶³ Reiner and Spencer (n5) 3 - 5

⁴⁶⁴ Waddington (n176) 163

⁴⁶⁵ Robert Reiner, *Myth vs Modernity: Reality and Unreality in the English Model of Policing* in Brodeur (n67) 27, 28

⁴⁶⁶ Robert Reiner, 'Multiple Realities, Divided Worlds' in Goldsmith (n364) 215 - 221

⁴⁶⁷ Walsh (n43) 263 - 268

⁴⁶⁸ Conway (n395) 174 - 177

⁴⁶⁹ Walsh (n43) 274 - 277

supervision. Some major weaknesses included the fact that the Board did not have to give its reasons for dismissing complaints and the fact that the PCB could not compel statements or documents from witnesses within the police force if such cooperation could lead to police officers' self-incriminating themselves.⁴⁷⁰ Like its English counterpart, the Irish body also came in for severe criticism for not having sufficient resources to oversee the supervision of substantial numbers of complaints.⁴⁷¹

On the Danish side, the Government established numerous decentralised boards.⁴⁷² Each PCB was responsible for handling complaints emanating from the police forces assigned to it. Each one consisted of an attorney as chair and at least two laymen from the locality nominated by the local municipality for a tenure of four years.⁴⁷³ PCBs were to be immediately notified of complaints made, investigative decisions taken, could suggest investigative measures and sanctions to the Regional Public Prosecutor (RPP) and could even appeal decisions to the DPP. Both the PCB and the RPP could submit recommendations to the relevant police commissioner to adopt remedial practices. The Danish model appeared to address many of the inherent weaknesses of the English and Irish models.

The rise of external 'investigative' mechanisms of complaint

The adequacy of the English and Irish models continued to be called into question due in particular to the absence of an independent investigative capacity for routine, less serious complaints. It was widely appreciated that public confidence in the handling of police complaints could only be improved if the external civilian complaints authorities were bestowed with routine investigative powers, a team of skilled investigators and a much larger staff to oversee the internal handling of complaints.⁴⁷⁴ Two major catalysts reportedly had a significant bearing on England's eventual decision to bestow fulsome investigative powers upon an external civilian complaints body. Firstly, the Police (Northern Ireland) Act 1998 was drafted and passed by the Westminster Parliament which established a civilian complaints body for Northern Ireland as part of the Northern Ireland peace process. The Police Ombudsman for Northern Ireland (PONI) was required to handle all complaints, could independently investigate those it deemed sufficiently important and was to manage or supervise all remaining admissible complaints handed back to the police force for internal investigation.⁴⁷⁵ Savage remarks that PONI effectively changed the landscape for the external civilian review of police complaints.⁴⁷⁶ Goldsmith and Lewis convey that it helped to start the 'third wave' of police complaints bodies, this time bestowed with substantial investigative powers.⁴⁷⁷

⁴⁷⁰ *ibid* 276 – 284 citing *McCormack v Garda Siochana Complaints Board* (1997) 2 ILRM 321

⁴⁷¹ *ibid* 266

⁴⁷² Jensen (n239) 150 to 154

⁴⁷³ *ibid*

⁴⁷⁴ Andrew Goldsmith and Colleen Lewis (eds), *Civilian Oversight of Policing* (Oxford Hart 2000) 1-4

⁴⁷⁵ Nuala O'Loan, 'The Police Ombudsman for Northern Ireland' in John Doyle (ed) *Policing the Narrow Ground: Lessons from the Transformation of Policing in Northern Ireland* (Royal Irish Academy 2010) 117, 118

⁴⁷⁶ Steven Savage, 'Calling the police to account through the Independent Investigation of Complaints' (2013) 53 *British Journal of Criminology* 94 – 112

⁴⁷⁷ Goldsmith and Lewis (n474) 1 - 4

Secondly, the MacPherson Report in 1999 into the killing of Stephen Lawrence identified a systemic culture of racial prejudice within the London Metropolitan Police and recommended the immediate introduction of an independent complaints body with investigative powers due to the apparent inability of the police force to systemically identify and punish the overt racial prejudices of various detectives. England's PCA was subsequently replaced by the Independent Police Complaints Commission (IPCC) pursuant to the Police Reform Act 2002. The Commission, which consists of a chairperson appointed by the Queen and members appointed by the Home Secretary, is empowered, along with its staff, to supervise the police investigation of complaints, to manage investigations by way of directions to police investigators or alternatively to carry out investigations itself.⁴⁷⁸ Investigators have recourse to all of the powers and privileges of constables to enter private property, search premises and conduct surveillance under the relevant policing Acts.⁴⁷⁹ The IPCC is required to undertake independent investigations into all police-public encounters which end with a fatality but, in practice, almost all minor complaints are forwarded or 'leased back' to the relevant territorial police force to be dealt with internally, subject to IPCC supervision and direction.⁴⁸⁰ Where independent investigations are pursued, the IPCC must forward its findings and recommendations to the relevant chief constable so that the disciplinary process can be activated. Where complaints concern the police chief such reports must be forwarded to the elected Police and Crime Commissioner who may move to dismiss the police chief.⁴⁸¹ The IPCC may direct that disciplinary hearings are opened to the public if it determines that it is in the public interest to do so. The IPCC must publish an annual report outlining the nature and number of complaints received and the nature of their resolution.

Ireland, for its part, was once again slow off the mark and did not establish a comparable civilian complaints body until 2005. Much like the English government, Ireland refused to bestow the external civilian complaints mechanism with powers of independent investigation until it was pressurised to do so following a major policing scandal.⁴⁸² The Morris Tribunal, which conducted its inquiries between 2002 and 2006, found major 'management negligence' in the supervision and discipline of police officers within the Donegal police division which contributed to the unchecked falsification of evidence, harassment of suspects, detainee abuse and oppressive interrogation techniques.⁴⁸³ In light of the extensive, unchecked police malpractice, Justice Morris recommended the immediate reform of the external complaints mechanisms to include a general power of independent investigation. Conway posits that the Morris Tribunal only scratched the surface of systemic police malpractice in Ireland at the time, pointing to the use of oppressive interrogation techniques and unsafe investigative practices in a litany of cases throughout the 1990s.⁴⁸⁴

Ireland subsequently transformed its PCB into the Garda Síochána Ombudsman Commission (GSOC) pursuant to the Garda Síochána Act 2005 which was modelled

⁴⁷⁸ Police Reform Act 2002 Sch 2 & 3

⁴⁷⁹ Independent Police Complaints Commission (Investigatory Powers) Order 2004

⁴⁸⁰ Savage (n476) 98

⁴⁸¹ Elected Local Policing Bodies (Complaints and Misconduct) Regulations 2012

⁴⁸² Walsh (n40) 334, 335

⁴⁸³ Conway (n395) 188 - 191

⁴⁸⁴ *ibid* 178, 179

largely on PONI and the IPCC. However unlike its Northern Irish counterpart, the Irish body did not have the power to conduct inquiries on its own initiative, only once a complaint was received from a person with *locus standi*. Its counterpart in Northern Ireland, for instance had used this power with significant effect to conduct major investigations into the police handling of investigation into the Omagh bombing amongst others. The inability of GSOC to conduct a major inquiry on foot of a whistle-blower's complaints in 2014 ultimately contributed to a political stalemate that resulted in the resignation of both the Irish Police Commissioner and the Minister for Justice following the eventual validation of the whistle-blower's complaints by way of a separate government inquiry. Unfortunately, the Irish government only intends to address this particular anomaly in 2015.

Denmark was comparatively late in transforming its Police Complaints Board into an independent civilian body to monitor and investigate the handling of complaints. The independent Police Complaints Authority (Politiklagemyndigheden) was established only as recently as 2012. The PCA consists of a Police Complaints Council (Politiklageradet) and a Director.⁴⁸⁵ The Council contains a judge (as chairman), one lawyer, a university lecturer in legal sciences, and two public representatives. The judge is appointed by the Minister for Justice on the recommendation of the courts service, the lawyer on the recommendation of the Bar Council, and the public representatives on the recommendation of the Local Government Association for a period of four years.⁴⁸⁶ The PCA Director must follow the instructions and guidelines of the Council and participates in Council meetings. The PCA can request a relevant police chief to conduct an investigation under its supervision or else it may submit a valid complaint or issue to the DPP for investigation and prosecution.⁴⁸⁷ Like England and Ireland, internal resolution in less serious cases often involves the holding of a meeting between the complainant and the police officer so that views can be aired.⁴⁸⁸ Warnings and disciplinary fines of between €100 and €400 can be issued for improper conduct.⁴⁸⁹ Similarly, all cases of injury due to police firearms must be investigated and in cases of criminal conduct police officers can face a criminal trial.⁴⁹⁰ Reports indicate that the vast majority of the complaint cases that reach the courts relate to traffic offences committed by police officers.⁴⁹¹

Denmark was reportedly reluctant to establish the PCA since its internal police complaints process and long-standing Police Complaints Board were held in relative esteem.⁴⁹² Confidence in the extant system was premised upon the fact that Denmark had long established a novel institutional structure which 'co-located' police prosecutors alongside police officers within the police organisation, largely for the purposes of minimising police malpractice.⁴⁹³ The incorporation of prosecutors within police units was designed to ensure that the supervisory presence of police

⁴⁸⁵ Administration of Justice Act s 118.1

⁴⁸⁶ *ibid* s 118.b

⁴⁸⁷ *ibid* s 118.2 – s 1020i

⁴⁸⁸ *ibid* s 1019

⁴⁸⁹ Civil Servants Act Part 4 s 10

⁴⁹⁰ Administration of Justice Act s 137

⁴⁹¹ Director of Public Prosecutions, Police Complaints Board Cases in Denmark (Rigsadvocaten, 2002) 25 - 31

⁴⁹² Jan Steenbeek, 'The Kingdom of Denmark' in Lucas Prakke and Constantijn Kortmann (eds),

Constitutional Law of 15 EU Member States (Kluwer 2004) 135 – 142

⁴⁹³ *ibid*

prosecutors would make police officers less able to falsify reports, tamper with evidence, force confessions, hoard information from other members of the department or conceal malpractice.⁴⁹⁴ Most importantly, the co-location of police prosecutors was designed to ensure that prosecutions would not fail on the basis of poorly formatted police reports, incomplete evidence or unlawfully or unconstitutionally obtained evidence. Police prosecutors were required to have a law degree, usually from the University of Copenhagen, and to have spent a minimum of three years postgraduate work experience in the legal field.⁴⁹⁵ Their legal skill and training in matters of law and human rights compliance was designed to counteract the more goal-orientated nature of police officers who receive comparably little legal training. Where police officers may have been more concerned with the 'ends' of police work, the police prosecutors were to focus on the 'means' to ensure that the 'ends' were legal and could withstand judicial scrutiny.

In practice, Denmark's detective bureaus typically consist of a number of detective units, each with their own assigned or 'co-located' police prosecutor who typically operates from the same office space. A chief police prosecutor is normally assigned to each major investigative area within the Divisional headquarters such as homicide fraud, organised crime and so forth.⁴⁹⁶ The police prosecutors have no command authority over the police detectives but supervise their investigative work, proffer advice and ultimately present criminal cases throughout all court proceedings, including applications for warrants, applications for extended police detention and the trial itself to ensure that all legal materials and presentations are of a high legal quality.⁴⁹⁷ Where police malpractice is identified, either through civilian complaint or internal monitoring, the police prosecutor is expected to notify a commanding officer so that disciplinary proceedings can commence. By virtue of their legal training and objectivity, it is widely appreciated that police prosecutors are not tempted to conceal police malpractice to a systemic extent for it is their precise function to engender strict adherence to lawful and judicially-admissible conduct.

To ensure that Danish police prosecutors can be actively instructed to oversee particular cases or be deployed between detective and uniformed units as needs arise they are directly employed by the police chief and subject to his or her direction and control. However since the police prosecutors are employed primarily to prosecute cases in court, the Danish police prosecutors also serve as employees of the Prosecution Service and are subordinate to the Director of Public Prosecutions (Rigsadvocaten).⁴⁹⁸ The link between the two areas, operational policing and prosecution, is the Danish police chief who serves as a formal member of the Prosecution Service, holding the title of chief prosecutor. In practice, the police chief employs a senior chief prosecutor to carry out prosecutions on his or her behalf.

The police chief serves as a police prosecutor primarily to ensure that full control of the police force can be exerted through the issuance of directions to both police officers and police prosecutors within the force. The common convention is that the DPP cannot interfere in police operations in accordance with the principle of

⁴⁹⁴ Langsted (n236) 20, 21, 127

⁴⁹⁵ Kruize (n266) 161 – 178

⁴⁹⁶ *ibid*

⁴⁹⁷ Langsted (n236) 127, 128, 181

⁴⁹⁸ Administration of Justice Act s 95 to s 104

operational independence save in the interest of coordinating investigations across multiple police districts.⁴⁹⁹ This may involve the issuance of instructions to one police force to relinquish investigations or investigative materials to another police force in the interests of a more effective prosecution. Langsted outlines that the DPP's influence is used primarily to resolve conflicts of jurisdiction between the police districts and to encourage collaboration across linked cases.⁵⁰⁰

To engender continuous, clear and systemic cooperation and communication between Denmark's 12 district police chiefs, the DPP is also assisted by two Regional Public Prosecutors (RPPs) or 'Statsadvokaterne', one responsible for the eastern part of the country corresponding to the jurisdiction of the Eastern High Court (Ostre Landsret) and one for the west or Western High Court (Vestre Landsret).⁵⁰¹ The two regional prosecutors work closely with the senior chief prosecutors and their legal staff within the police districts to ensure an effective prosecution which may involve the issuance of directions to police prosecutors to coordinate their cases.⁵⁰² The two regional prosecutors will normally lead the prosecution of any serious crime cases which carry sentences in excess of four years imprisonment. A Public Prosecutor for Serious Economic Crime (SOK) was also created in 1973 to lead the prosecution of serious cases of fraud relating to VAT, insurance, stock market and EU frauds. The regional prosecutors are empowered to carry out inspections of the working practices of the police prosecutors and may instigate disciplinary proceedings and publish reports. Denmark's police prosecutors, not including the district police chiefs, are subject to a separate disciplinary system headed by a special board (Advokatnaevnet) when charged with breaches of conduct under the Civil Servants Act.⁵⁰³

England and Ireland appear to have caught on to the idea of the Danish approach in recent years but without formally and radically incorporating police prosecutors into their police services. English and Irish detectives traditionally tended to carry out their investigation and complete their case files and books of evidence before leading the prosecution themselves as common informers at common law.⁵⁰⁴ This changed considerably in the 1970s and '80s as the Irish Prosecution Service, headed by an independent DPP, was established in 1974 and the Crown Prosecution Service (CPS), also headed by an independent DPP, was established in 1985 respectively. All police case files concerning indictable offences were thereafter to be submitted to the offices of the DPP to impartially review case files before deciding whether and what charges should be brought, the punishment sought or whether an alternative was more appropriate.⁵⁰⁵ Prosecutors and State Attorneys employed by the Prosecution Service would subsequently assume responsibility for the presentation of the case at court. One of the primary purposes of the transformation was to ensure that the legal arguments, the standard of evidence and the presentation of the case before the court would be of a consistently high legal quality. The DPP was not entitled to direct

⁴⁹⁹ Langsted (n236) 121 - 128

⁵⁰⁰ *ibid*

⁵⁰¹ *ibid* 22 - 29

⁵⁰² Administration of Justice Act s 99.1 to s 104

⁵⁰³ DPP Report (n491) 25 - 27

⁵⁰⁴ Jim Herlihy, *The Dublin Metropolitan Police: A Short History and Genealogical Guide* (Four Courts Press Dublin 2001) 8 - 17, 189

⁵⁰⁵ Ashworth and Redmayne (n211) 4 - 22

police investigations but could simply refuse to bring a prosecution on the basis of insufficient evidence or inadmissible evidence, outlining the reasons for refusal.⁵⁰⁶

Even though the police forces and prosecution services were each independent in theory, the net effect in England and Ireland was that police detectives tended to follow the guidance and preferences of the DPP to ensure that their investigative work would not go to waste and, most importantly, that they would not receive a reprimand from their supervisors for botching an investigation, for wasting police resources or for undermining the victim's confidence in the police force and the wider criminal justice system. Although a professional distance between the police force and the prosecution service has been maintained in England and Ireland, the working relationship between detective units and public prosecutors has arguably grown increasingly akin to the Danish model. The respective prosecution services now typically assign public prosecutors to each of the police stations that house the major detective departments. Although public prosecutors typically operate from law firms unconnected to the police stations, they regularly attend police stations to discuss investigative matters with detectives at the detectives' request.

It is submitted that a more structured relationship between police officers and prosecutors, along Danish lines, could arguably improve the quality of police investigations and reduce the opportunity for police malpractice and its concealment in England and Ireland. As recently as 2014, a damning inspection by Her Majesty's Inspectorate of Constabulary (HMIC) in England found that only 3 out of every 40 police reports examined during its inspections were of a sufficient quality to present to the CPS for prosecution.⁵⁰⁷ In the interest of enhancing the quality of cross-border police cooperation, a number of distinct EU working groups have also recommended the establishment of more formal relationships between police detective units and prosecutors along the lines of the Danish model of 'co-location' in order to improve the admissibility of police evidence and the compilation of case files.⁵⁰⁸

Conclusions

The relatively new addition of 'investigative' complaints bodies to the realm of disciplinary accountability is evidently crucial to any modern conceptualisation of police accountability. The rapid development of the 'investigative' civilian review bodies for the handling of police complaints between 2002 and 2012 across England, Ireland and Denmark represents a remarkable evolutionary step. They represent a vast departure from the closed internal system for handling police complaints which prevailed throughout the 19th and 20th Centuries. The new bodies should ultimately serve to ensure that police conduct is brought as close as possible into line with traditional codes of ethics and more modern codes of procedure by enhancing objectivity and transparency.

Bayley remarks that the modern feature of civilian management of police complaints has become critical to democratic policing, police accountability and, by extension, to

⁵⁰⁶ *ibid*

⁵⁰⁷ HMIC, *Annual Report* (2014) 107 - 125

⁵⁰⁸ Multidisciplinary Group on Organised Crime, *Second Round of Mutual Evaluations – Law Enforcement and its Role in the Fight Against Drug Trafficking* (EU Council 2002) 8

police legitimacy.⁵⁰⁹ He explains that ‘democratic policing’ refers not just to the issuance of rules by a representative government elected by citizens at frequent intervals by universal suffrage through processes that are free, fair and forged in constitutional law but, more particularly, it is about the accountability of the police to each and every individual citizen through the rule of law and mechanisms that monitor police activity, evaluate propriety and institute remedial action if needed.⁵¹⁰ Bayley and Shearing comment that external review has the potential to remove the shroud of secrecy and monopoly long held by the police forces, to dispel unfounded criticisms and to hold errant police officers to account.⁵¹¹ Similarly, Samuel Walker observes that institutional and political understanding has finally caught up with the scholarly perception that accountability mechanisms must not only target individual deviance but address the organisational deficiencies of police management in the first instance.⁵¹²

Although independent civilian complaints bodies clearly serve to enhance transparency across the three jurisdictions, the actual impact that the new bodies will have across the respective jurisdictions appears to differ considerably. The modern English and Irish mechanisms were long demanded by victims of police abuse, political commentators and academic scholars but such demands were not so evident in Denmark. Police management within the Danish police forces was not considered to be closed, insular or deviant to the same extent due primarily to the integration of legalistic police prosecutors. It is submitted that Denmark’s new complaints body will undoubtedly enhance the transparency of the complaints process but it appears that the new body does not need to affect management change to the same extent. From a comparative perspective, it appears that Denmark established the new body largely to keep in step with its neighbouring jurisdictions. Although it may not be needed in substance, a jurisdiction without an independent civilian body for handling police complaints suddenly has the appearance of being considerably closed and undemocratic.

Importantly, the ‘blue wall of silence’ remains a formidable problem of police accountability.⁵¹³ Police officers reportedly continue to use delaying tactics when they are asked by the civilian investigative bodies to provide documents, attend interviews and answer questions.⁵¹⁴ An observation made by David Bayley in 1995 arguably holds one key to overcoming this trenchant issue. He warns that civilian review bodies must be careful not to supplant the role of the internal hierarchical regime to discipline itself, thereby encouraging police management to leave matters of adverse police conduct to be dealt with by the external body out of simple inertia or resistance.⁵¹⁵ He explains that it must remain the role of police supervisors to proactively ensure adherence to high moral and legal standards since it is the police sergeant who can discourage systemic malpractice from occurring in the first instance.⁵¹⁶ He remarks that the evolving external complaints bodies must not only

⁵⁰⁹ David Bayley, ‘Preface’ in Goldsmith (n364) vi – ix

⁵¹⁰ David Bayley, *Changing the Guard* (OUP 2006) 17 - 21

⁵¹¹ David Bayley and Clifford Shearing, ‘The future of Policing’ in Newburn (n48) 720

⁵¹² Walker (n6) 1 - 35

⁵¹³ Punch (n49) 213

⁵¹⁴ Savage (n476) 107

⁵¹⁵ Bayley (n377) 94 - 96

⁵¹⁶ *ibid*

concern themselves with investigating and sanctioning complaints about police misconduct, they must also ensure that police supervisors and managers are carrying out their supervisory functions appropriately and consistently.⁵¹⁷ Bayley surmises that external civilian review must ultimately serve to make police forces more rather than less responsible for the behaviour of their members.⁵¹⁸

Bayley's observations clearly imply that the external civilian review bodies could do well to treat the practices of police management during the handling of a complaint as a more important issue than the actual deviance of the individual police officer. It is submitted that the complaints body should scrutinise first and foremost whether the police management handles a complaint appropriately and subsequently admonish the police management if necessary and carry out the investigation itself. The pressure that such an approach would bring to police management, possibly leading to the dismissal of sergeants, inspectors and superintendents, would arguably encourage police management to gradually dismantle the blue wall of silence itself by adopting more transformative leadership styles that engender ethics, consistency and respect over and above deviance and loyalty. Moreover, Bayley indicates that the investigation of the police management by an external civilian agency would presumably be far more acceptable to the rank and file police officers than if the external civilian agency simply subsumed the role of management and carried out external investigations into individual malpractice itself, thereby leaving police managers free of scrutiny and responsibility, ultimately discouraging them from adopting more transformative leadership styles.⁵¹⁹

Unfortunately Savage's research suggests that the ability of the complaints bodies to monitor the broader police organisation continues to be impeded by a lack of funding.⁵²⁰ Savage indicates that additional funding would enable IPCC case managers to follow up minor cases that are leased back for internal investigation more quickly and regularly.⁵²¹ Additional manpower would also enable the complaints bodies to undertake more independent investigations as an alternative to supervision if appropriate. As Maguire notes, it is often the minor complaints that concern the discourteous, offensive or improper exercise of police discretion that can be most damaging to the victims involved and the public image of the police if carried out regularly and with impunity.⁵²² Nevertheless, it is the minor complaints that are habitually 'leased back' to the police.

The civilian complaints bodies could clearly do more to hold police management to account and encourage more transformative leadership styles, particularly in England and Ireland. Complaints concerning stop and search in England, for example, have been habitually considered to be of minor interest and leased back to the police for internal investigation but a 2014 report by HMIC showed that police officers are systematically displaying a keen lack of understanding around the purpose, requirement and justifiable grounds for the exercise of stop and search powers.⁵²³ The

⁵¹⁷ *ibid*

⁵¹⁸ *ibid*

⁵¹⁹ *ibid* 103 - 107

⁵²⁰ Savage (n476) 105

⁵²¹ *ibid*

⁵²² Maguire (n54) 203, 204

⁵²³ HMIC (n507) 121, 122

Inspectorate pointed to over a million stop and searches every year since 2006, of which only 9 percent resulted in arrest.⁵²⁴ More than 20 years earlier, Sanders' research had indicated that English police officers were regularly unable to specify exactly why they had stopped and searched an individual, referring predominantly to abstract, unacceptable notions of instinct.⁵²⁵ The same HMIC report also indicated that 'authorising officers' under the RIPA Act do not fully appreciate the standards that must be met for covert surveillance and undercover operations.⁵²⁶

One of the major roles of the civilian complaints bodies is to hold officers to account for unlawful practice but in these instances the problem clearly lies with the broader police management. It is the sergeants, inspectors and superintendents who should be systematically shaping the ethical and lawful conduct or 'sense of permission' of their subordinates and should be held accountable for the systemic malpractice of their subordinates. The civilian complaints bodies must clearly do more to hold police managers to account and, as a corollary, force them to adopt more transformative and ethically-compliant leadership styles.

Whether dealing with the deviance of individual officers or broader police management, the civilian complaints bodies evidently play an important part in bringing police conduct and co-option ever closer into line with constitutional, legal and administrative codes of procedure and ethics. This is particularly true in the case of England and Ireland. In Denmark, the civilian complaints body can work to roundly show the general public that complaints are being dealt with in practice and that police conduct is in line with the AJA thereby enhancing the quality of constitutional democracy and transparency. In light of the difficulties faced by the English and Irish civilian complaints agencies, serious thought should be given to adopting some elements of Denmark's model of 'co-location' as a complementary initiative in order to further enhance police accountability from the inside out.

Legal accountability

The mechanisms of 'legal accountability' are undoubtedly the most stable of the three dimensions of complaint and inquiry. They have changed little between the 19th and 20th Centuries with relatively negligible differences arising across England, Ireland and Denmark. The realm of 'legal accountability' refers explicitly to the role of the criminal and civil courts in holding police officers to account for their actions or omissions according to the rule of law. 'Legal accountability' can be attained primarily through three legal avenues, the criminal courts, the civil courts and judicial review, depending upon the nature of the complaint. The chapter will show that not only are the mechanisms of legal accountability almost identical across the three jurisdictions but, more particularly, that legal accountability is only capable of capturing a relatively small degree of police deviance and malpractice in comparison to the realms of disciplinary accountability and democratic accountability.

The criminal prosecution of an errant police officer provides a direct way to communicate a complaint and to ensure punishment. At common law, each police

⁵²⁴ *ibid*

⁵²⁵ Andrew Sanders, 'Controlling the discretion of the individual officer' in Reiner and Spencer (n5) 83 - 85

⁵²⁶ HMIC (n507) 117

officer is responsible for the legality of his or her own actions and should be prosecuted for any actions that constitute criminal offences in the same manner as a civilian.⁵²⁷ Walsh comments that AV Dicey's highly regarded formula for ensuring the 'rule of law', which demands the equality of all before the regular law whether legislators, public servants or civilians, in order to avoid arbitrary oppression is crucial to the ideas of democratic policing and accountability.⁵²⁸ He notes that criminal liability was a fundamental feature of the ancient offices of tithingman and constable ensuring that any individual bestowed with a public policing power and function could be prosecuted before a magistrate for criminal behaviour.⁵²⁹ Pursuant to the Justices of the Peace Act 1361, justices of the peace could not only convict a parish constable for criminal offences arising from the unlawful treatment of detainees but could also see them dismissed.⁵³⁰ Throughout the 19th and 20th Centuries numerous police officers were convicted of criminal offences through the criminal process.⁵³¹ Sanders and Young note that at least forty serving police officers were prosecuted in England for corruption between 1998 and 2005.⁵³² Reiner comments that the subjection of police officers and their use of police powers to the criminal law in a similar fashion to the citizenry is ultimately a major factor which legitimises the authority of the public police in constitutional democracies.⁵³³

Unfortunately, although police officers can be prosecuted in criminal courts to the same extent as the regular civilian, police work rarely comes before the courts. In the first instance, most police-civilian encounters are minor cases and are dispensed with on the street through the exercise of police discretion.⁵³⁴ Moreover, most civilian complaints about police officers do not pertain to criminal offences but largely to discourtesies. In the fraction of cases of police malpractice that do amount to criminal conduct and eventually reach the criminal courts, the issue of conviction subsequently becomes a considerable challenge. Waddington remarks that jury verdicts tend to reinforce a perception that jurors will show lenience to police officers who claim to act in the noble interest of justice.⁵³⁵

By and large, it is the trial of the civilian criminal that, by volume and nature, provides the most frequent opportunity to scrutinise police conduct.⁵³⁶ The civilian under prosecution can convey instances of ill treatment which can potentially undermine the admissibility of the prosecution's evidence and possibly lead to charges being brought against the suspect police officer. Moreover, the trial judge can exclude evidence because of police malpractice such as oppressive interviewing or even because of omission or negligence which renders evidence unreliable.⁵³⁷ Although the trial judge is powerless to oversee the punishment of a police officer during a civilian trial, the exclusion of unsafe evidence should indirectly deter police deviance and malpractice. Deeming police methods to be unlawful or unfair

⁵²⁷ Marshall (n46) 624 - 630

⁵²⁸ Walsh (n43) 300, 301

⁵²⁹ *ibid* 49, 345

⁵³⁰ Critchley (n177) 8, 9

⁵³¹ Reiner (n48) 54 - 67

⁵³² Andrew Sanders and Richard Young, 'Police Powers' in Newburn (n175) 304

⁵³³ Reiner (n48) 54 - 65

⁵³⁴ Waddington (n176) 192 - 202

⁵³⁵ *ibid* 173, 174

⁵³⁶ Walker (n107) 54 - 67

⁵³⁷ Ashworth and Redmayne (n211) 101 - 103

significantly weakens the chances of a successful prosecution thereby rendering the officer's actions counter-productive.⁵³⁸ However judges, particularly in the UK, tend not to exclude evidence on the basis of police misconduct itself but only if such misconduct jeopardizes the reliability of the evidence collected.⁵³⁹ Similarly, in Denmark if the complaint concerns the use of evidence sourced without an appropriate court order, the judge can hear a presentation from the complainant and a representative of the police.⁵⁴⁰ Reports indicate that Danish judges tend to be reluctant to exclude evidence on the basis of police error, preferring instead to accept evidence while reading a rebuke of the police into the record of the court where appropriate.⁵⁴¹

In cases where a judge has identified poor or unlawful police practice, the judge will often make a statement *in obiter* castigating the performance of the police force. Unfortunately, judicial *obiter dicta* and the exclusion of evidence reportedly do not carry much weight with police officers. Bayley and Bittner note that police officers tend to institutionally distrust and resent judges in any case for habitually taking lenient approaches to accused persons who the officers obviously considered were deserving of arrest and punishment in the first instance.⁵⁴² Moreover, although the civilian criminal trial carries some hope of bringing police malpractice to light, Ashworth and Redmayne note that the majority of criminal cases never reach the trial stage but instead are resolved by way of plea-bargaining which means that police malpractice generally remains hidden from judicial scrutiny.⁵⁴³

Due largely to the limited ability of the criminal court to hold an errant officer accountable, civil cases have become increasingly popular as a panacea.⁵⁴⁴ The civil court offers civilians the chance to seek financial damages for physical, emotional, financial or property damage caused intentionally or negligently by police officers in the course of their duty. The main setback of the civil or tort route is that civil cases must be pursued at the personal effort and often the personal cost of the plaintiff. Unless a plaintiff can secure legal aid from a Legal Aid Board and can show that they do not have the appropriate financial means to finance the case themselves, the plaintiff will be forced to cover the substantial financial costs of employing legal representatives themselves.⁵⁴⁵

Moreover, like the criminal trial of a civilian, a successful civil suit does not mean that an errant police officer will be punished for his or her harmful acts.⁵⁴⁶ Whether the harm caused was intentional, in the form of assault, unlawful detention, trespass or threatening language, or even if it was unintentional in the form of a negligent car accident or failure to protect life through inaction, the civil process can only provide a financial remedy subject to a number of strict legal standards.⁵⁴⁷ The civil process cannot even require the errant police officer to incur the financial sanction himself. Police chiefs across England, Ireland and Denmark will typically be held vicariously

⁵³⁸ *ibid*

⁵³⁹ Walsh (n43) 354 - 363

⁵⁴⁰ Langsted (n236) 143 - 164

⁵⁴¹ *ibid*

⁵⁴² Bayley and Bittner (n301) 41 - 44

⁵⁴³ Ashworth and Redmayne (n211) 265 - 286, 369 - 372

⁵⁴⁴ Conway (n424) 180 - 184

⁵⁴⁵ Walsh (n43) 308 - 329

⁵⁴⁶ *ibid*

⁵⁴⁷ *ibid*

liable for torts committed by constables acting under their direction and control in the performance of their functions, particularly where the rules, regulations and instructions in place could and should have prevented the reasonably foreseeable harm from occurring in the first instance. Even if the police administration is not deemed to be vicariously liable, the police force or the officer's representative association frequently pay the financial penalty on their behalf. The only mechanism that can actually sanction the errant officer other than the criminal court is the administrative disciplinary process.

Due in part to the weaknesses of the disciplinary and criminal routes, the civil route has become so popular that the London Metropolitan Police alone has paid out several million pounds in compensation to hundreds of plaintiffs over the past two decades.⁵⁴⁸ The Irish Police reportedly incurred damages of €37 million between 1997 and 2008.⁵⁴⁹ In Denmark, claimants routinely seek compensation through the civil courts for pecuniary loss even for suffering or humiliation caused by a criminal investigation where no charge is brought or if the prosecution is abandoned. Waddington remarks that not only has the civil court proved to be a good avenue for securing financial restitution but where police forces decide to contest the case it serves as a useful window into a police force's policies, arrangements and methods.⁵⁵⁰ He argues furthermore that a police force's disciplinary regulations should ideally be designed so that a pay-out at civil court automatically activates a disciplinary hearing or sanction because the mere idea of awarding damages without bringing a disciplinary sanction, which occasionally occurs, is simply unfathomable to members of the public.⁵⁵¹

Judicial review also exists in order to challenge the constitutionality and lawfulness of statutes, legal principles and the interpretation of those statutes and principles by police officers.⁵⁵² In the context of a police operation, judicial review can be used to inquire into whether the relevant rules and regulations were appropriately interpreted and applied reasonably by the police commanders and police officers involved.⁵⁵³ As Walsh and Conway observe, judicial inquiries are key instruments of police accountability for the purposes of fact finding, exemplified not least by the famous Knapp, MacPherson and Morris inquiries.⁵⁵⁴ Lustgarten suggests that the fact-finding inquisitorial approach of the judicial review, albeit expensive and slow, is quite effective in uncovering the truth.⁵⁵⁵ Judicial review, for instance, appeared to work well in England in the *Fisher* and *Blackburn* cases in order to solidify constitutional principles around operational independence and general policy instructions.⁵⁵⁶

Conclusions

The extant literature and case law would suggest that the three 'legal' dimensions of criminal law, civil law and judicial review operate in broadly the same fashion across

⁵⁴⁸ Sanders and Young (n532) 304

⁵⁴⁹ Conway (n424) 180 - 184

⁵⁵⁰ Waddington (n176) 171 - 181

⁵⁵¹ *ibid*

⁵⁵² Walker (n107) 63 - 66

⁵⁵³ Walsh (n43) 330 - 342

⁵⁵⁴ Dermot Walsh and Vicky Conway, 'Police Governance and accountability' (2011) 55 *Crime Law and Social Change* 67, 68

⁵⁵⁵ Lustgarten (n15) 2- 7

⁵⁵⁶ Marshall (n46) 625 - 630

England, Ireland and Denmark.⁵⁵⁷ Nevertheless, the stark reality is that ‘legal accountability’ would appear to capture only a relatively small volume of police deviance. Few police officers who engage in police malpractice will be charged with a criminal offence and fewer still will arguably be convicted. Even the books of evidence prepared by police officers will rarely be tested before the court by simple virtue of the fact that most criminal cases will be dealt with by way of plea-bargaining. The opinions of the suspects about the lawfulness of their treatment and the procedural probity of the police officers’ investigation will ultimately rarely find scrutiny in court. The relative inability of the courts to hold police officers to account is well reflected in Herbert Packer’s famous crime control and due process typology, wherein the notion of ‘due process’ explicitly acknowledges the fallibility of police officers and the courts system thereby demanding extremely robust mechanisms of accountability.⁵⁵⁸ More particularly, the criminal courts by and large are concerned predominantly with legal wrongs, not the establishment and implementation of hierarchies of ethics or the most desirable allocation of resources.⁵⁵⁹

The civil court it would seem offers most hope of remedy but it is a costly and time consuming exercise largely beyond the financial and practical reach of low earners. Judicial review, for its part, cannot be used to adjudicate on the fairness of a police operation in terms of a hierarchy of ethics or an optimum allocation of resources but only on the interpretation and application of the relevant legal rules, which can be a semantic dialectic. It is somewhat ironic and unfortunate that Beggs and Davis should convey in 2009 that coroner inquests into police fatalities are one of the few legal windows through which police conduct can be subject to periodic scrutiny.⁵⁶⁰

From an accountability perspective, it seems strange that the ethos of vicarious liability is used frequently to shield individual police officers from liability in the civil court but the same principle does not enjoy similar traction within the realm of disciplinary accountability. At civil law, it is not unusual for police chiefs to be held liable for errant actions committed by constables acting under their direction and control in the performance of their functions, particularly where the rules, regulations and instructions in place could and should have prevented the reasonably foreseeable harm from occurring but the prevailing managerial ethos would appear to be the polar opposite within the disciplinary realm. The thesis conveyed that the traditional ethos of police management to disciplinary accountability was to either hold errant police officers individually accountable for disciplinary infractions, thereby shielding police managers from culpability, or else to act only to cover up the malpractice altogether. It is submitted that police forces and the various mechanisms of accountability should be systematically applying the ethos of vicarious liability in a non-discriminatory manner across both legal and disciplinary realms to ensure that police managers are held to account for the systemic conduct of their officers.

Democratic accountability

The normative dimension of ‘democratic accountability’ is arguably the most conceptually unstable and convoluted area of police accountability. The obscure

⁵⁵⁷ Jensen et al (n239) 85 - 111

⁵⁵⁸ Packer (n273) 9 - 22

⁵⁵⁹ Walker (n107) 54 - 67

⁵⁶⁰ Beggs and Davies (n433) 404 - 452

nature of democratic accountability is attributable in part to the fact that its constituent mechanisms can be found at both the national and local levels, ranging from parliamentary committees at the national level to local consultation forums at the city and regional levels. The landscape is complicated by the fact that the shape and form of local mechanisms of democratic accountability generally differ across time and place, not only between jurisdictions but within them. Local mechanisms may take the form of directly elected bodies or unelected bodies bestowed with either substantial powers of inquiry or more simple powers of consultation. Significant variations can also occur within jurisdictions over a relatively short period of time as political parties rebrand the local constructs in their own image in line with their political ideologies. The thesis will show that although no jurisdiction appears to have established local mechanisms for democratic accountability which are considered to be emblems of best practice, the three jurisdictions have increasingly converged towards a common approach to local democratic police accountability. Similarly, the thesis will convey that on the national level, although the three jurisdictions have long pursued a common approach to parliamentary accountability, there remain disparities in standards which need to be addressed.

The local and national mechanisms for democratic police accountability serve broadly the same function, to facilitate the airing of complaints, concerns, questions and simple misunderstandings by members of the public about the propriety of police actions or omissions so that the conduct of the police force can be amended. As Bayley conveys, democratic accountability should ultimately ensure that the needs and wants of the local people who empower, finance, trust in and cooperate with the public police are reflected in police policies and practices.⁵⁶¹ At the national level, the national parliament typically serves as the primary construct of democratic accountability. The national parliament generally functions, in a constitutional democracy, as the primary forum within which the quality and adequacy of the national laws governing the structures, powers and procedures of the police can be questioned, reviewed and potentially amended. Moreover, it is the forum within which the Minister for Justice can be questioned about the propriety and adequacy of any secondary regulations or codes of practice issued to the police under the primary statutes. Stenning observes that police scandals are invariably followed by public demands of parliament to introduce new legislative formulas and procedural codes that serve to further limit police powers and behaviour as well as the establishment of more robust mechanisms of complaint and inquiry.⁵⁶²

The local level of democratic police accountability, on the other hand, represents the mechanisms that should enable civilians to ask the police force to amend the conduct of its police officers and its strategic and tactical policies in order to address community issues, concerns and complaints.⁵⁶³ The mechanisms of local democratic accountability should serve to ensure that police chiefs remain abreast of community needs and deploy their police officers accordingly. To echo the popular Greek nautical metaphor of governance, if the national level determines the shape of the 'police' ship and the size of its masts, then the local level should determine the speed of travel and the direction it sails.⁵⁶⁴ The chapter will proceed to evaluate the nature and form of the

⁵⁶¹ Bayley (n10) 160, 182

⁵⁶² Stenning (n23) 3 - 5

⁵⁶³ Marshall (n46) 626

⁵⁶⁴ See Foucault (n284) 123

local and national levels of democratic police accountability to elucidate whether and to what extent comparable approaches can be identified across England, Ireland and Denmark.

The purpose of local democratic accountability

Marshall explains that the entire concept of police accountability in a democratic society revolves around the boundless capacity of civilians and their political representatives to require information, answers and reasons from an ‘explanatory and cooperative’ police force whether on the national or local level.⁵⁶⁵ More particularly, such responses by the police force should, if appropriate, include a commitment by the police commander to amend the conduct or deployment of its police officers in order to address issues, concerns and complaints.⁵⁶⁶ Dixon comments that the primary job of the police chief is not to independently eradicate crime on behalf of the community but to carry out a public policing function with the support of and in consultation with the local community.⁵⁶⁷

Wilson conveys that community ‘input’ into local police policies, strategies and tactics is crucially important because it serves to ensure that police forces do not under-appreciate the individual and collective senses of insecurity within the community by attaching too much weight to their insular policing expertise.⁵⁶⁸ In other words, without systematic community inputs, police officers and their commanders might assume that they know what kind of policing service the community needs without actually asking. Numerous dramaturgical police studies, not least Wilson and Kelling’s ‘broken windows’ study, have shown that without constructive community-police dialogue, police forces invariably leave some vicinities ‘untended’ and de-prioritise some crucial crime areas by overly relying on their professional expertise and often inaccurate statistical indicators.⁵⁶⁹

The central ethos of local democratic accountability is that police forces must tailor their deployment of resources and the exercise of police discretion to reflect not only their professional judgment and their statistical indicators but also the needs and wants of the local community. For example, local residents may appreciate that loitering gangs are intimidating some older members of the community or that drug dealing on the local street corners is gradually increasing, thereby undermining feelings of safety and security in the community, but the police may not be aware of the full scale of the problem or, more particularly, may be actively contributing to it.⁵⁷⁰ By relying solely on their own professional expertise, police officers might consider that the loitering gangs or petty drug takers are relatively harmless, engaging in ‘victimless’ crimes, and might therefore exercise a wide degree of discretion and decide to take no action, even redeploying patrols to other crime hotspots.

⁵⁶⁵ Marshall (n46) 633

⁵⁶⁶ *ibid* 626

⁵⁶⁷ David Dixon, ‘Beyond zero tolerance’ in Newburn (n48) 490 - 494

⁵⁶⁸ Wilson (n25) 200 - 214

⁵⁶⁹ James Q Wilson and George L Kelling, ‘Broken Windows: the police and neighbourhood safety’ in Newburn (n48) 462 - 465

⁵⁷⁰ Bayley (n244) 142 - 144

Without regular local community-police consultation a ‘communicative gap’ invariably opens up between the police and the public. Members of the community might feel increasingly unsafe and insecure but the police, to all intents and purposes, may do nothing about it because they do not realise the full effects of their actions or inactions. Zedner conveys eloquently that ‘security’ is not just about physical security but emotional security, the individual feeling of safety and freedom from apprehension coupled with individual sensitivities to risk and danger.⁵⁷¹ As Banton iterates, even the simple deployment of more patrols can serve to placate fears since the mere visibility of a police uniform carries the symbolic reassurance that assistance is nearby.⁵⁷² Fielding and Innes refer to such patrol work as ‘reassurance policing’.⁵⁷³

Moreover, another scenario can arise at the other end of the spectrum. The police force may be ‘over policing’ a particular crime hotspot through over-zealous stop and searches thereby regularly subjecting local residents to undignified bodily searches, without realising the full extent of their actions.⁵⁷⁴ Residents may be feeling oppressed, discriminated against and disenfranchised without the police officers fully realising it. Ericson and Haggerty indicate that instead of a culture of partnership and consent existing between the police and the public in England, the lack of community consultation means that police-community relations are often more characterised by a ‘culture of distrust’.⁵⁷⁵ A litany of policing scandals and regular over-policing has reportedly caused various demographics to lose respect for the police and police authority over successive generations, particularly in England.⁵⁷⁶ Lord Scarman observes that the lack of public consultation can also cause the professional police force to adopt an us-versus-them ‘siege mentality’.⁵⁷⁷ He noted that the police do not create social deprivation but inflexible and hard policing tactics can make it worse.⁵⁷⁸ Loader and Mulcahy convey that one of the major effects and objectives of community-orientated policing should ultimately be to facilitate and engender respect between the police and the public.⁵⁷⁹ Bayley observes that even the simple conveyance of explanations by the police can help to ameliorate police-community tensions.⁵⁸⁰ Otherwise, as Foucault outlines, perceived or real injustices that go unremedied have always and should always give rise to some form of resistance, a condition he referred to as ‘counter-conduct’.⁵⁸¹

Most importantly from a legal perspective, as Brogden and Nijar convey, local democratic input into police policy ensures that the exercise of police discretion is made public, explicit and most importantly afforded ‘legitimacy’ through community consent and validation.⁵⁸² Klockars observes that local democratic accountability

⁵⁷¹ Lucia Zedner, *Security* (Routledge 2009) 16, 17

⁵⁷² George L Kelling, ‘On the Accomplishments of the Police’ in *Punch* (n20) 163 - 166

⁵⁷³ Nigel Fielding and Martin Innes, ‘Reassurance Policing, Community Policing and Measuring Police Performance’ (2006) 16:2 *Policing and Society* 127 - 130

⁵⁷⁴ Lord Scarman, *Report of Inquiry* (HMSO London 1981) 5.33 – 5.40

⁵⁷⁵ Richard Ericson and Kevin Haggerty, *Policing the Risk Society* (Clarendon Press Oxford 1997) 56 - 72

⁵⁷⁶ Loader and Mulcahy (n275) 70 - 118

⁵⁷⁷ Scarman (n574) 5.58 - 5.65

⁵⁷⁸ *ibid* 6.1

⁵⁷⁹ Loader and Mulcahy (n275) 70 - 118

⁵⁸⁰ Bayley (n244) 106, 107

⁵⁸¹ Foucault (n284) xxvii, - xxxi; 193 – 201, 228 - 237

⁵⁸² Michael Brogden and Preeti Nijar, *Community Policing: National and International models and approaches* (Willan 2005) 30 - 32

should effectively enable the local community to ‘regulate’ the exercise of police discretion by encouraging police officers to narrow their exercise of discretion in areas of growing community concern or by applying a wider application of discretion in areas where hard policing tactics are proving profoundly unfair and immoral.⁵⁸³ The much-lauded Scarman Report into the Brixton riots in England concluded that police discretion lies at the heart of maintaining public order and that the proper use of discretion depends heavily on the input of the local community.⁵⁸⁴

Klockars remarks that, because the tenet of police discretion cannot be found in legal statutes, local democratic accountability is particularly important for validating and legitimating the exercise of discretion.⁵⁸⁵ Wilson noted in 1975 that the habitual public denial of police discretion by police chiefs, who bizarrely tend to hide behind a mask of full enforcement or zero tolerance, meant that police officers were routinely left frustrated, lacking in confidence and unsure of their mission, often resulting in citizens being poorly treated.⁵⁸⁶ Effective mechanisms of local democratic accountability should ultimately enable police forces to point to local community consultation to validate their strategies and tactics.⁵⁸⁷

Local democratic accountability not only facilitates a more responsive, proactive police force but the community dialogue also enables the police to motivate civilians to become more vigilant about their own security or encourage them to report deviant or radical behaviour witnessed in a familial, neighbourhood or even a business setting. Denmark’s counter-terrorism officers, for instance, participate in local community boards and visit schools to raise awareness of local terrorism and encourage citizens to report suspect radical fundamentalist behaviour even at its earliest stages. Simple information updates or crime bulletins which outline the nature of relevant local crime occurrences and the emerging modus operandi of local criminals can greatly enhance the ‘explanatory’ nature of the police force as well as the responsiveness of the community to deter criminality.⁵⁸⁸

The liaison between the police, community, local government and relevant non-governmental organisations can also help to address criminality by way of economic and social means. The establishment of new drug addiction centres, juvenile rehabilitation programmes, the re-zoning of particular areas to restrict or allow for gambling or prostitution, the dispersal of social housing or even the simple instalment of street lighting to deter petty crime at night are important preventative strategies.⁵⁸⁹ Ericson and Haggerty, in their work on *Policing the Risk Society*, comment that the modern attraction to the idea of ‘risk management’ demands the establishment of ‘communication systems’ between the police, the public, probation services, drug addiction centres, hospitals, schools, youth clubs, football clubs and any other relevant agencies so that the police can work to address risks and reassure the public, whether or not such risks are real or imagined.⁵⁹⁰ Loader and Sparks convey that modern

⁵⁸³ Carl Klockars, *The Idea of the Police* (Sage 1985) 108 - 118

⁵⁸⁴ Scarman (n574) 4.58, 4.60 and 5.56 – 5.58

⁵⁸⁵ Klockars (n583) 102 - 118

⁵⁸⁶ James Q Wilson, *Thinking about Crime* (Basic Books New York 1975) 81 - 83

⁵⁸⁷ Manning (n39) 337, 338

⁵⁸⁸ Loader and Walker (n78) 122 – 133, 198, 199

⁵⁸⁹ Goldstein (n297) 399 - 402

⁵⁹⁰ Ericson and Haggerty (n575) 1 - 10

society is increasingly moving away from the State-dominated administration of justice to a wider ideal of multi-institutional ‘governance’.⁵⁹¹ They refer to the evolving partnership between the police, the community and relevant public and private agencies in terms of the ‘co-production’ of order and security.⁵⁹²

The aim of local democratic accountability is ultimately to ensure that police forces tailor their conduct and resource deployments according to the needs and wants of the local community as well as attaching weight to the wisdom of their professional expertise and their indicative crime statistics. The key of local democratic accountability is that the ‘virtue ethics’ of the police officer is not sufficient on its own to determine what is a good or right course of discretionary action. It must factor in the fluctuating needs and wants of the local community. The ethos of local democratic input effectively represents one of the modern embodiments of the ideal of ‘policing by consent’ and the traditional Peelian principle that the ‘police are the public and the public are the police’ within modern constitutional democracies. Reiner comments that the ethos of ‘democratic policing’ ultimately demands that police forces are organised and controlled by local means in order to facilitate responsiveness to local community concerns and communal values.⁵⁹³

The evolution of local democratic accountability in England

The evolution of the mechanisms for local democratic accountability has been remarkably haphazard, particularly in England. Local democratic accountability was initially delivered by town and borough Watch Committees in the 19th Century but the gradual amalgamation of police forces in England throughout the late 19th Century and the early 20th Century required their replacement with more novel regional constructs. Initially, in the 19th Century, Robert Peel’s project was built upon the promise that the community was simply transitioning from the prime performer of the policing function through the Watch and Ward construct to a new supervisory and directorial role through the construct of Watch Committee.⁵⁹⁴ Instead of carrying out the policing function, the community could use the Watch Committee to guide and amend the conduct of their new permanent, paid and professional police officers. The only English police force which did not originally have a Watch Committee was the London Metropolitan Police. It was controversially deprived of a local political entity with powers of dismissal partly due to fears that too many local watch committees would be required to cover the expansive, heavily populated metropolitan area which would serve only to paralyse the ability of the Police Commissioners to act decisively.⁵⁹⁵ Instead the Home Secretary was bestowed with the role of political oversight which clearly served only to render the police force far too remote from local neighbourhood needs and concerns.⁵⁹⁶

Throughout the rest of England, the Watch Committees on the town and borough level and the Quarter Sessions or Standing Joint Committees (SJC) on the county

⁵⁹¹ Ian Loader and Richard Sparks ‘Contemporary landscapes of crime, order and control: Governance, risk and globalization’ in Maguire et al (n50) 87 - 89

⁵⁹² *ibid*

⁵⁹³ Reiner (n206) 78 - 91

⁵⁹⁴ Critchley (n177) 268, 269

⁵⁹⁵ Emsley (n178) 85, 86

⁵⁹⁶ *ibid* 248 - 261

level, which had traditionally overseen the medieval Watch and Ward and constabulary system, reportedly worked quite well to bring the concerns of the local community to the attention of the police chief by way of regular general policy instructions, guidance and regulations.⁵⁹⁷ Marshall states that Watch Committees regularly issued notices outlining their alarm at the number of muggings, robberies or assaults in an area or by advising the police force about concerns over the presence of loitering gangs, vagrant drunks and prostitutes on the high street.⁵⁹⁸ Brogden notes that it was not uncommon for Watch Committees to ask a police chief to take action against brothels as well as criminal gangs known to be extorting traders, robbing neighbourhoods and running pick-pocket ruses in particular business areas and residential neighbourhoods.⁵⁹⁹ In London, for instance, the 'local' Home Secretary issued numerous notices in the 19th Century calling for a clampdown on inter-faction rivalry assaults as well as requesting the police to curtail the over-zealous arrest of Irish nationals for minor gambling infractions amongst other issues.⁶⁰⁰

Reiner conveys that the ability of the local community entity to scrutinise the work of the police chief, to issue general policy directions and to subsequently dismiss the police chief for poor performance was integral to the English concept of policing by consent.⁶⁰¹ Loader conveys that the idea of policing by consent was ultimately not some obscure principle pertaining to the absence of complaint but it was the very real feature of local political involvement in shaping the conduct of the public police.⁶⁰² Local political involvement in police oversight was considered to be so important that the Desborough Committee sitting in 1918 stated that the provision of law and order was the concern of the local authority and that the imposition of a unitary national police force would ultimately distance policing from local political control to an unacceptable and possibly unconstitutional degree.⁶⁰³ Walker conveys that vesting the responsibility to issue general policy instructions and the power of dismissal in a democratic and representative political entity is entirely legitimate and, most importantly, appropriate in a constitutional democracy.⁶⁰⁴

However a retreat of the Watch Committees and Standing Joint Committees following the distortion of the *Fisher* judgment in 1930 ultimately set in train a number of developments that enhanced the national role of the Home Secretary at the expense of local democratic accountability. In the seminal case of *Fisher v Oldham Corporation 1930*, a Watch Committee was sued over the actions of local constables on foot of guidance issued by the Watch Committee.⁶⁰⁵ Drawing on American, Canadian and Australian jurisprudence, McCardie J presiding reiterated the absence of a master-servant relationship between Watch Committees and constables and reaffirmed the individual responsibility of officers for their actions as servants of the public, not as employees of local or national government. McCardie J cited the Australian case of *Enever v The King 1906* which found that 'a peace officer is not exercising a

⁵⁹⁷ *ibid*

⁵⁹⁸ Marshall (n46) 626 - 628

⁵⁹⁹ Michael Brogden, *The Police: Autonomy and Consent* (Academic Press London 1982) 62 - 75

⁶⁰⁰ Marshall (n46) 627, 628

⁶⁰¹ Reiner (n48) 17

⁶⁰² Loader (n336) 35 - 40

⁶⁰³ Emsley (n178) 161, 162

⁶⁰⁴ Walker (n107) 54 - 67

⁶⁰⁵ Marshall (n46) 625 - 630

delegated authority but an original one'.⁶⁰⁶ The *Fisher* judgment effectively did little other than reiterate the ancient common law principle of 'operational independence', a principle which held that constables were individually responsible for the legality of their own actions and could not defend indiscipline or avoid criminal prosecution or a civil suit for unlawful action on the basis of orders received from commanding officers or directions received from local political entities such as a Watch Committee.⁶⁰⁷ Manning explains that the principle of operational independence ultimately ensures that police chiefs are sensitive to the needs and wants of local community representatives without being subservient to them.⁶⁰⁸

The logical corollary to the principle of operational independence was that if police officers received orders or directions that were lawful, moral and appropriate they were obliged to follow them or they would face disciplinary proceedings and possible dismissal from the top down. The principle of operational independence only served to embody the legal requirement that police officers should refuse to follow unlawful or inappropriate orders and would be held individually accountable if they failed to do so.⁶⁰⁹ It served largely to preserve the lawfulness and propriety of orders and directions so that police officers or police chiefs could not be directed by their commanders or Watch Committees to carry out unlawful and immoral deeds. Reiner remarks that the principle is crucial for the 'legitimacy' and popular support of the police for it serves to ensure that police officers will not allow themselves to become partisan or politicised in fear of dismissal by their commanding officers or by the local political entity.⁶¹⁰ Walker states that the principle of operational independence was a matter of constitutional convention, pragmatic empiricism or simple constitutional 'common sense'.⁶¹¹ Marshall's research indicates that, by and large, the local Watch Committee members were well aware of their legal obligation to refrain from interfering in specific police investigations and prosecutions, for fear of being investigated themselves for obstruction, extortion or even aiding and abetting criminal activity.⁶¹²

However the ambiguous wording of the *Fisher* judgment and subsequent political and practitioner rhetoric generated a misinterpretation that Watch Committees were not legally entitled to issue general policy instructions pertaining to operational matters.⁶¹³ Marshall argues that Lord Denning presiding in *R v Metropolitan Police Commissioner ex part Blackburn* in 1968 regrettably exacerbated such confusion by remarking in *obiter* that no government official can tell a police chief that 'he must or must not keep observation on this place or that or that he must or must not prosecute this man or that one'.⁶¹⁴ Lord Denning was similarly reiterating the basic *raison d'être* of 'operational independence', simply that it was strictly unlawful for a Watch Committee or police chief to issue policy instructions which required police officers

⁶⁰⁶ Geoffrey Marshall, *Police and Government: The Status and Accountability of the English Constable* (Methuen, London, 1965) 35 - 45 citing *Fisher v Oldham Corporation* (1930) 2 K.B. 364 & *Enever v The King* (1906) 3 CLR 969

⁶⁰⁷ Walsh (n43) 13, 14, 50 - 70

⁶⁰⁸ Manning (n39) 200, 201

⁶⁰⁹ Marshall (n606) 18

⁶¹⁰ Reiner (n48) xi, xii, 11, 17

⁶¹¹ Walker (n107) 16 - 18, 79

⁶¹² Marshall (n46) 625 - 632

⁶¹³ *ibid*

⁶¹⁴ *ibid*

not to enforce a particular statute or offence, which clearly conflicted with their legal obligation and prerogative.⁶¹⁵

Bayley remarks that many police chiefs, even in America, zealously promoted the misconstrued idea that police forces were not accountable to local political entities but instead were ‘accountable only to the law’.⁶¹⁶ He argues that police chiefs promoted the ideal as a badge to enhance their claims to ‘professional’ status and expertise on all local policing and crime-related matters.⁶¹⁷ As outlined in the section on ‘legal accountability’, this argument was ludicrous since only a small volume of police malpractice comes before the court and, more particularly, a court cannot decide on the appropriate allocation of resources, the hierarchy of police priorities or the ethics of police discretion, such matters are for the local political entity to resolve in consultation with the police chief.⁶¹⁸ Accountability only to the law would ultimately render the general low-visibility application of police discretion free of public consultation or accountability.⁶¹⁹

Nevertheless, Samuel Walker remarked in 1977 that police chiefs were increasingly using the vague rhetoric of professionalism to effectively deflect almost all forms of criticism and external scrutiny.⁶²⁰ Brogden states that police chiefs and their subordinates were to all intents and purposes putting themselves ‘above criticism’.⁶²¹ Marshall added that the notion of being independent of either municipal or government control was ‘a doctrine so unconstitutional as to appear absurd’.⁶²² As late as 1999, the Patten Commission in Northern Ireland suggested that the misinterpreted maxim of operational independence should be better understood as ‘operational responsibility’ so that the expectation of chief officers to consult with and account to the citizenry is made absolutely explicit.⁶²³

The fact that the issue was not clearly addressed in the Police Act 1964, which abolished Watch Committees in favour of regional Police Authorities, led to growing concerns about the increasing centralisation of influence and power towards the Home Office in the absence of local oversight.⁶²⁴ Marshall’s seminal research conveys how the Royal Commission 1962, which was established in part to address the growing ineffectiveness of Watch Committees following the Popkess Affair, remarkably subscribed to the misinterpretation of the *Fisher* judgment without much consideration, leading to the establishment of Police Authorities which were similarly inclined.⁶²⁵ Emsley argued that the part-time Police Authorities, which were filled with councillors who were far more concerned with other issues of local government, generally followed the previous approach of the Watch Committees and often deferred passively to the preferences of their police chiefs without substantial scrutiny

⁶¹⁵ Walsh (n43) 66–69, 94 -101

⁶¹⁶ Bayley (n10) 13, 47 - 51

⁶¹⁷ *ibid*

⁶¹⁸ Walker (n107) 54 - 67

⁶¹⁹ *ibid*

⁶²⁰ Samuel Walker, *A Critical History of Police Reform* (Lexington Books 1977) ix – x

⁶²¹ Brogden (n599) 93 - 95

⁶²² Marshall (n606) 30, 31

⁶²³ Patten Commission (n44) 32, 33

⁶²⁴ Emsley (n178) 6, 7, 160 - 170

⁶²⁵ Marshall (n46) 626 – 630

or disagreement.⁶²⁶ At the time, Professor Goodhart wrote a cogent dissenting memorandum to the Royal Commission arguing that there needed to be either a significant element of local control or a significant element of national control but following the Police Act 1964 there was neither.⁶²⁷

Regrettably, the situation was exacerbated considerably by the case of *R v Secretary of State for the Home Department, ex parte Northumbria Police Authority* in 1988 which held that a Police Authority could not seek to amend a chief constable's policy decisions if the chief constable secured the support of the Home Secretary for those policies.⁶²⁸ The development significantly undermined the ability of Police Authorities to enter into negotiations with the police chief over the local policing plan with any seriousness.⁶²⁹ Walker described the prevailing situation as a major 'policy vacuum'.⁶³⁰ Reiner vociferously joined the debate in 1985 arguing that the influence and power of the Police Authorities had been reduced to nil. His overarching argument in the seminal *Politics of the Police* (1985) was that the ambiguous condition of police governance in England at the time was leading to a significant politicization of the police.⁶³¹ He subsequently conducted a number of interviews with chief constables in the early 1990s which indicated that chief constables viewed the Home Office as the most influential policy decision-maker, attaching greater weight to Home Office Circulars and its financial expectations over and above the concerns of Police Authorities.⁶³² Critchley remarks that the 'advice' and guidance contained in Home Office Circulars had incrementally become a euphemism for 'direction'.⁶³³ Mawby suggested that the community-orientated nature of the English policing model was shifting more towards the control-dominated model of continental police forces which were traditionally closer to government control and less accountable to the public.⁶³⁴ Tupman and Tupman remarked that the side-lining of mechanisms of local democratic accountability in favour of centralised state bodies represented the creation of a clear 'legitimacy gap' due to the stark absence of community input and consent.⁶³⁵

Furthermore, Loader and Walker warned in 2006 that the unbridled State was naturally 'partisan', with its own political preservation at the forefront of its concerns, not the welfare of minority communities.⁶³⁶ They convincingly argued that the State should always be considered to be an 'idiot' and a 'cultural monolith' when it comes to the issues and concerns of diverse local communities, for politicians are rarely if ever in touch with minority and vulnerable demographics and are certainly not aware of the peculiar concerns of all neighbourhoods at all times.⁶³⁷ Referring to Habermas' typology of policy action, Loader conveyed in 1996 that police policy needed to return to its roots of 'communicative action', which uses public discourse and

⁶²⁶ Emsley (n178) 6, 7

⁶²⁷ Lustgarten (n15) 51,74,75

⁶²⁸ Walker (n107) 84 - 87 citing *R v Secretary of State* (Home Secretary) (1988) 1 AL ER 556

⁶²⁹ *ibid* 86, 87, 104

⁶³⁰ *ibid* 67 - 72

⁶³¹ Reiner (n48) 29, 30

⁶³² Reiner (n443) 267 - 278

⁶³³ Critchley (n177) 219, 220

⁶³⁴ Rob Mawby, 'Models of Policing' in Newburn, (n175) 22 - 38

⁶³⁵ Bill Tupman and Alison Tupman, *Policing in Europe: Uniform in Diversity* (Intellect 1999) 98 - 103

⁶³⁶ Loader and Walker (n78) 172, 173

⁶³⁷ *ibid* 175 - 181

concerns as the basis for police policy rather than continue on the prevailing path of 'instrumental action' whereby government officials and technocrats could manipulate the policy subjects in a certain way to bring about a desired end or state of affairs.⁶³⁸ Lustgarten lamented in 1986 that Marshall's observations on the misinterpretation of operational independence had been so ignored that his 1964 book 'might as well never have been written'.⁶³⁹

Modern mechanisms of local democratic accountability

England has since appeared to have reinstated the ethos of local democratic accountability but only remarkably recently. The Police and Crime Commissioner (PCC) construct was introduced in 2011 on foot of a Conservative Party pre-election promise to stem the tide of increasing centralisation and dwindling community influence over policing matters.⁶⁴⁰ The Police Reform and Social Responsibility Act 2011 abolished the Police Authority mechanism, replacing it with a Police and Crime Commissioner (PCC) for each police territory. Each PCC is to be directly elected by the residents of each police territory for a four year term on the strength of their proposed Police and Crime Plan.⁶⁴¹ The London Metropolitan area is again an exception wherein the elected Mayor doubles as the PCC. It was envisaged that the PCC election process would generate debate and competition amongst prospective candidates and stimulate community consultation all across England since the local citizenry would presumably want to elect the candidate with the most rounded and convincing agenda.

Once elected it is the PCC's responsibility to maintain a Police and Crime Plan in consultation with the Police Chief which should set out the needs and wants of the local citizenry. The 2011 Act provided that the local police and crime plan should set out the annual local targets for the force and the financial requirements deemed necessary to fulfil those priorities.⁶⁴² The PCC should ultimately voice the community's concern and ensure that the police chief is fully aware of local community concerns. The PCC, acting in cooperation with its Police and Crime Panel, can proceed to dismiss a territorial police chief on the basis of inadequate attainment of the objectives set out in the Police and Crime Plan.⁶⁴³ The Police and Crime Panel (PCP) of sitting local councillors is essentially expected to serve as a second layer of democratic oversight and transparency by scrutinising the performance of the PCC, requesting the PCC to submit a written report on police activities or by calling the PCC before its public meetings to answer questions.⁶⁴⁴ The Panel may make recommendations to the PCC, publish any oral or written responses received from the PCC or request an inspection by Her Majesty's Inspectorate of Constabulary (HMIC).⁶⁴⁵ HMIC can subsequently issue directions to the PCC to remedy any budgetary, financial or procedural irregularities identified upon inspection.⁶⁴⁶ The Panel must also be notified by the IPCC about any complaints made about the PCC

⁶³⁸ Loader (n336) 31 – 33

⁶³⁹ Lustgarten (n15) 33,78

⁶⁴⁰ Adrian James, *Examining Intelligence-led Policing* (Palgrave Macmillan 2013) 19, 20

⁶⁴¹ Police Reform and Social Responsibility Act 2011 s 5 – s 11

⁶⁴² *ibid*

⁶⁴³ *ibid* s 28 & s 29

⁶⁴⁴ *ibid* s 11 & s 12

⁶⁴⁵ *ibid* s 28 – s 38

⁶⁴⁶ *ibid* Schedule 1

and may move to dismiss a PCC but only on the basis of a criminal conviction.⁶⁴⁷ In the case of London, the functions of the Panel are carried out by the London Assembly, which must secure the consent of the Home Secretary before dismissing the Metropolitan Police Commissioner in agreement with the Mayor.⁶⁴⁸

While the PCC is tasked predominantly with focusing on issues of local concern, to ensure that the official does not prioritise local initiatives over and above the needs of regional and national police cooperation, the PCC's Police and Crime Plan, like the plans of the traditional Police Authorities, must take cognisance of any national strategic priorities issued by the Home Secretary.⁶⁴⁹ A degree of national coordination and policy making is particularly important in the areas of terrorism, drug trafficking and human trafficking, crimes which are typically carried out by and coordinated through criminal organisations and networks with a national profile and reach.⁶⁵⁰ Not only do the criminal organisations stretch across police areas but national governments have a particular vested interest in protecting the 'specific order' of government and parliamentary democracy from the threat of subversion and terrorism.⁶⁵¹ The Home Secretary may also provide PCCs with guidance on the development of their plans, particularly the financial aspects of their plans which will ultimately form part of the national police budget presented to and approved by Parliament.⁶⁵² The Home Secretary may also require police forces to share equipment and other resources to realise financial efficiencies in the form of 'mutual aid'.⁶⁵³

Although the PCC construct represents the re-establishment of a clear mechanism of local democratic accountability for the first time in decades, obvious questions arise around the ability of a single elected officer to gauge the concerns and needs of countless disparate communities over an entire police area, which typically consists of numerous towns, cities and millions of inhabitants. A perusal of the election literature disseminated throughout the country would suggest that candidates are not even seeking to represent each and every constituent community for they only require a majority turnout to be elected. Moreover there is nothing which requires PCCs to continuously engage in grass-roots community consultation once they take office. Once elected, their jobs are effectively safe regardless of whether or not they actively seek out dialogue with each and every neighbourhood. In essence, there is absolutely no guarantee of significant consultation with minority communities either before or after an election.

There appears to be every possibility that PCCs, like many Police Authorities before them, will become wholly unrepresentative of the minority communities within their catchment areas. As Brogden and Nijar convey, the ethos of local democratic accountability advocates that police policy and action should be guided not just by the majority of working class voters but by the needs of each and every neighbourhood, each with their own distinctive crime problems and resident concerns.⁶⁵⁴ Skogan adds

⁶⁴⁷ *ibid* s 30

⁶⁴⁸ *ibid* s 48

⁶⁴⁹ Police Act 1996 s 38 – s 52

⁶⁵⁰ Mathieu Deflem, *The Policing of Terrorism* (Routledge 2010) 19 - 21

⁶⁵¹ Anderson et al (n63) 90, 167

⁶⁵² Police Reform and Social Responsibility Act 2011 s 7 & s 17

⁶⁵³ *ibid*

⁶⁵⁴ Brogden and Nijar (n582) 1 – 7, 23 - 27

that a central element of community-orientated policing is that police forces do not take a 'one size fits all approach' but are guided by and responsive to the acute needs of each and every neighbourhood.⁶⁵⁵ Similarly Reiner argues that the mechanisms for local democratic accountability need to be explicitly representative of race, gender and culture to the greatest extent possible.⁶⁵⁶ He outlines that inclusive mechanisms of local democratic accountability are particularly important in overcoming and addressing the increasingly fractured concept of 'community' caused by the acceleration of plurality, social division, cultural diversity and fragmentation in the post-modern, post-nation-state, globalised world.⁶⁵⁷

Loader and Mulcahy remark that late or post-modernity demands a cosmopolitan policing culture that is responsive to the new dynamic of community, one that is constantly in flux, inhabited by strangers with even greater demands.⁶⁵⁸ Jackson et al argue that in the post-modern world it is absolutely vital to systematically integrate the input of diverse communities into the policing policy process to ensure the continued 'legitimacy' of the public policing and future claims of 'policing by consent'.⁶⁵⁹ McGarry and O'Leary convey, with reference to Northern Ireland, that powersharing through proportional representative and parity of rights is crucial for policing a divided society.⁶⁶⁰ Loader and Walker argue that it is ultimately the State's responsibility to help produce trust and solidarity between strangers since the State construct is supposed to be the very embodiment of the resident community, namely the democratic political community upon which the liberty and security of its citizens depend.⁶⁶¹

Unfortunately, depending on the individual nature of the PCC there is every possibility that the PCC construct can be reduced to little more than a superficial 'public relations' exercise which promotes the idea of local democratic accountability without the substance. As Skogan notes, by virtue of the simple establishment of constructs of local democratic accountability governments can merely advertise and assume that there is a degree of civic participation but without actually facilitating it in practice.⁶⁶² Regrettably, the inherent weaknesses of the PCC project chimes with Banton's observations of 1973 that police forces have a tendency to promote an image of community-orientated policing but that this mythical 'image' is often based on the creative expressions of a 'public relations' PR specialist employed to portray an attractive image and narrative to the media without actually engaging in 'public relations' or 'community relations' by way of grass-roots consultation.⁶⁶³ Arguing along similar lines, Mawby states that police forces should be image conscious and engage in 'image management' but that such 'image work' must be based on the

⁶⁵⁵ Wesley Skogan, 'Community Participation and Community Policing' in Brodeur (n426) 88 - 89

⁶⁵⁶ Reiner (n443) 682, 683

⁶⁵⁷ *ibid* 686 - 693

⁶⁵⁸ Loader and Mulcahy (n275) 320 - 325

⁶⁵⁹ John Jackson et al 'Why do people comply with the law' (2012) 52 *British Journal of Criminology* 1052 - 1062

⁶⁶⁰ John McGarry and Brendan O'Leary, *Explaining Northern Ireland: Broken Images* (Blackwell 1995) 397, 398

⁶⁶¹ Loader and Walker (n78) 167 - 172

⁶⁶² Skogan (n326) 31, 32

⁶⁶³ Michael Banton, *Police - Community Relations* (Willan Collins 1973) 12 - 17

ethical conduct of its police officers during interactions and engagements with the public rather than the myth of media presentation.⁶⁶⁴

Manning suggests that the ‘creative’ media presentations of ‘community-orientated policing’ have contributed significantly to the convolution of the concept of local democratic accountability.⁶⁶⁵ He argues that police forces have increasingly attached the label of community-orientated policing to everything from basic police patrol to neighbourhood watch, all the time losing sight of the fact that community-orientated policing was traditionally a precise concept, symbiotic with local democratic accountability, pertaining to systematic community input into all facets of local police policy, strategies and tactics.⁶⁶⁶ Similarly, Reiner remarks that chief constables display a broad affinity with the idea of community-orientated policing because it is so easy to claim that all of the functions carried out by police forces, whether remote or inclusive, are undertaken on behalf of the public and therefore community-orientated.⁶⁶⁷ Brogden and Nijar comment that the label of ‘community-orientated policing’ has increasingly become obfuscated not only within States but within the wider transnational discipline of ‘security sector reform’ because politicians and police forces increasingly consider the concept to be ‘value free’, as an antidote for all ills, referring to everything but nothing at the same time.⁶⁶⁸

Although the PCC construct appeared to hold the promise of enhanced local democratic accountability, it has arguably been more successful in reinforcing the superficial, value free notion of community input. Moreover, PCC candidates are generally tied to political parties which suggests that some political parties may exploit the opportunity of running candidates who promote the party’s brand of politics within the constituency rather than prioritising and addressing the needs and wants of the constituent neighbourhoods. Such party politics in the past have, for instance, promoted the ideologies of police ‘consumerism’ and Hayekian free-market policies which guided the Sheehy Inquiry’s recommendations for privatisation and deregulation in English policing in 1992, resulting in a major crisis of confidence in the public police service.⁶⁶⁹ As Reiner conveys, local democratic accountability should require significant human and administrative resources, voluminous community meetings, consultative strategy formulation and the proactive deployment and instruction of police officers, it is by no means ‘policing on the cheap’.⁶⁷⁰

Another English initiative in the area of local democratic police accountability which held similar promise at the outset is the multi-agency Crime and Disorder Reduction Partnerships (CDRP). The Crime & Disorder Act 1998 ultimately required each police chief to participate in a formal partnership with representatives from local government, the probationary service, the health authority, drug and alcohol addiction centres, youth centres and neighbourhood watches amongst other interested community groups to ensure that police chiefs were well appraised of community concerns and could encourage more social and economic solutions to prevailing crime

⁶⁶⁴ Mawby (n159) 1 – 29; 36 - 62

⁶⁶⁵ Manning (n39) 204 – 206

⁶⁶⁶ *ibid*

⁶⁶⁷ Reiner (n443) 110 - 122

⁶⁶⁸ Brogden and Nijar (n582) 9 - 14

⁶⁶⁹ Loader and Mulcahy (n275) 7 – 28, 259 - 261

⁶⁷⁰ Reiner (n443) 141 - 143

problems.⁶⁷¹ Each CDRP was required to develop a multi-year rolling partnership plan to tackle the priority crime areas identified by the forum. Police chiefs were also encouraged to include the commanders of each BCU in the CDRPs to engender closer working relationships between local communities and the BCU since each community normally has their own set of crime problems and anxieties.⁶⁷² Unfortunately, it appears that community and police force engagement with the CDRPs has dwindled in recent years as CDRPs have focused increasingly on the simple compilation of statistics through local crime audits in partnership with the local divisional police commanders. The audits are, in effect, a public report on crime hot spots, youth offending, child abuse, drug crime and hate crime rates within the community amongst other priority crime areas. The audit is typically compiled by a Community Safety Unit (CSU) within the offices of local government and published for public consumption.

England clearly needs to undertake additional reforms to develop more effective models of local democratic accountability but the prevailing system is undoubtedly a marked improvement from the pre-2012 arrangements. It is submitted that the government should give considerable thought to blending together the two constructs of PCC and CDRP. Both constructs depend almost entirely on the character and enthusiasm of the PCC which can ebb and flow across time and place. An amalgamation could potentially take the form of a 'partnership' of elected representatives each elected by disparate community groups and minority associations, not too dissimilar to the Northern Ireland Policing Board (NIPB), which serves to keep the police chief apprised of community concerns and subsequently holds him or her accountable for his or her performance by threat of possible dismissal.

Although the mechanisms in England need vast improvement to meet the ideal of local democratic accountability, the English system appears to be quite advanced in comparison to Ireland. Ireland, for its part, only recently introduced a semblance of local democratic accountability in the form of Joint Policing Committees (JPC). Since Ireland's single police force is unitary and centralised, in complete contrast to England's decentralised model of 43 separate police forces, the government long considered it unnecessary to establish a police authority at the national level to oversee the strategies of the national Police Commissioner since it would arguably duplicate the role and responsibility of the Minister for Justice.⁶⁷³ As such, the power to issue general directions pertaining to policy, strategies, priorities, performance or any other matter relating to the management of the police force as well as the power of dismissal was long vested squarely within the office of the Justice Minister. The Minister, like the English PCCs, is required to form annual or multi-annual policing plans in consultation with the Police Commissioner.⁶⁷⁴

From an accountability perspective, the Irish government has long appeared to have fundamentally missed the entire point and importance of the ethos of local democratic accountability and community orientated policing. Police policy and conduct should

⁶⁷¹ Crime & Disorder Act 1998 s 5 – s 7

⁶⁷² Peter Neyroud 'Managing the Police through a time of change' in Alistair Henry and David Smith (eds), *Transformations of Policing* (Ashgate 2007) 218, 219

⁶⁷³ Walsh (n43) 11, 12, 101 - 106

⁶⁷⁴ Garda Siochana Act 2005 s 20 to s 25, s 46 & s 47

be guided not only by professional police expertise and national strategic policy objectives but by the needs of each and every neighbourhood, each with their own distinctive crime problems and resident concerns. Walsh remarks that even though the Irish standpoint remains considerably inept today, it was particularly surprising that it prevailed in the 1920s when Irish policy makers were trying to shake off the yoke of the widely disliked English colonial policing model of the Royal Irish Constabulary.⁶⁷⁵ He comments that although the Irish government signalled its intention to establish a democratic and consensual unarmed police force, it was remarkable that the Irish government blatantly avoided the development of Watch-style Committees to oversee the work of local police commanders.⁶⁷⁶ The mechanisms of local democratic accountability were a central tenet of ‘policing by consent’ in England and could even be traced back to Ireland’s pre-19th Century baronial constabulary model.⁶⁷⁷ He conveys that the continuation of central government control from the RIC to the new Garda Siochana model was undertaken in part to ensure that the establishment of new Irish Police got off the ground and could effectively suppress the dissidents and their Republic Police in the 1920s.⁶⁷⁸ Walsh observes that the government was so concerned with maintaining full policy and regulatory control over the new police force that the first major policing bill, the Garda Siochana (Temporary Provisions) Bill 1923, was introduced only after the first recruits had already been dispatched to barracks and stations, leaving little room for public debate or democratic input.⁶⁷⁹

To all intents and purposes the Irish approach regrettably copper-fastened the Irish police force as a constitutional component of the executive government both in spirit and in principle, without any significant concern for local democratic policing.⁶⁸⁰ The effort by the newly independent Irish government to remove from the Irish psyche and the new policing legislation all controversial processes and terms associated with the RIC was almost entirely superficial since the quasi-military hierarchical structures of the RIC and, most importantly, its relationship to central government, were largely maintained.⁶⁸¹ The toxic nature of this ongoing politicized relationship is well reflected in one particular case of cross-border police cooperation in the 1980s wherein the Minister for Justice instructed the Irish Police Commissioner to cancel meetings with the RUC Chief Constable until a political dispute over the prosecution of RUC police officers for apparent ‘shoot-to-kill’ incidents could be resolved.⁶⁸²

Ireland has only taken steps in recent years to introduce a semblance, if only the appearance, of local civilian involvement in police policy making. It has not done so out of some enlightened thinking around local democratic accountability but largely because the Morris Tribunal recommended the establishment of mechanisms for local civilian input to address major findings of police malpractice and corruption. The subsequent Garda Siochana Act 2005 provided for the establishment of Joint Policing

⁶⁷⁵ Walsh (n43) 11, 12, 101 - 106

⁶⁷⁶ *ibid*

⁶⁷⁷ *ibid*

⁶⁷⁸ *ibid* 7 - 12

⁶⁷⁹ *ibid* 10, 11

⁶⁸⁰ *ibid* 73 - 80

⁶⁸¹ *ibid* 7 - 15

⁶⁸² Shaun Flynn and Dennis Coughlan, ‘Security talks off over “shoot to kill” stance by British’, *Irish Times* (Dublin 27 Jan 1988) 1

Committees (JPC).⁶⁸³ The JPCs, containing a mix of local councillors, community representatives, non-governmental organisations and Garda officers from the relevant division, are required to hold periodic public meetings to discuss the nature and patterns of crime and policing responses in the local area. However they are completely devoid of any power of dismissal or the authority to issue formal general policy instructions, these are powers vested solely in the office of Minister for Justice.⁶⁸⁴

Unfortunately local consultative committees like the JPCs have long been a staple of English towns and cities, complementing Police Authorities and PCCs since the Brixton riots of 1981.⁶⁸⁵ More importantly, they have long been considered to be highly ineffective. Numerous studies, not least Loader's research in 1996, have shown that the agendas of local consultative committees, which have no power of police chief dismissal, are generally dominated by the police.⁶⁸⁶ Moreover meetings are largely attended by community activists, not the common working class members of the community, ethnic minorities or vulnerable segments of society that frequently come into contact with the police.⁶⁸⁷ Topping's analysis of almost identical local policing partnerships in Northern Ireland, which are known as District Policing Partnerships (DPPs), found that they have been reduced in practice to public meetings of less than 20 participants, often dominated by the same handful of community activists.⁶⁸⁸ Similarly, his research indicated that police policies and priorities remained largely police-led, devoid of any substantial civilian input.⁶⁸⁹

Furthermore, Lord Scarman noted in 1981 that within community consultation forums senior police officers typically consider operational police matters to be inappropriate topics for community consultation and refuse to divulge explanatory answers.⁶⁹⁰ Morgan observes that local consultative committees are not only largely ineffective but there is often little awareness of the existence of the committees amongst members of the public.⁶⁹¹ Similarly Manning writes that neighbourhood representatives are typically not involved in meetings and meetings rarely find a problem on which the attendees and the police representatives agree.⁶⁹² Walsh's research indicates that the JPC's scattered throughout Ireland have had a negligible effect on local policing plans at best.⁶⁹³

Denmark's system for local democratic accountability, on the other hand, appears to be a hybrid between the extant Irish and English systems. Denmark's 12 District Police Commissioners (Politidirektorerne) are required to work closely with the mayors of municipalities that fall within their respective districts and tailor their activities to local needs. The respective commissioners, or their deputies, are required

⁶⁸³ Garda Siochana Act 2005 s 35 & s 36

⁶⁸⁴ *ibid*

⁶⁸⁵ Police & Criminal Evidence Act 1984 s 106

⁶⁸⁶ Loader (n336) 10 - 29

⁶⁸⁷ *ibid*

⁶⁸⁸ John Topping 'Community Policing in Northern Ireland' (2008) 18:4 Policing and Society 381, 382

⁶⁸⁹ *ibid* 386, 387

⁶⁹⁰ Scarman (n574) 5.55 – 5.58

⁶⁹¹ Rod Morgan 'Police Accountability: Developing the Local Infrastructure' British Journal of Criminology 27:1 (1987) 88 - 95

⁶⁹² Manning (n13) 157 - 162

⁶⁹³ Walsh (n40) 407

to chair a council (Kredsradet) alongside the constituent mayors and community representatives at least four times a year to discuss crime trends and community policing issues and initiatives.⁶⁹⁴ The Commissioners, together with the local mayors, must set local performance targets for the district but these should be broadly in line with policies agreed with the National Police Commissioner (Rigspolitchefen) within their respective annual contracts.

Most importantly, the National Police Commissioner should, in theory, facilitate local democratic accountability by agreeing annual performance contracts with each police chief individually so that the peculiar needs and wants of the local community can be accommodated. The annual contracts agreed between the National Police Commissioner and each district Commissioner generally set out priorities, targets, budget allocations and other issues for the coming year.⁶⁹⁵ To ensure transparency, the contracts are typically published on the Danish district police websites. Poor performance can lead to a district commissioner being dismissed by the National Police Commissioner.⁶⁹⁶

Denmark also employs another novel construct at the national level to ensure that Danish police chiefs are performing well but, most importantly, to ensure that they are not being overly influenced by either local mayors or national government. The relationship between the police chiefs and the National Police Commissioner, who effectively carries out the traditional regulatory and budgetary functions of the Minister for Justice (Justitsministeren), is shaped by way of a round-table meeting (Koncernledelsen) involving all of the officials at least six times a year.⁶⁹⁷ The 12 Police Commissioners meet together with the National Police Commissioner and the DPP (Rigsadvocaten) to discuss strategic and performance issues and the status of priority cases, especially those of interest to the media.⁶⁹⁸ The idea of the round-table forum is to ensure that no one official dominates the policing agenda.⁶⁹⁹ The National Police Commissioner essentially acts as a chairman to stimulate investigations, coordination and cooperation amongst the district commissioners. In practice, the National Police Commissioner and the DPP only interfere with operations on the ground by way of offering additional finances or resources to enhance an investigation or by requesting that joint investigations be led by a more suitable district. The National Police Commissioner partakes primarily to proffer regulatory or budgetary advice and solutions while the DPP partakes primarily to stimulate cooperation and resolve conflicts of jurisdiction.

It is fundamentally clear from the comparative analysis that neighbourhood communities are highly unlikely to participate in community-police consultative groups which have no power of chief officer dismissal since they will be dominated by the agenda of the police force rather than vice versa. Moreover, if constructs of local democratic accountability are developed which are bestowed with a power of chief officer dismissal, such as a police authority or PCC, steps must be taken to

⁶⁹⁴ Administration of Justice Act s 108 - s 114

⁶⁹⁵ *ibid*

⁶⁹⁶ *ibid*

⁶⁹⁷ National Police Commissioner, *Annual Report* (Rigspolitiet 2007) 9

⁶⁹⁸ *ibid*

⁶⁹⁹ Informal interview with a representative of the National Police Commissioner (Copenhagen, 2 November 2012)

ensure that such constructs are not too remote or under-resourced to address the needs and concerns of each and every unique neighbourhood community to the greatest extent possible. The national legislature that gives shape and form to these constructs of local democratic accountability cannot simply assume that residents will engage with local partnership and liaison bodies once established. The founding statutes should be highly detailed, outlining precise obligations and relationships at multiple local, regional and national levels in a similar fashion to the Danish approach.

Future constructs must do more to ensure engagement with disenfranchised communities. In particular, as Skogan notes, in many cases communities are systemically averse to engaging in community-police dialogue out of hostility and distrust caused by prolonged periods of over-policing, abusive practices, perceived prejudices and generational neglect.⁷⁰⁰ Moreover, Loader remarks that teenagers, who are the most likely demographic to come into frequent contact with the police due to their habitual loitering, are the least likely to be represented at police-community meetings.⁷⁰¹ Loader's research indicates that the police generally empathise with youths due to the lack of opportunities available to them but he argues that the police must do more to develop 'institutional spaces' which facilitates open and inclusive dialogue and communication between the police and youths and all affected parties, which he refers to as 'discursive policing'.⁷⁰² Although the English and Irish constructs for local democratic accountability are in particular need of reform to address significant weaknesses, the most important feature for the purposes of this analysis is that each jurisdiction has a tangible construct in place to facilitate local democratic accountability in the first instance. Each jurisdiction evidently claims to adhere to an ethos of community input into local police policy albeit there are significant variations in approach and effectiveness in practice.

The importance of national democratic accountability

The mechanisms of national democratic accountability take a different shape and form to the constructs of local democratic accountability but the purpose of both is largely the same, to facilitate the airing of complaints, concerns, questions and simple misunderstandings by members of the public about the propriety of police actions or omissions so that the conduct of the police force might be amended. Mechanisms of local democratic accountability facilitate civilian guidance of local police policy whereas the national mechanisms of democratic accountability should facilitate civilian guidance and scrutiny of national laws, regulations, codes and policies governing the structures, powers and procedures of the police. National democratic accountability should facilitate the questioning, review and amendment of the laws that shape and define the police organisation, the codes of procedure that define police processes and human rights protections, the criminal laws that police officers are expected to enforce and, most importantly, the laws and policies that define mechanisms of complaint and inquiry. The primary mechanism for national democratic accountability is the national parliament and legislature.⁷⁰³ As Breathnach observes, it is the role of parliament to decide the nature and limitations of police

⁷⁰⁰ Skogan (n655) 89, 90

⁷⁰¹ David Bayley and Harold Mendelsohn, *Minorities and the Police* (Free Press New York 1969) 45 – 47, 129 - 131

⁷⁰² Loader (n336) 50 – 53, 76 – 81, 158 - 166

⁷⁰³ Alderson (n166) 11 - 15

powers, the ways in which the police should apply their powers, what their function should be, how they should be trained and for what purpose.⁷⁰⁴

In the aftermath of a policing scandal, commentators and theorists often question ‘*quis custodiet ipsos custodiet*’ or ‘who guards the guardians’?⁷⁰⁵ Although the question is often posed as a ‘thorny conundrum’, the answer by and large is rather simple, in a constitutional democracy the ‘people’ do.⁷⁰⁶ Wilson remarks that when the police come under attack for doing the wrong thing or the right thing in the wrong way, there are usually calls for institutional or procedural change.⁷⁰⁷ Walsh remarks that when there is an inexorable rise in crime or a policing scandal, it is the parliament and its executive government that people tend to look to for answers and remedy.⁷⁰⁸

As Reiner has famously observed policing is unescapably political.⁷⁰⁹ It is the elected parliamentary legislators who typically decide whether statutes are introduced to define and re-define the structures and processes of the police force and the concomitant criminal law.⁷¹⁰ Anderson et al remark that it is the quality of the criminal law and policing acts that ultimately define the character of the police force and the subsequent quality of civil and political life in the State.⁷¹¹ Similarly, it is the legislative statute that defines the role of the Minister for Justice in regulatory and policy matters. The powers, nature and transparency of the internal and external mechanisms of complaint and inquiry are determined by the legislature so too is the extent of involvement that local democratic bodies enjoy in matters of local police policy.

The legislature is ultimately the architect of the mechanisms of police accountability and, by extension, the architect of police-community relations. Such is the relationship between policing and politics that Miller cogently observes that the peoples’ contact with the police generally colours their perception of government.⁷¹² In the context of cross-border police cooperation, it is similarly the parliament that has the power to develop legal frameworks to complicate, simplify, facilitate and regulate the conduct of cross-border police cooperation.⁷¹³ Due to the fact that parliaments bear such responsibility, the mechanisms that they have in place to ‘signal’ when and to what extent new laws, structures and processes are required are crucial.

Walsh notes that one of the most fundamental ingredients for the proper functioning of the policing architecture in a constitutional democracy is informed debate.⁷¹⁴ He conveys that democratic parliaments must function as a forum for the relatively fulsome disclosure of reports and inquiries concerning policing matters so that problems and concerns can be aired, debated and solutions subsequently

⁷⁰⁴ Breathnach (n196) 5, 6

⁷⁰⁵ Reiner and Spencer (n5) 1, 2

⁷⁰⁶ McGarry and O’Leary (n660) 98, 99

⁷⁰⁷ Wilson (n25) 1 - 3

⁷⁰⁸ Walsh (n43) 115, 367, 368

⁷⁰⁹ Reiner (n48) 1, 2

⁷¹⁰ Critchley (n177) xiii - xviii

⁷¹¹ Anderson et al (n63) 86

⁷¹² Miller (n154) 1, 2

⁷¹³ Cyrille Fijnaut, ‘The globalisation of police and judicial cooperation’ in Saskia Hufnagel et al (eds), *Cross-border law enforcement* (Routledge 2012) 11, 12

⁷¹⁴ Walsh (n43) 367, 368

introduced.⁷¹⁵ Marshall observes that, without an effective mechanism for local democratic accountability, parliament is often the most direct and appropriate way for a citizen to demand information, answers and reasons about police force performance.⁷¹⁶ Walker and Loader remark that parliamentary disclosure and debate is not only important for amending police conduct but it is often crucial for placating social fears, anxieties and alarm about rising crime or police performance.⁷¹⁷ Loader and Mulcahy eloquently convey that not only does policing symbolically shape people's judgements about the present but it is a potent medium through which they can channel fears and longings for the future.⁷¹⁸ The role of parliament is a fundamental feature of Marshall's concept of 'explanatory accountability'.⁷¹⁹ Patten comments that the democratic ideal is that everything should ultimately be made available for public scrutiny unless it is specifically in the public's best interest for the government to withhold it.⁷²⁰

In line with the ideology of local democratic accountability, Foucault's standpoint was that governments should ultimately be driven not by a partisan or fascist majority but be inclusive of, representative of and ultimately guided and directed by the multi-cultural citizenry.⁷²¹ He states that the legislature should not prioritise the preservation of governments but act in the complete service of all those who are governed, both the majority and the minority, in order to let populations and the common good flourish.⁷²² Punch observes that, since social conditions and the needs, wants and anxieties of the citizenry are ever changing, the process for review, accountability and amendment is never finished and must be constantly enhanced.⁷²³ To echo Kleinig's eloquent summation, police accountability is not only a normative demand that can be made but should be thought of structurally as a condition that exists.⁷²⁴ Unfortunately very few studies of parliamentary oversight of the policing function have been undertaken. Brogden's 1982 publication on *The Police: Autonomy and Consent* makes vague reference to ministerial powers, Walker's 2000 thesis on *Policing in a Changing Constitutional Order* makes reference to various parliamentary-established commissions of inquiry but Walsh's ground-breaking book on the *Irish Police* appears to be one of the only in-depth analyses of parliamentary apparatus. Unfortunately the latter is specific to one jurisdiction only.

Parliamentary Committees

The main apparatus for responding to complaint and inquiry within Parliament is typically the Minister for Justice but the main apparatus for monitoring and evaluating the policing system, as well as the performance of the Minister, is typically the Standing Parliamentary Committee. Parliamentary members' questions to the Minister are particularly useful for making inquiries on behalf of constituents and bringing matters to the attention of the parliamentary select committees but such questions

⁷¹⁵ *ibid* 367, 368, 383, 409

⁷¹⁶ Marshall (n46) 633

⁷¹⁷ Loader and Walker (n78) 114

⁷¹⁸ Loader and Mulcahy (n275) 303, 304

⁷¹⁹ Marshall (n46) 633

⁷²⁰ Patten Commission (n44) 36

⁷²¹ Foucault (n284) 43, 44, 78, 79, 100 - 105

⁷²² *ibid*

⁷²³ Punch (n49) 202

⁷²⁴ Kleinig (n59) 210 - 213

typically pertain to a very particular policing action or function and are usually asked *ad hoc* on behalf of a constituent or on foot of a media report. Walsh remarks that members of parliament tend to focus their questions on narrow operational controversies in their local constituency as opposed to discussing national strategic priorities.⁷²⁵ Moreover, parliamentary debates typically only occur on an *ad hoc* basis in response to major crime occurrences or policing scandals if and when they arise. For example, of the 20 debate days available to the opposition in the House of Commons in 2009, only one day was set aside for issues of law and order and one day for knife crime.⁷²⁶ In the context of cross-border policing, the Government itself scheduled only 2 days of debate on European affairs, during which time matters of cross-border police cooperation were ignored.⁷²⁷

Due to their regulatory responsibility for policing matters and their broader obligation to promote new legislation if needed, it is a matter of common convention that Ministers strive to provide answers pertaining to all non-sensitive areas of policing, whether the question relates to drug trafficking, armed robberies, violence against women, community orientated policing, street patrol or local crime.⁷²⁸ Prior to parliamentary debates or in response to written or oral questions, the Minister for Justice or Home Affairs will normally request a report on the matter from the relevant police chief or commissioner pertaining to the issue at hand.⁷²⁹ In practice, the Minister rarely ever deals directly with a police chief or commissioner, usually communicating instead through a permanent secretary from the ministerial department.

It is not unusual for Ministers to answer questions by reminding their critics within Parliament that they are unable to instruct police officers to carry out operations in one way and not another since such instructions may impinge upon the force's operational independence.⁷³⁰ They may typically only issue general strategic directions pertaining to policy, priorities, performance or any other matter relating to the management of the police force and may proffer advice that police chiefs are only bound to consider. However Marshall remarks that successive Home Secretaries have evidently not understood the precise meaning of operational independence by consistently claiming that they could not be questioned in Parliament about the discharge of duties by individual police officers from the London Metropolitan Police even though such questions typically pertained to policy matters for which the Home Secretary could traditionally issue general policy instructions.⁷³¹ The Danish Auditor General conducted an inquiry into the quality of the Danish Minister's reporting to the Parliament in 2009 and reported that the quality of the key indicators provided were sufficiently good to represent fairly the results achieved by the police.⁷³² Nevertheless, the mechanism of parliamentary debate is far from comprehensive since the matters covered are haphazard and piecemeal, addressing only a small ambit of policing issues.

⁷²⁵ Walsh (n43) 379 - 393

⁷²⁶ Philip Norton, *Parliament in British Politics* (2nd edn, Palgrave Macmillan 2013) 112, 113

⁷²⁷ *ibid* 117, 118

⁷²⁸ Walsh (n43) 367 - 384

⁷²⁹ *ibid* 111 - 126, 382, 383

⁷³⁰ *ibid* 112-125, 384 - 396

⁷³¹ Marshall (n46) 628 - 631

⁷³² Auditor General, *Annual Report* (Rigsrevisionen 2009) 6

One problematic feature is that the respective Minister for Justice or Home Affairs tends to praise the ‘excellence’ of the police force rather than lead with criticisms.⁷³³ If a Minister for Justice proceeds to criticise a police force, they are in effect criticising their own political performance as the primary elected official responsible for police regulation, strategic direction and resourcing.⁷³⁴ Similarly, as Walsh observes, police chiefs are highly unlikely to criticise the resources provided by the national government or the policy performance of the Minister for fear of causing a rift with the Minister which may lead to calls for their dismissal or weaken the ability of the police chief to secure a bigger budget in the following fiscal year.⁷³⁵

Even the annual or multi-annual national police budget which must typically be approved by Parliament does not engender much constructive debate within Parliament.⁷³⁶ The national police budget is generally presented and treated as a *fait accompli* since it is widely appreciated that the Ministry of Justice or Home Affairs will already have pored over the financial figures outlined in the police estimates to ensure that the force expenditure is in line with government policy and, most importantly, will have prioritised those crimes of national concern such as organised crime and terrorism which parliaments are invariably interested in.⁷³⁷ Walsh conveys that disagreement typically arises only over whether too much money is being spent on major crime initiatives, taskforces, IT projects and equipment upgrades rather than whether and to what extent the budget apportioned to each police division is sufficient to enable each police department to perform to its potential in line with community needs and wants.⁷³⁸ Neyroud and Beckley observe that parliaments have a tendency to prioritise monetary value over social value.⁷³⁹

Since the Parliamentary chambers offer little opportunity for the constructive development of solutions to community concerns and inquiries, it is the construct of the parliamentary committee that is supposed to address concerns and developments in a systematic way. Unlike the individual Member of Parliament who typically does not have the time or resources to conduct inquiries or investigations into police practice or the adequacy of ministerial oversight, the Parliamentary Committee is tasked with such responsibility and generally bestowed with the powers necessary to inquire into prevalent issues of concern. All three jurisdictions maintain parliamentary committees which oversee the policing function. In England, the Home Affairs Committee which corresponds to the work of the Home Office is the House of Commons Standing Committee responsible for policing matters.⁷⁴⁰ Each department of government typically has at least one standing committee overseeing its legal and administrative activities.⁷⁴¹ Each committee typically consists of a dozen or so members, each of whom represent one of the political parties or affiliations while the chairperson of each committee is elected by parliamentary vote.⁷⁴²

⁷³³ Walsh (n43) 386 - 400

⁷³⁴ Walsh (n43) 115 - 129, 386 - 409

⁷³⁵ *ibid*

⁷³⁶ National Police Commissioner, *Annual Report* (Rigspolitiet 2001) 22, 23

⁷³⁷ Walsh (n43) 129-136

⁷³⁸ *ibid*

⁷³⁹ Neyroud and Beckley (n164) 119 - 121

⁷⁴⁰ Norton (n726) 30, 31, 126 - 129

⁷⁴¹ *ibid*

⁷⁴² *ibid*

The primary functions of the select committees, whether departmental or cross departmental, is to carry out reviews of key legislation already in force, to evaluate whether the legislation has achieved what the legislators had in mind and to contribute to the drafting and introduction of new legislation.⁷⁴³ The select committees will typically keep legislation under review by holding regular inquiries whereby they are empowered to summon witnesses to provide oral or written evidence, whether public or private sector, and may ask the government to produce documents for the purposes of shedding light on an issue.⁷⁴⁴ Committees typically hold weekly meetings, choose their own agenda and topics of inquiry and generally publish the details and findings of their inquiries. Crucially, their meetings are normally open to the public and usually recorded on dedicated internet and television channels. The Home Affairs Committee's agenda is often driven by the policy agenda of the Home Office as well as any new legislation under consideration, any regulations under consideration, annual reports from the territorial police forces, inspection reports from HMIC, complaints under investigation at the IPCC, local reports from the PCCs and their Police and Crime Panels and concerns raised by the local, national and international media.

The Westminster Parliament also maintains a number of cross-departmental select committees, of which the European Scrutiny Committee is particularly relevant for matters of cross-border police cooperation.⁷⁴⁵ Established in 1974, the European Committee receives all EU Council and Commission proposals, white papers and reports, necessitating a weekly sift of dozens of documents.⁷⁴⁶ Matters of cross-border police cooperation fall under the rubric of the Committee's Justice and Home Affairs sub-committee. The European Committee functions in a similar fashion to the Home Affairs Committee. Upon request, government departments must provide the Committee with explanatory memos and reports outlining the government's position and the considered effects of new laws and policies.⁷⁴⁷ Although the Committee exists in part to unburden the departmental select committees from having to consider EU matters as well as national ones, it frequently requests comments from the relevant departmental select committee due to their national expertise in the relevant areas.⁷⁴⁸ Ministers may also be called upon to appear before the Committee prior to EU Council meetings but the Committee has no legal authority to force a Minister to follow its advice or even to wait for it to reach a decision before entering negotiations on the EU level.⁷⁴⁹

The European Scrutiny Committee also works in partnership with the House of Lords EU Committee which is largely responsible for carrying out thematic reviews of legislative and policy developments.⁷⁵⁰ The House of Lords' Committee also has a Home Affairs sub-committee which typically carries out reviews in the area of cross-border police and judicial cooperation.⁷⁵¹ Like the departmental select committees, the

⁷⁴³ *ibid* 91 - 101

⁷⁴⁴ *ibid* 31, 126 - 130

⁷⁴⁵ *ibid*

⁷⁴⁶ *ibid* 153 - 157

⁷⁴⁷ *ibid*

⁷⁴⁸ *ibid*

⁷⁴⁹ *ibid*

⁷⁵⁰ *ibid* 134 – 136, 157

⁷⁵¹ *ibid* 42, 158, 159

Lords can take oral and written evidence to inform its reviews and recommendations.⁷⁵² The reports published by the relevant committees and, in particular, their opinions on various EU Commission white papers and judicial decisions are considered to be crucial for providing a counter-balance against the rhetoric of the national and supranational executive.

A number of other departmental and cross-departmental committees tend to play a more incidental role in policing matters. The Commons' Joint Committee on Statutory Instruments as well as the Lords' Delegated Powers Committee and Secondary Legislation Scrutiny Committee are tasked with keeping the regulative performance of ministers under review, ensuring that they introduce any and all secondary instruments demanded by statute, such as the PACE Codes of Practice, and that such regulations are appropriate.⁷⁵³ Any regulation issued by the Home Secretary may be subject to annulment by Parliament if it is deemed unsuitable.⁷⁵⁴ The Public Accounts Committee also plays a key role in keeping the financial expenditure and budgets of each governmental department under review, which may include a review of the national police budget upon an inquiry into the Home Office's expenditure. The cross-departmental Joint Committee on Human Rights has also conducted reviews of policing legislation such as the Terrorism Acts following public outcry or contentious judicial rulings.⁷⁵⁵

Ireland and Denmark have similar parliamentary committees in place. Ireland's Joint Committee on Justice, Equality, Defence and Women's Rights is responsible for matters of public policing and a European Committee scrutinises matters concerning EU law and policy.⁷⁵⁶ Denmark's Parliament (The Folketing), maintains a similar Justice Committee as well as a European Affairs Committee.⁷⁵⁷ In a similar fashion to the Westminster Home Affairs Committee, the Justice Committees can typically compel witnesses, whether in the public or private sector, to attend meetings or produce documents in order to address relevant concerns and to keep its members briefed on topical issues. They normally have recourse to the police force's annual report, any multi-annual policing plans, any reports issued by the external complaints body or inspectorate as well as any reports requested by the Minister albeit in redacted form to safeguard case sensitive information and national security. From a transparency perspective, the Annual Report and Crime Reports published by Denmark's National Police Commissioner provide particularly detailed descriptions of major and special operations undertaken, statistics on the number of patrolmen deployed and the total patrol hours in each district as well as the nature of future threats along with the standard lists of statistics outlining the number of crimes reported, crimes cleared, and drug, weapons and asset seizures.⁷⁵⁸

With respect to European matters, like the English parliamentary system, the Irish and Danish Parliamentary European Committees must normally be provided with a copy

⁷⁵² *ibid*

⁷⁵³ *ibid* 91 – 99

⁷⁵⁴ Police Act 1996 s 53

⁷⁵⁵ Norton (n726) 187-189

⁷⁵⁶ Dermot Walsh, 'The Garda Siochana: a legal and constitutional perspective' in Paul O'Mahony (ed), *Criminal Justice in Ireland* (Institute of Public Administration, Dublin 2002) 469, 470

⁷⁵⁷ National Police Commissioner (n736) 25

⁷⁵⁸ Lars Holmberg, *Policing Stereotypes: A qualitative study of police work in Denmark* (Galda and Wilch Verlag Publishers Berlin 2003) 35

of all relevant planned EU legislative measures together with a statement outlining the content, purpose and likely implications of the proposed measures. As a working rule, the respective European Committees are normally provided with a report compiled by the Minister every six months which provides a general overview of the initiatives introduced and the immediate plans of the various EU institutions within all areas of the Minister's competency. In Ireland, the Minister is only required to have regard to the recommendations made by the European Committee and may undertake negotiations against the recommendations of the Committee or, in urgent circumstances, even before notifying the Committee.⁷⁵⁹

However in Denmark, the Danish European Affairs Committee has formed a number of contracts with the Danish Folketing, one of which demands that the Minister for Justice attain its approval before committing to new policy initiatives on the EU level.⁷⁶⁰ To reinforce parliamentary authority, the Danish Folketing even maintains a Parliamentary Ombudsman who may conduct tribunal-style investigations into the unlawful, unreasonable or errant actions of serving ministers upon receiving a substantiated complaint.⁷⁶¹ Furthermore, a mixed High Court (Ringret), presided not only by sitting judges but representative members of the parliament, can subsequently be used to prosecute ministers for interfering with or obstructing the administration of justice.⁷⁶²

Regrettably, the Irish Parliament's Justice Committee has been considerably weakened in recent years. A Supreme Court ruling in the case of *Maguire v Ardagh* in 2002, which concerned the police shooting of John Carthy, appears to have generated a significant degree of confusion around the Irish Justice Committee's powers of inquiry.⁷⁶³ The Court effectively ruled that the Committee could not reach findings of fact about the culpability of a particular police officer or civilian, in much the same fashion as a Tribunal of Inquiry. The ruling has been somewhat distorted by Irish police officers who thereafter began to blatantly refuse to answer the committee's questions on procedural or operational matters where such answers could incriminate or tarnish their reputation or that of any other officer.⁷⁶⁴ The prevailing situation creates the remarkable scenario that the Minister for Justice is able to instruct the police Commissioner to carry out internal inquiries and to afford the Minister full disclosure but the parliamentary committee, which is responsible for overseeing the functioning of the Department of Justice and for gauging whether and to what extent legislation is having the desired effect does not enjoy nearly the same powers of inquiry.

The weakened powers of the parliamentary committee is considerably problematic in light of the fact that the Morris Tribunal found that the Minister for Justice was habitually placing too much faith or trust in the Police Commissioner to provide the Department of Justice with spontaneous and regular briefings, particularly when they

⁷⁵⁹ European Union (Scrutiny) Act 2002 s. 2 & s. 3

⁷⁶⁰ Lyse Lyck, *Denmark and EC Membership Evaluated* (Pinter Publishers London 1992) 237 - 242

⁷⁶¹ Steenbeek (n492) 175, 176

⁷⁶² *ibid* 149 - 156

⁷⁶³ *Maguire v Ardagh* (2002) 1 IR 585

⁷⁶⁴ Dermot Walsh, Irish experiences and perspectives' in Marianne Van Leeuwen (ed), *Confronting Terrorism* (Kluwer Law 2003) 51, 52

concerned police complaints, corruption and internal inquiries.⁷⁶⁵ Remarkably, the Irish Government addressed Justice Morris' concerns, not by enhancing the capacity of the parliamentary committee, but by introducing a requirement in the Garda Siochana Act 2005 for the Police Commissioner to provide any police records, statements or any other document in the possession of the police force to the Minister upon request and to report any matters of national significance to the Minister of Justice spontaneously and immediately as such issues arise.⁷⁶⁶ Walsh comments that the prevailing situation fundamentally limits transparency, accountability and democratic debate and participation around public policing in Ireland, effectively enabling the Minister to shield the Department of Justice and the police force from adverse public scrutiny to a remarkable degree.⁷⁶⁷

National inspectorates

England, Ireland and Denmark not only maintain similar mechanisms for national democratic accountability in the form of parliamentary committees for policing and European matters but they also maintain somewhat similar inspectorates which serve primarily to conduct thematic inspections on behalf of the parliament and the broader public. To enhance the transparency of the police organisation, largely for the benefit of parliamentary and public consumption, the creation and enhancement of national independent police inspectorates has become increasingly popular. Although England's Inspectorate, namely Her Majesty's Inspectorate of Constabulary (HMIC), has been conducting inspections and publishing reports on the organisational practices and financial efficiencies of English police forces since 1856, the relatively recent development of modern codes of procedure such as the PACE Act 1984 have demanded radically new inspections in the areas of police procedure and compliance.⁷⁶⁸ Neyroud remarks that, although HMIC was long considered to be empathetic towards the territorial police forces since it was almost always led by retired chief constables, following the introduction of PACE, which formally extended its mandate to scrutinise legal police procedures, its inspections have become increasingly open and critical of police work.⁷⁶⁹ HMIC typically carries out at least one inspection of each police force annually as well as a number of thematic inspections, whether focusing specifically on interrogation procedures, stop and search processes, the policing of domestic abuse, anti-social juvenile behaviour, child protection arrangements, the preparation of cases for trial or the standard of custody suites and processes.⁷⁷⁰ HMIC must not only be given complete access to police premises, documents, information and evidence in order to conduct their inspections but police forces are required to prepare and provide the inspectors with vast quantities of detailed information formatted according to HMIC's matrix of indicators.⁷⁷¹

Ireland and Denmark established police inspectorates relatively recently, which indicates that the construct is gradually becoming a feature of international best

⁷⁶⁵ Walsh (n40) 335, 336

⁷⁶⁶ Garda Siochana Act 2005 s 40 & s 41

⁷⁶⁷ Walsh (n43) 373, 374

⁷⁶⁸ County & Borough Police Act 1856 s 15; Police Act 1996

⁷⁶⁹ Neyroud (n672) 216 – 218

⁷⁷⁰ HMIC (n507) 55 – 57, 80 – 83, 194 – 199

⁷⁷¹ Clive Emsley, 'The birth and development of the Police' in Newburn (n175) 76 - 79

practice. Unfortunately it took a policing scandal in Donegal in the early 2000s and another recommendation of the Morris Tribunal to set up the Garda Inspectorate in Ireland.⁷⁷² Remarkably, the Irish legislation did not provide for annual budgetary or procedural reviews like its English counterpart but only enabled the Inspectorate to carry out thematic inspections upon the consent of the Minister for Justice.⁷⁷³ This meant that in practice the Inspectorate had to apply to the Minister to conduct each and every inspection or must simply wait until the Minister demanded that an inspection be carried out into some particular area of the police force. Although the Irish Inspectorate was designed to be independent, it was by no means independent in substance in the sense that it could not carry out routine inspections on a year by year basis but was, in effect, an external investigative agency to be employed at the will of the Minister. Denmark, on the other hand, uses a National Audit Office (Rigsrevisionen) which conducts and publishes an annual audit of the police organisation.⁷⁷⁴

Conclusion

England, Ireland and Denmark all appear to have conceptually similar mechanisms in place across the disciplinary, legal and democratic fields. They each have mechanisms for the external civilian investigation of police complaints, facilitate broadly the same judicial avenues for addressing police misconduct and have the same basic processes and structures for democratic accountability in the local and national spheres, not least consultative community constructs on the local level and similar parliamentary committees on the national level. More particularly, across the various areas the three States have taken remarkably similar evolutionary steps which suggest that there is a considerable degree of ‘knowledge transfer’ as well as an emerging ethos of best practice in police accountability. All three jurisdictions established new independent ‘investigative’ police complaints bodies between 2002 and 2012 respectively in order to enhance the transparency and effectiveness of their regimes for disciplinary accountability. In the concomitant area of local democratic accountability, Ireland has recently introduced Joint Policing Boards which has brought it much closer into line with similar English PACE committees and the Danish ‘Kredsradet’. Unfortunately, like much police reform, it only did so in the aftermath of a major police scandal.

Although the constituent dimensions of complaint and inquiry appear to be broadly similar across the three jurisdictions, there remains a considerable gap in standards within the realm of democratic accountability in particular. On the local level, Ireland is apparently one or two evolutionary steps behind both England and Denmark for both have developed novel constructs to address the issue of community consultation in recent years. England’s establishment of PCCs in 2011 and Denmark’s police reform of 2007, which gave effect to the round-table forum of police management (Koncernledelsen) and the simplified publication of police chief contracts, were designed in part to engender greater transparency.

However, as a word of caution, no major English-language analyses have been undertaken as of yet which convincingly show whether the Danish reforms have significantly enhanced democratic police accountability relative to the previous

⁷⁷² Garda Siochana Act 2005 s 117 & s 118

⁷⁷³ *ibid*

⁷⁷⁴ Steenbeek (n492) 175, 176

regime. The amalgamation of 53 district police forces into 12 in 2007 may conceivably have rendered police forces less responsive to the needs and wants of local communities as the police districts were recast as 'regional' rather than local. Nevertheless, it is submitted that it should ultimately boil down to the question of proactivity. Local democratic accountability demands that police forces are responsive to the needs and concerns of each neighbourhood as a unique client but whether that responsiveness comes through a small decentralised police force or through the local basic command unit of much larger centralised or regional police forces appears to be immaterial. The main issue is that the local police department, whether decentralised or centralised in nature, has both the flexibility and the stimulation to respond proactively to community needs. Regardless of the decentralised or centralised nature of the police force, the same ethos of local democratic accountability should apply.

It is submitted that the chapter on 'complaints and inquiry' and the preceding chapter on 'codes and co-option' represent a useful addition to modern epistemology. The thesis developed and tested a theoretical framework through which police accountability could be evaluated and measured. It ultimately found that England, Ireland and Denmark each have constructs and processes that fit relatively seamlessly within it. Most importantly, it found that the mechanisms and approaches were broadly similar to one another, albeit with some constituent variations. Although the dimensions of disciplinary, legal and democratic accountability had already been signposted and broadly accepted by the academic community, the comparative analysis and consolidation of the relevant structures and processes should enable policy makers, legislators and academics to view the issues and deficiencies in a way that was traditionally unfeasible due to a lack of such analyses.

Most importantly, the thesis added the issues of 'codes' and 'co-option' to the traditional framework of police accountability, not as supplementary addendums but as crucial sources which underpin the effectiveness and quality of the mechanisms of disciplinary, legal and democratic complaint and inquiry. 'Codes' arguably take centre-stage for they set the standards against which the disciplinary, legal and democratic mechanisms must ultimately measure police conduct. It is submitted that policy makers and legislators should adopt the relatively clear and concise framework of 'codes, co-option and complaint' to view, appreciate and subsequently enhance their national structures and processes for police accountability, some of which remain considerably weak from a comparative perspective.

The chapters have shown that the organisational weaknesses which facilitate police malpractice, brutality, secrecy and impunity can be significantly affected by key reforms, almost all of which can be introduced by way of legislative action. Continued failure to do so arguably generates a degree of parliamentary complicity in future cases of systemic police brutality, unlawful investigative practices, racism and internal secrecy, issues which have severely tainted the image and legitimacy of public policing in the very recent past.⁷⁷⁵ Unfortunately, as Bayley observes, major statutory reforms are normally only introduced in the immediate aftermath of major policing scandals and, most importantly, typically emanate not from the police force,

⁷⁷⁵ Bayley (n377) 93, 94

the executive government or the legislature but from civil society complaint and activism.⁷⁷⁶

As Manning indicates, the simple fact that a State practices a brand of democratic political government does not simply translate to the existence of a ‘democratic police’.⁷⁷⁷ It is the nature, form and effectiveness of the extant processes of police accountability that ultimately determines whether a police force can be considered to be democratic in the final analysis.⁷⁷⁸ The issue is not just about how a police officer behaves but how police officers are directed and regulated by the hierarchical police organisation, government, the legislature and broader civil society. Mawby observes that governments and police chiefs typically claim that they are ‘high on accountability’ and point to various mechanisms that they maintain but in many cases the rhetoric does not match the reality, quantity does not invariably equate to quality.⁷⁷⁹ In other words, police accountability is only as strong as the processes, structures and mechanisms established to deliver it.

The purpose of the next sequence of chapters is to determine whether and to what extent the EU project has incorporated or affected these conventional legal and administrative structures and processes for police accountability. In particular it aims to investigate whether and to what extent the EU has incorporated the various principles, approaches and mechanisms on the EU level in order to enhance the accountability of cross-border policing. The thesis aims to deduce whether any similarities between the national and supranational approaches serve to reinforce the idea of a common approach to police accountability across the wider EU or whether and how any substantial differences in approach on the supranational level have been reconciled with the Member States’ conventional legal and administrative mechanisms for police accountability.

⁷⁷⁶ David Bayley, ‘Police Reform: Who done it?’ (2008) 18:1 Policing and Society 7 - 13

⁷⁷⁷ Manning (n13) vii, viii, 46 - 62

⁷⁷⁸ Punch (n49) 9

⁷⁷⁹ Mawby (n159) 64, 65

Ch. 3 Codes as EU law and policy

The thesis will proceed to critically analyse the constitutional, legal and administrative values that shape the modern landscape of police accountability on the EU level. It can be anticipated that the development of common transnational measures and the challenges that they raise have been met by drawing upon and reconciling the Member States' long-standing national approaches to police accountability which are rooted in constitutional, legal and administrative traditions and values. To facilitate the critical and comparative analysis, chapters 3, 4 and 5 will apply the same theoretical framework to the EU dimension as the one applied in chapters 1 and 2 to the Member States, namely codes, co-option and complaint. The thesis will first examine the EU regime through the principal lens of 'codes'. Where weaknesses are identified, the thesis will attempt to draw upon national approaches and international best practice to mould constructs to enhance the transparency and accountability of EU cross-border policing in line with conventional legal and administrative values.

Codes as a *raison d'être* of the EU project

The EU was bestowed with a legislative and policy competency for cross-border police cooperation not because of some enlightened ideology around transparency and accountability. The conduct of cross-border police cooperation was inflicted with various obstacles prior to the 1990s which the Member States showed little interest in addressing through the EC/ EU institutions. Obstacles included a discernible lack of legal frameworks for hot pursuit at border crossings throughout Europe, a lack of clarity around the legal immunities enjoyed by visiting police officers, complicated processes for the exchange of evidence through diplomatic channels and a marked unwillingness amongst counter-terrorism police units to share intelligence with one another. If anything, the efforts by the EC Justice Ministers to enhance counter-terrorism cooperation through the secretive Trevi organisation in the 1970s and '80s had been marked by almost complete failure.

The primary reason for the EU's involvement in matters of cross-border police cooperation pursuant to the Maastricht Treaty 1993 was far more banal. The EU institutions were initially concerned with removing the internal border controls between the Member States in order to facilitate the four freedoms of movement, namely the free movement of people, goods, services and capital. It was suggested that the 'open' market could lead to the creation of 5 million new jobs and re-direct €24 billion which was being spent on the maintenance of border crossings and related technical functions.⁷⁸⁰ It was widely held that the ability of commercial companies to operate easily across the Member States in a 'single market' would better enable them to compete with American and Japanese conglomerates and the EU would be able to negotiate better trading agreements as an integrated 'economic bloc'.⁷⁸¹ The Member States of Belgium, the Netherlands and Luxembourg, referred to as the Benelux States, had long benefitted from the abolition of their internal border controls and played a part in convincing the other EU Member States of the economic benefits.

⁷⁸⁰ European Commission, *Europe without frontiers: a review half-way to 1992* (European File 10/89, 1989) 13

⁷⁸¹ John D Occhipinti, *The Politics of EU Police Cooperation* (Lynne Rienner Publishers 2003) 25

At a meeting in Fontainebleau in June 1984, the Heads of State and Government of the Member States agreed to work towards the removal of internal border controls throughout Europe in order to create a single economic market by 1992.⁷⁸² At the time, there was widespread vociferous concern amongst police forces and politicians that the EU governments were naively putting economic integration ahead of security considerations.⁷⁸³ The EC Commission's seminal White Paper on 'Completing the Internal Market' published the following year merely contained a few vague compensatory security recommendations, which revolved around the ratification of various extant conventions concerning the harmonisation of offence prohibitions and sanctions which had been developed by the Council of Europe (CoE) and United Nations (UN) but remained unratified by a number of Member States.⁷⁸⁴

Chief amongst the concerns was the widespread fear that upon the removal of border controls the highly lucrative markets of Member States would incur an influx of transient criminals, illegal immigrants and stolen and counterfeit goods which would otherwise have been stymied by the traditional border checks.⁷⁸⁵ Benyon et al state that the uneasy political and public discourse about the arrival of foreign organised crime and immigration in the absence of border checks coupled with the traditional limits of jurisdiction which tied police powers to the national territory created fears about a perceived 'internal security deficit'.⁷⁸⁶ Bigo observed that many chief police officers and politicians amplified the security concerns by treating organised crime, terrorism, drugs, immigration, and asylum as a single 'internal security' problem.⁷⁸⁷ He argued cogently that the rhetoric was useful in drawing attention to the need to address the loss of the traditional border checkpoint which was perceived to carry out an important security as well as economic function but that such rhetoric also served to blur the discernible differences between the various crime problems and the ability of the border checkpoint to affect each one.⁷⁸⁸

Bigo conveyed that the distinct problems of organised crime, terrorism, immigration, asylum and any other crime problem of note were being emotionally treated as mere objects on an 'internal security continuum' rather than unique and peculiar problems.⁷⁸⁹ Zedner outlines how the term 'security' is not a single immutable concept but is a promiscuous semantic concept that is applied and conceptualised differently in different academic and policy disciplines ranging from national security to social security, financial security, commodity security and private security.⁷⁹⁰ Nevertheless, the terms 'internal security' and 'security deficit' were regularly employed by chief police officers and politicians to underpin their emotive rhetoric

⁷⁸² European Commission, *Completing the Internal Market: White Paper from the Commission to the European Council* (1985) COM(85) 310 3 - 15

⁷⁸³ Heberton and Thomas (n65) 4, 5

⁷⁸⁴ European Commission (n782) 3 - 15

⁷⁸⁵ Anderson et al (n63) 22

⁷⁸⁶ Benyon et al (n64) 58

⁷⁸⁷ Didier Bigo, 'The European Internal Security Field' in Malcolm Anderson and Monica Den Boer (eds), *Policing across National Boundaries* (Pinter London 1994) 163 - 165

⁷⁸⁸ Didier Bigo, 'EU Police Cooperation: National Sovereignty Framed by European Security?' in Elspeth Guild and Florian Geyer (eds), *Security versus Justice: Police and Judicial Cooperation in the European Union* (Ashgate 2008) 91 - 95

⁷⁸⁹ Bigo (n787) 163 - 165

⁷⁹⁰ Zedner (n571) 6 - 9

but without addressing the substantive problems with the necessary degree of erudition.

Bigo argues that not only were politicians using the rhetoric of internal security to avoid addressing the substantive issues but they were also closely associating problems of terrorism and organised crime with largely unconnected issues of immigration thereby promoting a palpable brand of xenophobia and the introduction of unwarranted counter-terrorism measures to address unfounded fears of uncontrollable immigration.⁷⁹¹ Ellison and Pino similarly convey that globalisation, which was originally idealised in terms of technological and engineering advancement, has increasingly been linked colloquially and conceptually to migration, rapid urbanization, cheap labour, unemployment, social dislocation and rising crime.⁷⁹² Loader and Sparks indicate that this modern internal security discourse has contributed to the portrayal of criminal and terrorist groups operating in foreign countries as a 'global' crime problem instead of a foreign problem, which has contributed significantly to a highly illusory 'globalized crime anxiety'.⁷⁹³

Zedner notes that it is precisely because of its linguistic imprecision, that policy-makers prefer to use the term 'security' since its lack of definitional clarity permits expansive interpretation and wide application.⁷⁹⁴ She argues that politicians like to use the term 'security' as a rhetoric lever to create a perpetual sense of crisis which in turn legitimates their vague and often illusory 'law and order' policy initiatives.⁷⁹⁵ Garland argues in his cogent treatise on *The Culture of Control* (2001) that politicians have played a central role in transforming the victim of crime, who is by and large little more than an unfortunate citizen, into a much more representative character whose experience is taken to be common, collective and symbolic rather than individual and atypical so much so that every mistake by a police officer becomes a scandal and every decision subject to political contention.⁷⁹⁶ Zedner suggests that a far more pragmatic and reasonable approach is to avoid the use of the term security and instead define and measure the actual threats themselves so that initiatives and measures are driven by informed calculation rather than abstract political values.⁷⁹⁷

Although the rhetoric of the internal security deficit helped to draw attention to the need for enhanced cross-border police cooperation in order to address the loss of the traditional border checkpoint, almost all of the academic commentators at the time conveyed that the perceived 'internal security deficit' was largely illusory and unfounded.⁷⁹⁸ Benyon et al pointed out that the removal of internal border checkpoints would make little difference to international immigration, drug trafficking and terrorism since borders were always highly porous.⁷⁹⁹ Bresler conveyed that only a small proportion of travellers were typically stopped and checked at border crossings on mainland Europe, most travellers were simply waved through.⁸⁰⁰ Moreover, it was

⁷⁹¹ Bigo (n787) 163 - 165

⁷⁹² Ellison and Pino (n98) 11 - 26

⁷⁹³ Loader and Sparks (n591) 97 - 201

⁷⁹⁴ Zedner (n571) 10 - 22

⁷⁹⁵ *ibid*

⁷⁹⁶ David Garland, *The Culture of Control* (OUP 2001) 8 - 20

⁷⁹⁷ Zedner (n571) 14, 15

⁷⁹⁸ Anderson (n102) 10

⁷⁹⁹ Benyon et al (n64) 23 - 32

⁸⁰⁰ Fenton Bresler, *Interpol* (Sinclair Stevenson London 1992) 10 - 16, 413, 414

not unheard of for criminals to forge identity papers and bribe border officials at border checks whilst most countries had so many points of entry by road or sea that border checks could be circumnavigated with relative ease.⁸⁰¹ Fijnaut and Paoli's research indicates that Dutch criminal gangs habitually crossed between the Benelux States and travelled hundreds of miles into France and Germany throughout the 17th and 18th Centuries to commit burglaries, armed robberies and the highway robbery of horse-drawn carriages.⁸⁰² Rail travel in Europe from the mid-19th century had also greatly exacerbated the movement of criminals and stolen property.⁸⁰³ Thieves and fraudsters reportedly moved habitually between the lucrative European capitals of London, Paris and Vienna, often bringing with them a distinct *modus operandi*.⁸⁰⁴ Interpol's files dating from the 1930s, for instance, contained thousands of profiles on currency forgers, hotel fraudsters, cheque swindlers, art thieves, house breakers, safebreakers, armed robbers, murderers and rapists operating throughout Europe.⁸⁰⁵

Police cooperation on the other hand was far from non-existent. It was considerably more multi-faceted than the simple manning of border checkpoints. As early as the 1850s, the Vienna police was famous for circulating newspaper alerts throughout Europe, translated into English, French and German, in order to provide European police forces and members of the public with details about the known activities, whereabouts, physical description, photographs and, from the early 1900s, fingerprints, of wanted criminals.⁸⁰⁶ Police forces in Germany and England also published similar gazettes with a European circulation.⁸⁰⁷ The publication of international notices has since become the responsibility of Interpol which rebranded the Vienna policing gazette as the International Public Safety gazette and began to issue colour codified notices pertaining to wanted persons (red), police requests for investigative action (green), police request for information (blue), missing persons (yellow) and unidentified bodies (black) not long after its inauguration in 1923.⁸⁰⁸

Throughout the first half of the 20th Century, police forces in all of the major capital cities in Europe maintained vast card-based criminal files describing crimes by offence type, suspect description, alias and various other categories.⁸⁰⁹ Moreover, information was regularly exchanged between police forces particularly where such information pertained to threats against heads of State.⁸¹⁰ It was not unheard of for parallel investigations to be coordinated across jurisdictions and for police officers to occasionally travel abroad to discuss cases with their foreign counterparts and to attend international police conferences.⁸¹¹ Deflem observes that Austria's relationship with the Police Union of German States in 1863 was one of the first formal multi-national police cooperation networks in Europe.⁸¹² Formalised through a Convention,

⁸⁰¹ Benyon (n64) 23 - 32

⁸⁰² Fijnaut and Paoli (n264) 225, 226

⁸⁰³ Anderson et al (n63) 36 - 47, 151, 152

⁸⁰⁴ Peter Andreas and Ethan Nadelmann, *Policing the Globe* (OUP 2006) 79, 80 245, 246

⁸⁰⁵ Bresler (n800) 26 - 37

⁸⁰⁶ Fosdick (n362) 332 - 368

⁸⁰⁷ *ibid* 341, 342

⁸⁰⁸ Bresler (n800) 5 - 45

⁸⁰⁹ *ibid* 10 - 36

⁸¹⁰ Bernard Porter, *The Origins of the Vigilant State* (Weidenfeld and Nicolson 1987) 122 - 129

⁸¹¹ Deflem (n70) 66 - 68

⁸¹² *ibid* 49 - 63

it facilitated regular intelligence exchanges and coordinated surveillance operations across the jurisdictions.⁸¹³

Although there were a few notable networks for police cooperation through the 19th and early 20th Centuries, only a few national parliaments in Europe showed a keen interest in formally enhancing cross-border police cooperation with their neighbours by legislative means. The Benelux and Nordic States were largely the exception to the rule. Both regions developed systems for cross-border hot pursuit, surveillance and the exchange of evidence from the first decades of the 20th Century. Most other national parliaments appeared to place their faith in Interpol, the Council of Europe (CoE) and the United Nations (UN), in particular, to devise solutions to the major challenges encountered during cross-border police cooperation. The three principal organisations produced an array of initiatives to minimise and alleviate some of the major obstacles encountered during cross-border police cooperation between the 1940s and 1990s.⁸¹⁴

Interpol, which was funded and supported by the participant governments albeit indirectly via the participant police forces, served primarily as a liaison bureau within which liaison officers from each participant police force could develop working relationships and through which the police headquarters of each of the participant police forces could contact one another directly and relatively rapidly.⁸¹⁵ The Council of Europe (CoE) developed a number of key legal frameworks that were designed to simplify and streamline various bureaucratic diplomatic and judicial procedures which served to delay and impede cross-border police cooperation. The United Nations, like the League of Nations before it, introduced a number of instruments to encourage States to harmonise their criminal definitions particularly in the areas of drugs, human trafficking and terrorism so that police and judicial cooperation in major crime areas would not be impeded by differing definitions and legal interpretations.⁸¹⁶ Most of the measures introduced by the CoE and the UN were signed by all of the States in Western Europe but they were rarely ratified in their entirety by the participant State governments.⁸¹⁷ The relevant codes and initiatives that were introduced by the CoE, the UN and Interpol will be discussed throughout the chapter.

By any objective standard, the crime anxiety and internal security discourse that emerged in Europe following the decision to remove the internal border controls was considerably theatrical.⁸¹⁸ Anderson argued that even the statistics on international crime were very weak in comparison to domestic ordinary crimes so it was relatively clear that the internal security deficit was based mainly on fantasies and fears which were far from convincing.⁸¹⁹ Even a cursory acknowledgment of the amount of drugs being trafficked into European countries and the number of terrorist attacks carried out on mainland Europe and the islands of Ireland and England in the 1970s and '80s

⁸¹³ *ibid*

⁸¹⁴ Lemieux (n85) 4

⁸¹⁵ Anderson (n240) 38 – 93

⁸¹⁶ See League of Nations International Convention Relating to Dangerous Drugs 1925 and Convention for the Suppression of the Traffic in Women of Full Age 1933 amongst others. United Nations Convention on Narcotic drugs 1961, Convention on Psychotropic Substances 1971 and a Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988

⁸¹⁷ Anderson (n240) 111 - 115

⁸¹⁸ Benyon et al (n64) 19 - 62

⁸¹⁹ Anderson (n102) 9

indicated that border checkpoints served little more than a tax and excise function.⁸²⁰ Drug seizures depended almost entirely on intelligence-led policing and the quantities of drugs found spontaneously at border checkpoints were reportedly miniscule in comparison.⁸²¹ Neyroud and Vassilas observe that, in hindsight, the removal of border controls ultimately had a much greater impact on policing than it had on crime.⁸²²

Although it was relatively clear that the prevalent internal security fears and anxieties around the planned removal of internal border controls were largely unfounded, the EU policy competency was established in the original Maastricht Treaty 1992 to appease those fears.⁸²³ It was apparent that the EU did not enter the policy field organically or naturally because it had some novel new invention or enlightened approach to offer. It was clear that the illusory internal security deficit, particularly the perceived problems of organised crime and terrorism as a by-product of the removal of internal border controls were the driving forces behind the development of the competency. Fijnaut and Paoli convey that it was essentially deemed to be a political imperative for the governments ‘to be seen to be doing something’ about the perceived ‘internal security deficit’ which they had caused.⁸²⁴ Using the terminology of functionalist theory, Anderson described the EU policing project as little more than a politically-driven ‘functional spillover’ of the desire for greater economic integration.⁸²⁵

Due largely to the illusory nature of the internal security concerns the Maastricht Treaty avoided setting out highly proscriptive policy objectives, expectations, priorities or definitive timescales for progress.⁸²⁶ Moreover, no attempt was made to clarify whether and to what extent the EU project would coexist with the extant international organisations already active in the ‘crowded policy space’, not least the CoE, the UN and Interpol.⁸²⁷ No considerable attempt was even made to prove that the EU framework was the most suitable environment within which to build new trans-European initiatives.⁸²⁸ Anderson et al characterised the project as an abstract lofty political ambition to be determined by a fluctuating political environment of negotiation, absent of any tangible structural determinism.⁸²⁹ Walker referred to the act of prioritising lofty political ambitions over identifiable practitioner needs as an act of profound naïve separatism.⁸³⁰

Before the vague Treaty was introduced, the respective justice ministers outlined some of their ideas and intentions within the Palma Document in 1988 and a joint statement in Paris in 1989, known as the Paris Declaration.⁸³¹ The Document and Declaration outlined the Ministers’ intention to develop ‘compensatory measures’ in a

⁸²⁰ Heberton and Thomas (n65) 136 - 168

⁸²¹ Anderson (n240) 114 - 142

⁸²² Peter Neyroud and Peter Vassilas, ‘The Politics of Partnership: Challenges to Institution Building in European Policing’ in Antoinette Verhage et al (eds), *Policing in Europe* (Maklu 2010) 77, 78

⁸²³ Heberton and Thomas (n65) 3

⁸²⁴ Fijnaut and Paoli (n264) 3 - 7

⁸²⁵ Anderson (n118) 4 - 6

⁸²⁶ Heberton and Thomas (n65) 38 - 41

⁸²⁷ Anderson et al (n63) 40 - 46, 221 - 238

⁸²⁸ *ibid* 38 - 40

⁸²⁹ *ibid* 44, 45

⁸³⁰ Walker (n107) 23

⁸³¹ Anderson et al (n63) 133 - 140

number of areas.⁸³² They indicated their intention to develop a common law enforcement information system; to facilitate joint training activities; to establish national drugs intelligence units; to engender closer cooperation between police liaison officers; to promote joint investigations; to examine ‘hot pursuit’ across borders; to harmonise laws in major crime areas and to further simplify extradition procedures amongst other measures.⁸³³ The objectives were restated in a more formal Action Plan in 1990.⁸³⁴ For the most part, the initiatives appeared to draw almost entirely upon multi-lateral initiatives already in place in the Benelux and Nordic regions as well as various aspects of Interpol’s institutional character. In effect, the Member States outlined their intention to develop ‘Euro’ versions of the extant regional and international constructs and procedural frameworks in order to placate concerns over the perceived security deficit.⁸³⁵

By and large, the policy objectives have not changed drastically between the Paris Declaration and the Lisbon Treaty. The Lisbon Treaty policy objectives around the collection storage, processing, analysis and exchange of relevant information; the coordination of police training and research; the introduction of common investigative techniques in relation to the detection of serious forms of organised crime; the development of measures concerning operational cooperation; and the enhancement of Europol to support such objectives looks remarkably similar to the original prescription. The Lisbon Treaty is considerably broader if anything. Where the Paris Declaration outlined the intention to promote joint investigations and to examine ‘hot pursuit’ across borders, the Lisbon Treaty formally expands the EUs competency to look beyond joint investigation teams to any types of common investigative techniques and beyond ‘hot pursuit’ to any and all forms of operational cooperation which concerns the detection and investigation of serious and organised crime with a cross-border dimension.

Although the treaty basis for the EU regime remains vague and ambitious, most of the measures that have been introduced by the EU take statutory form and concern operational processes and procedures. The thesis will show that the lofty treaty objectives have ultimately been translated by and large into codes of procedure that serve to determine how various facets of cross-border police cooperation are carried out in practice. In other words, the EU has attempted to fill the conceptual deficit or void with agencies and procedural codes in order to give shape and form to cross-border policing. Although the initial *raison d’etre* of the remarkably vague and abstract EU project was the ambitious treatment of the illusory ‘security deficit’, it is submitted that its *raison d’etre* at present appears to be the codification of some acute processes of cross-border policing.

For clarity and simplicity, the chapter will divide EU policy and legislative activity into three specific areas, focusing on Europol, the Schengen Acquis and ‘mutual assistance’ respectively. The three areas should sufficiently capture the five policy objectives outlined in the Lisbon Treaty. The section on Europol will capture many of the measures introduced to enhance the collection storage, processing, analysis and exchange of information and intelligence as well as the development of the institution

⁸³² Benyon et al (n64) 152 - 158

⁸³³ *ibid*

⁸³⁴ Anderson et al (n63) 56

⁸³⁵ Tupman and Tupman (n635) 99 - 103

itself. The section concerning the Schengen Acquis will reflect many of the measures introduced regarding operational cooperation. The issue of ‘mutual assistance’ for its part will address the development of joint investigation teams and the introduction of common investigative techniques. The remaining Lisbon Treaty objective which relates to police training will be discussed in the final chapter since the EU’s primary training mechanisms such as Cepol do not enumerate descriptive codes of police procedure.

It is submitted that it would not be appropriate to evaluate the performance of the EU project under each of the five Treaty objectives since there is a considerable degree of overlap across the various dimensions. For instance, measures concerning the collection storage, processing, analysis and exchange of information and intelligence have been individually developed for the Europol, Schengen and Joint Investigation Teams initiatives respectively. Evaluating the EU project by mechanism appears to be the most prudent analytical course to follow in order to engender clarity and transparency.

Although the Lisbon Treaty is relatively new, the thesis will show that it has been used by and large to build upon and enhance the agencies and codes previously developed by the EU institutions under the previous Maastricht and Amsterdam Treaties. Moreover, although all of the Maastricht and Amsterdam era measures must be re-constituted as ‘regulations’ pursuant to the Lisbon Treaty in order to facilitate greater legislative responsiveness and co-decision, at the time of writing almost all of the key regulations had yet to be formally agreed upon and ratified by the relevant EU institutions. The chapter will refer to key constructs and codes as they are currently formed, typically as conventions, decisions or framework decisions. From a perusal of the draft regulations, it is not expected that the first round of regulations will introduce drastic changes. The character and basic functions of the principal agencies and codes have remained relatively stable since their initial introduction under the Maastricht and Amsterdam treaties.

Europol

Although the European Police Office (Europol) initiative was the only EU cross-border policing measure clearly prescribed in the original Maastricht Treaty, it was a highly illusory and ambitious concept at the outset. Reflecting the fact that the EU Governments were evidently caught unawares by the perceived ‘security deficit’, the concept had never been piloted or tested and the heads of State and Government had only spoken about it previously in conceptual terms.⁸³⁶ The abstract idea for the Europol project was formally tabled at a meeting of the EC European Council in Luxembourg only a year earlier.⁸³⁷ German Chancellor Helmut Kohl’s reasons for tabling the initiative apparently lay in the fact that the perceived internal security deficit was particularly discernible in Germany since the ongoing unification between East and West after the fall of the Berlin Wall had exacerbated public fears over an influx of criminal counterfeiters, smugglers, fraudsters and murderers from the former Soviet bloc.⁸³⁸ The Europol project that was tabled at the summit depended almost entirely on the opportunistic development of cutting-edge transnational computer

⁸³⁶ Heberton and Thomas (n65) 50 – 52

⁸³⁷ Anderson et al (n63) 251, 252

⁸³⁸ Occhipinti (n781) 42 - 45

linkages that were neither tried nor tested on an international level. More particularly, the project depended upon a profound degree of goodwill and cooperation between governments and police forces which were traditionally characterised more by self-interest, secrecy and distrust than unfettered cooperation.⁸³⁹

The proposal first presented by Chancellor Kohl revolved around the radical creation of a federal European Criminal Police Office, to be known as Europol, which would focus initially on information exchange between European police forces but would eventually evolve into a federal organisation with independent investigative powers.⁸⁴⁰ The heads of State and government present at the Luxembourg summit in 1991 reportedly roundly rejected the idea of a European policing agency with executive police powers.⁸⁴¹ There was apparently no misunderstanding at the meeting that the Member States would not countenance a European supranational federal police agency with unilateral police powers. Member States such as the UK and the Netherlands which had highly decentralised policing systems with a high degree of territorial autonomy reportedly had no enthusiasm to start permitting a new brand of police officer to conduct investigations within their jurisdictions.⁸⁴² Chancellor Kohl's Germany, on the other hand, used a federal policing model which could adapt relatively easily to accommodate the proposed European federal model.

Walker remarks that the audacity of the proposal for a European federal police, which challenged traditional attachments to sovereignty, appeared to shock the more moderate States into action.⁸⁴³ At the following European Council in December 1991, the Member States agreed to establish the European Police Office (Europol) but only for the strict purposes of information pooling and analysis.⁸⁴⁴ The initiative was largely in line with their earlier vision for a new European police information sharing network outlined in the Paris Declaration 1989. The conceptual Europol project was centred around the idea that Member States would systematically feed their policing intelligence into a central European database and subsequently coordinate 'intelligence led' investigations based on the collated intelligence.⁸⁴⁵ It was envisaged that the pooling of police data and intelligence would greatly enhance intelligence-led policing throughout Europe by improving the quality of intelligence and criminal records available so that linkages could be made, overviews developed and investigations coordinated.⁸⁴⁶ There was reportedly a widespread belief that the systemic sharing and analysis of information through Europol was going to be the most effective and important tool for enhancing, promoting and facilitating cross-border police cooperation in Europe over and above other international measures, particularly Interpol. Interpol, for its part, served primarily as a communications link between police forces by linking together each participant's National Central Bureau (NCB) to facilitate rapid and structured communication. Interpol did not physically connect together the Participant States' national police computers and intelligence

⁸³⁹ Nicholas Dorn and Nigel South, 'Drugs, Crime and Law Enforcement, Some Issues for Europe' in Frances Heidensohn and Martin Farrell (eds), *Crime in Europe* (Routledge 1991) 80, 81

⁸⁴⁰ Anderson et al (n63) 46 - 49

⁸⁴¹ *ibid* 276, 277

⁸⁴² Heberton and Thomas (n65) 85

⁸⁴³ Walker (n103) 261

⁸⁴⁴ Occhipinti (n781) 35

⁸⁴⁵ Bowling and Foster (n50) 994 - 1008

⁸⁴⁶ Charles Raab, 'Police Cooperation: the prospects for privacy' in Anderson and Den Boer (n82) 121, 122

databases. This specific intelligence function was the role envisaged for Europol. Lemieux remarks that Europol was effectively envisaged as an intelligence or knowledge broker, greatly enhancing the capacities of intelligence-led policing throughout Europe.⁸⁴⁷

The participant States were evidently banking heavily on major advancements which had taken place in computer technologies throughout the 1980s which enabled information to be stored electronically and linkages to be established between independent computers both within and between countries.⁸⁴⁸ The technological advancements were being used zealously by the English government and police forces to create electronic linkages between the decentralised forces.⁸⁴⁹ The UK had sought ground-breaking information sharing and money laundering agreements with France, West Germany, Spain and Switzerland from the late 1980s but without realising substantial electronic linkages.⁸⁵⁰ The Schengen Member States had formally commenced the establishment of a complex transnational Information System (SIS) from 1990 but it was still at the incubatory stage when the Europol initiative was tabled.

Towards a code of procedure

From the outset, police forces voiced concerns about the ability of the envisaged Europol Information System (EIS) to protect the integrity of sensitive and secretive information submitted to it.⁸⁵¹ The misappropriation of information and intelligence by corrupt police officers or system hacks represented a real risk to the success of major ongoing criminal investigations.⁸⁵² Moreover the unintentional dissemination or storage of intelligence had the potential to jeopardise informers, undercover officers, policing techniques and prosecutions amongst other unforeseen consequences. It became immediately apparent that participant police forces were not prepared to routinely send criminal intelligence through the Europol network without robust data safeguards which could protect the secrecy and integrity of their files and hold police forces accountable for their actions.⁸⁵³

As a result, the Europol Convention 1995 contained a number of heavily descriptive processes. The Convention provided first and foremost that the Member States would retain ownership of any information submitted to Europol in the interests of data security and protection and could withhold any information or intelligence from Europol or from other designated States in the interests of ongoing investigations, the safety of individuals or national security.⁸⁵⁴ The participant States evidently would not countenance the idea of foreign authorities having complete access to all files

⁸⁴⁷ Lemieux (n85) 9

⁸⁴⁸ Benyon et al (n64) 24, 25

⁸⁴⁹ Monica Den Boer and Patrick Doelle, 'Converge or Not to Converge That is the Question: A Comparative Analysis of European Trends in Criminal Justice Organisation' in Monica Den Boer (ed), *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* (European Institute of Public Administration 2002) 21 - 41

⁸⁵⁰ Dorn and South (n839) 80, 81

⁸⁵¹ Anderson et al (n63) 98

⁸⁵² Cyrille Fijnaut, 'The problem of corruption of police officials' in Malcolm Anderson and Joanna Apap, *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 221- 225

⁸⁵³ Raab (n846) 121, 122

⁸⁵⁴ Europol Convention 1995 s 4

submitted to Europol, particularly those that were case sensitive. In practice, searches of the Europol database were limited by and large to ‘hit’ or ‘no hit’ results only.⁸⁵⁵ Police officers could not sit at an EIS enabled computer terminal and browse through all of the criminal files maintained by foreign police forces on the EIS. In the event of a search producing a ‘hit’, the user would generally be presented with a name and a list of aliases and known associates and would then have to contact the police force administering the file so that the relevant information could be made available to it.⁸⁵⁶

The new rigorous data protection regime was reflected most acutely in the Convention’s new Europol National Unit (ENU) construct. The ENUs in each Member State were deemed to be the only national units authorised to upload, modify or delete information on Europol’s databases.⁸⁵⁷ Each ENU was legally responsible for the accuracy of the data uploaded to the EIS in line with their own national data protection, national security and privacy laws.⁸⁵⁸ ENUs were required to systematically forward any relevant information and intelligence relating to major cross-border criminality such as drug trafficking, money laundering and terrorism to the central Europol Information System while such uploads were to include the facts of the case, personal details such as physical descriptions, birth details; nationality, fingerprints, criminal record, modus operandi, associates and details on the law enforcement department handling the case.⁸⁵⁹

ENUs were required to remove information from the EIS where cases had not developed after a number of years and where personal details pertained to persons acquitted of alleged offences.⁸⁶⁰ In addition, a Europol Joint Supervisory Board (JSB), consisting of national data protection commissioners’ from each Member State, was established to periodically review the standards for handling information.⁸⁶¹ Many of the major data protection safeguards in the Europol Convention were inspired by the previous Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data 1981. Following the replacement of the Europol Convention with a Europol Decision in 2009, an independent Data Protection Officer was employed by the Europol Management Board to monitor the data protection processes of the Member State ENUs, the Europol liaison officers and Europol’s own processes for storage, analysis and dissemination of information.⁸⁶²

Aside from the Europol Information System, stringent processes were also applied to the opening of analysis work files (AWFs) and the deployment of liaison officers. Each ENU was required to second at least one Europol Liaison Officer (ELO) to the Europol headquarters in The Hague to stimulate cross-border investigations on behalf of their domestic police force. Individual secondments in areas of drug trafficking and counter-terrorism were encouraged.⁸⁶³ The ELOs were officially under the direct command of their domestic ENUs.⁸⁶⁴ On a day-to-day basis the liaison officers were

⁸⁵⁵ Europol, *Annual Review* (European Police Office 2010) 12 - 22

⁸⁵⁶ *ibid*

⁸⁵⁷ Europol Convention s 9, s 32 & s 38

⁸⁵⁸ *ibid*

⁸⁵⁹ *ibid* s 2 – s 9

⁸⁶⁰ *ibid* s 8 & s 21

⁸⁶¹ *ibid* s 14 – s 24

⁸⁶² Council Decision of April 2009 establishing the European Police Office (2009/371/JHA) s 10 – s 35

⁸⁶³ Europol Convention 1995 s 5

⁸⁶⁴ *ibid* s 4

encouraged to hold regular intelligence meetings with other ELOs and Europol officials to discuss and stimulate joint operations on the basis of national requests or Europol's own threat assessments.

The grouping together of liaison officers under one roof was nothing new since it had been a staple of Interpol since the 1950s.⁸⁶⁵ Like Interpol, Europol has increasingly encouraged its ELOs to engage in more long-term major case investigations alongside its analysts through distinct crime centres which prioritise major cases and compile and disseminate regular intelligence reports.⁸⁶⁶ Modern counter-terrorism centres, cybercrime centres and criminal assets bureau amongst others can be found within both Europol and Interpol.⁸⁶⁷ Gerspacher and Lemieux report that ELOs have increasingly become involved in coordinating short-term parallel investigation and controlled deliveries in particular.⁸⁶⁸

The case specific AWFs, which could only be opened upon the consent of the Europol Management Board, were exempt from the data protection provisions that applied to the EIS and essentially enabled Member States to collate and analyse intelligence derived from personal and unsubstantiated information, potentially with the help of an intelligence analyst employed by Europol.⁸⁶⁹ Europol's analysts can reportedly use their software programmes to rapidly search through thousands of scanned documents, even in non-European languages such as Arabic, to find matching terminologies, names and addresses across its intelligence files. Due in part to the overly stringent and bureaucratic application process for opening an AWF, the original system was not extensively used. The AWF system was reconstructed pursuant to the Europol Decision 2009 as a function of Europol's own analysts who were required to compile and maintain AWFs for organised crime and terrorism, usually subdivided into specific geographical regions.⁸⁷⁰

Upwards of one hundred analysts are directly employed by the Europol Management Board to collate the information submitted to the central database and to identify linkages and gaps in the information dossiers.⁸⁷¹ The collation and analysis of intelligence is designed to generate 'new intelligence' which the analysts can disseminate to the relevant police forces to augment their files.⁸⁷² Europol's analysts can also integrate additional data by way of direct requests to national ENUs, general media news sources, online sources and third party sources. Europol's access to third party sources has been incrementally increased by way of bilateral information sharing agreements between Europol and non-EU Member States such as Russia, Turkey, Serbia, Switzerland and the USA amongst others.⁸⁷³

⁸⁶⁵ Anderson (n240) 117, 118

⁸⁶⁶ Deflem (n650) 112 – 118

⁸⁶⁷ Europol (n855) 49 - 52

⁸⁶⁸ Nadia Gerspacher and Frederic Lemieux, 'A market-orientated explanation of the expansion of the role of Europol' in Lemieux (n85) 65 - 71

⁸⁶⁹ Europol Convention 1995 s10 to s 13

⁸⁷⁰ Europol Decision (n862) s 14 – s 16

⁸⁷¹ Europol (n855) 7 - 9

⁸⁷² *ibid* 7 - 9

⁸⁷³ Jorg Monar, 'The Integration of Police and Judicial Cooperation in Criminal Matters into EU External Relations' in Cyrille Fijnaut and Jannemieke Ouwerkerk (eds), *The Future of Police and Judicial Cooperation in the European Union* (Martinus Nijhoff 2010) 52 - 68

Agreements have also been established between Europol and other EU agencies such as Eurojust (the College of Prosecutors and Magistrates), Frontex (the Border Management Agency), OLAF (the European Anti-Fraud Office), Airpol (the Network of Airport Police), Tispol (the Network of Transport Police) and Seapol (the Network of Maritime and Port Guards) in addition to non-EU agencies such as Interpol and the OECD Financial Action Task Force (FATC).⁸⁷⁴ Eurojust, for instance, was established in 2000 to maintain a network of national criminal prosecutors from the Member States who would meet regularly to stimulate and coordinate prosecutions of serious and organised crime and terrorism in Europe which affected two or more Member States.⁸⁷⁵ In continental legal systems, prosecutors and magistrates generally play a major role in deciding the shape and form that investigations can take even before a police case file is submitted for prosecution.⁸⁷⁶ For this reason Europol is required, pursuant to the Europol Decision 2009, to maintain a close working relationship with Eurojust with respect to the performance of its tasks.

Frontex on the other hand was established in 2004 to coordinate the voluntary strategic deployment of border guards, airport police, customs officials and even naval vessels to interdict illegal immigration while Airpol, Tispol and Seapol are essentially conferences that meet annually with full time secretariats for the purposes of disseminating knowledge and best practice.⁸⁷⁷ Annual and biannual conferences of airport, traffic and railway police have been a staple of the international police community since the mid-20th Century.⁸⁷⁸ Eurojust and Interpol both have representative liaison officers posted to Europol headquarters for the purposes of engaging with Europol's analysts and ELOs on a daily basis. The ability for Europol to enter into third party agreements for the purposes of data sharing was enumerated in the Amsterdam Treaty.⁸⁷⁹

Europol's analysts play a crucial role in assessing crime phenomena to identify linkages and develop broad overviews of criminal networks and threat assessments.⁸⁸⁰ The analysts presently develop major crime reports and threat assessments which help to form Europol's priorities and strategies and inform the Member States' police forces.⁸⁸¹ The Serious and Organised Crime Threat Assessment (SOCTA) and the European Terrorism Situation and Trend Report (TE-SAT) are the two most comprehensive reports. Both reports are published for perusal by the general public on Europol's websites. Additional analysis sub-projects within Europol include a Russian Organised Crime Threat Assessment (ROCTA) and an Organised Crime Treat Assessment on West Africa (OCTA-WA) published periodically.⁸⁸² The analysis reports are reportedly used increasingly by police forces as well as other EU agencies such as the European Police Chiefs Task Force (EPCTF) and Frontex as well as ministries of justice and the JHA Council to guide their strategic decision making.

⁸⁷⁴ Ben Bowling and James Sheptycki, *Global Policing* (Sage 2012) 60, 61

⁸⁷⁵ Council Decision of 14 December 2000 Setting Up a Provisional Judicial Cooperation Unit OJ L 324/2

⁸⁷⁶ Guille (n80) 37

⁸⁷⁷ Ad Hellemons, 'Cooperation among traffic police departments in the European Union' in Fijnaut and Ouwerkerk (n873) 103 - 108

⁸⁷⁸ Heberton and Thomas (n65) 92, 93

⁸⁷⁹ See Monar (n873) 52 - 68

⁸⁸⁰ Anderson et al (n63) 12 - 21

⁸⁸¹ Europol (n855) 15, 16

⁸⁸² *ibid* 16, 17

The EPCTF, established in the aftermath of the Tampere summit in 1999, is an annual meeting of European police chiefs convened to discuss pressing issues and to formulate joint strategies.⁸⁸³ A Scanning, Analysis and Notification unit (SCAN) was also established within Europol to issue EU-wide alerts on immediate threats or emerging trends on the basis of the analysts' intelligence work.⁸⁸⁴ For example, the SCAN unit issued six organised crime notices (OC-SCAN) in 2010 concerning the expansion of the Nordic Hells Angels motorcycle gangs into the Balkan region and the growing use of light aircraft by human traffickers amongst other issues.⁸⁸⁵

The Europol project is evidently defined by a number of procedures that outline in highly legalistic fashion the functions and responsibility of Europol's analysts and the participant police forces' ELOs and ENUs. Fijnaut remarks that the demands of the participant police forces and their parliamentary overseers means that Europol has ultimately become one of the most regulated police information systems in the world.⁸⁸⁶ Information that is uploaded to Europol is subject to rigid security checks at both the national and international levels. Moreover, intelligence that is already uploaded typically requires the consent of the State of ownership before it can be shared with foreign police forces. As Anderson observes, the ethos of rigid procedural regulation is clearly due by and large to a high degree of caution and distrust between foreign police forces throughout Europe.⁸⁸⁷

The evolution of the domestic codes of procedure like PACE and the Danish amendments to the AJA share some fundamental similarities with the development of Europol's procedural regime, particularly the fact that the programmatic procedures were borne out of concern about institutional police malpractice. The domestic codes serve to enhance the transparency and accountability of police procedure within the State whereas the Europol framework was designed to enhance the transparency and accountability of police procedure in the arena of information exchange across borders. Europol's legal foundations are evidently marked by comparable concerns for legal precision and procedural clarity which have similarly been addressed through highly formulaic and programmatic statutory codes.

The Schengen Acquis

Bruggeman and Den Boer describe Europol as an example of the 'institutionalisation' of cross-border police cooperation whereas they refer to the Schengen framework as an example of the 'operationalisation' of cross-border police cooperation.⁸⁸⁸ The Schengen 'Acquis' refers to the Schengen Agreement 1985, the Schengen Convention 1990 and a number of protocols which regulate border checks at the participant States' external border points as well as facilitating some specific cross-border police operations at their internal borders. Like the Maastricht Treaty, the Schengen Treaty and Convention regulate far more than policing matters, covering a wide range of

⁸⁸³ Deflem (n650) 130 - 134

⁸⁸⁴ Europol (n855) 18

⁸⁸⁵ *ibid*

⁸⁸⁶ Cyrille Fijnaut, 'Police Cooperation and the Area of Freedom, Security and Justice' in Neil Walker (ed), *Europe's Area of Freedom, Security and Justice* (OUP 2004) 256

⁸⁸⁷ Anderson (n118) 16, 17

⁸⁸⁸ Willy Bruggeman and Monica Den Boer 'Policing and International Security in the Post Lisbon Era' in Sarah Wolff et al (eds), *Freedom, Security and Justice After Lisbon and Stockholm* (TMC Asser Press 2011) 137 - 139

internal security matters ranging from immigration and asylum, to judicial cooperation.⁸⁸⁹ On the policing side, the Schengen Convention establishes key legal frameworks for cross-border hot pursuit, cross-border surveillance and information exchange and, most importantly, it enumerates highly formulaic codes of procedure on each count. The Schengen processes and procedures concern not only serious crime and terrorism but petty crimes and public order disturbances.

With respect to cross-border hot pursuit, the Schengen Convention provides that police officers from one State can continue an uninterrupted pursuit of a suspect caught in the act of committing or participating in an extraditable offence for a distance of 10km into the territory of another Participating State.⁸⁹⁰ The 10km boundary can be extended even further on the basis of bilateral agreements between the Participant States. Showing a clear concern for sovereignty and accountability, the framework requires that police officers undertaking a border crossing must contact the domestic police force at the earliest possible opportunity and follow any and all instructions of the local police commanders.⁸⁹¹ Telephone, radio and telex lines are to be installed and maintained in order to facilitate rapid communication, particularly in the border areas.⁸⁹² Visiting officers are to be easily identifiable by their uniform or insignia and are allowed to continue carrying their service weapons for the purposes of legitimate and proportionate defence.⁸⁹³

Clearly respecting the unquestioned supremacy of the domestic police force, the Convention provides that pursuing officers are prohibited from entering private homes and places and are only permitted to apprehend persons for the purposes of awaiting the arrival of the local police.⁸⁹⁴ Upon completion of a 'hot pursuit' a mission report must be forwarded by the pursuing officers to the competent foreign authorities outlining the reasons for and the nature of the pursuit.⁸⁹⁵ Most importantly, the Convention provides that in the event of injury or property damage, officers operating in the territory of another are to be regarded as officers of that State with respect to offences committed against them or by them.⁸⁹⁶ Visiting officers are required to assist in any subsequent enquiry or judicial proceeding connected to a border crossing.⁸⁹⁷ Moreover, payments made on foot of civil claims arising from harm caused by a visiting officer are to be reimbursed by the officer's home State.⁸⁹⁸

The Convention took a similar approach to the conduct of cross-border surveillance. It provided that foreign officers undertaking an urgent cross-border surveillance operation had to make immediate contact with the local competent authorities as soon as possible after a crossing, follow any directions received and were entitled to the same legal immunities and responsibilities as those listed under the hot pursuit framework.⁸⁹⁹ Unlike the hot pursuit provisions, the surveillance measures place a

⁸⁸⁹ Schengen Convention 1990 Title III

⁸⁹⁰ *ibid* s 41

⁸⁹¹ *ibid*

⁸⁹² *ibid* s 44

⁸⁹³ *ibid* s 41

⁸⁹⁴ *ibid*

⁸⁹⁵ *ibid*

⁸⁹⁶ *ibid* s 42 & s 43

⁸⁹⁷ *ibid* s 41.5

⁸⁹⁸ *ibid* s 43.3

⁸⁹⁹ *ibid* s 40

significant emphasis on pre-authorisation which is largely impractical in the context of a hot pursuit. Due largely to the fact that surveillance operations are typically undertaken on the basis of intelligence-led policing, surveillance officers are expected to have some indication in advance of the likelihood of a border crossing. Applications should be made to the designated authority of the neighbouring State, usually the neighbouring divisional headquarters or the national investigative or intelligence agency, so that the relevant police force can make appropriate arrangements for assuming oversight or command of an operation once it enters their jurisdiction.⁹⁰⁰

Applications should provide clear evidence that the surveillance target intends to commit or has committed serious criminal offences within the Participant States.⁹⁰¹ Respecting the supremacy of the local police force, the Convention provides that the host police force can attach conditions to an approved application, such as requesting that the surveillance is carried out in a certain manner in line with local practice or be entrusted to domestic officers upon the entry of a surveillance target.⁹⁰² In urgent and unforeseen cases, authorisation can be secured *post factum* as long as the neighbouring police force is notified as soon as the border crossing occurs. Telephone, radio or other forms of communications systems must be established to ensure the timely transmission of information for the purposes of facilitating both urgent and non-urgent surveillance operations.⁹⁰³

Another important feature of the Schengen Acquis is the Schengen Information System (SIS) which was designed largely for the benefit of customs and police officials operating at the 'external' border checkpoints. Alerts concerning illegal immigrants, asylum seekers, wanted persons and stolen vehicles can be uploaded to the system for the purposes of cross checks by border police, immigration and customs authorities.⁹⁰⁴ Alerts are to be accompanied where possible with information indicating the nature and legal classification of the relevant criminal offence, the circumstances of the offence and details of an appropriate court order or warrant.⁹⁰⁵ Names and profiles of inadmissible aliens, such as failed asylum seekers, and 'watch lists' of risk categories, such as terrorists, are maintained by each Member State and regularly and systematically uploaded to the SIS 'blacklists'.⁹⁰⁶ Police, customs and immigration authorities are obliged to take an appropriate course of action if a person or item is matched to an alert or blacklist stored on the system, including the immediate notification of the issuing party and the compilation of a detailed record of the interdiction.⁹⁰⁷ Schengen Alerts should be treated in accordance with domestic laws and all basic domestic standards for employing coercive powers should be followed when giving effect to them.⁹⁰⁸

⁹⁰⁰ *ibid* s 40 & s 99

⁹⁰¹ *ibid* s 99.1 & s 99.2

⁹⁰² *ibid* s 40.1

⁹⁰³ *ibid* s 44

⁹⁰⁴ *ibid* s 94.3 & s 106

⁹⁰⁵ *ibid* s 95 – s 99

⁹⁰⁶ Elspeth Guild and Didier Bigo, 'The Legal Mechanisms – Collectively Specifying the Individual' in Anderson and Apap (n84) 129 – 135

⁹⁰⁷ Schengen Convention 1990 s 99

⁹⁰⁸ *ibid* s 92 – s 100

In a similar fashion to the Participant States' approach to Europol, to ensure that Participant States can be held to account for the quality of the alerts uploaded only designated national units are permitted to upload information to the SIS.⁹⁰⁹ Each Participant State is deemed to be legally responsible for the data uploaded to the SIS and is obliged to refund in full any amounts paid in damages by another State as a result of an operation carried out on foot of an unsubstantiated or unlawful request.⁹¹⁰ The national desk, known as the Schengen Information Request at the National Entry (SIRENE), is typically housed alongside the Europol ENU and the Interpol NCB within the national police headquarters.⁹¹¹ Representatives from the respective national data authorities must be appointed to a Joint Supervisory Authority (JSA) which is responsible for overseeing the general data compliance of the SIS in accordance with the CoE Convention on Data Protection 1981.⁹¹²

The Schengen Convention is clearly as formulaic and programmatic as the Europol Convention if not more so. It establishes a highly descriptive code of procedure concerning a number of key processes for operational cross-border police cooperation. Moreover, the movement of police officers across borders and the maintenance of the SIS are subject to stringent controls that strive to respect the fundamental supremacy of the domestic police forces whilst ensuring that cooperating police forces can be held to account according to a clearly identifiable and prescriptive standard of conduct. However one crucial aspect, from an accountability and transparency perspective, is that the Schengen Convention was not established by the EU institutions. The Schengen Acquis was developed as a regional project by the Benelux States, France and Germany in the mid-1980s and was only incorporated into the EU regime as a *fait accompli* on foot of the Amsterdam Treaty 1997.⁹¹³

The Schengen system was premised upon a system of hot pursuit and surveillance that the Benelux States had put in place in 1962 following their decision to remove their shared internal border controls in order to stimulate economic activity through a Benelux Union four years earlier.⁹¹⁴ The Benelux policing framework was outlined in the Benelux Treaty on Extradition and Mutual Assistance 1962. It provided for 'hot pursuit' across their internal borders within a ten kilometre radius as well as enhanced processes for mutual assistance amongst other provisions. Similar in ways to the subsequent Schengen Convention, the supremacy of the domestic police force and territorial sovereignty was preserved by a highly descriptive code of procedure which prescribed that once the border was crossed, the officers in pursuit were to contact the domestic police force at the earliest possible opportunity to request their assistance and were to follow any and all instructions received under the same conditions as a police officer of that State.⁹¹⁵

Similar legal frameworks for hot pursuit between Belgium and the Netherlands could be traced back to agreements from the 1910's and '20s. These enabled police officers

⁹⁰⁹ *ibid*

⁹¹⁰ *ibid* s 92 & s 126

⁹¹¹ Fijnaut (n886) 255

⁹¹² Benyon et al (n64) 134

⁹¹³ Toine Spapens, 'Cross-border public order policing in the Dutch border areas' in Verhage (n822) 163 – 173

⁹¹⁴ Cyrille Fijnaut, 'Police Cooperation Along the Belgian-Dutch border' in Cyrille Fijnaut (ed), *The Internationalization of Police Cooperation in Western-Europe* (Kluwer Law 1993) 121 - 133

⁹¹⁵ *ibid*

to legally cross over into a neighbouring border area, armed and in uniform, to warn their counterparts, to hold intelligence meetings, to carry out observations on known offenders in designated border zones and to assist in arrests without prior executive or judicial authority.⁹¹⁶ Fijnaut observes that the procedures for police cooperation within the border regions flourished prior to the 1940s.⁹¹⁷ He notes that the Benelux processes only started to get particularly strict from 1949 onwards following the collapse of the European empires and the introduction of tighter border and passport controls by the national governments.⁹¹⁸ The Benelux framework and a remarkably similar Nordic Framework were long considered to be the most advanced and effective operational cross-border policing frameworks in Europe.

In light of the political agreement of the broader EU Member States to remove all of the internal border controls throughout Western Europe, the Benelux States decided to invite France and Germany to join their regional cross-border policing framework.⁹¹⁹ France and Germany are the only two Member States bordering the Benelux States so the extension of the policing framework effectively enhanced the Benelux States' policing capacity not only at their internal border crossings with each other but at their only outer borders crossings with France and Germany. France and Germany, for their part, were largely amenable to joining the proposed Schengen initiative for they had already signalled their intention to proceed with the establishment of joint border posts, regular meetings of commanders, radio links and a regime for cross-border hot pursuit and surveillance at the Franco-German border.⁹²⁰ They had outlined their intentions through a formal Convention in 1977 and reaffirmed their ongoing discussions at a summit at Saarbrücken in 1984.⁹²¹

The broader EU Member States evidently realised immediately that the application of the cross-border policing framework throughout the wider EU could serve as a panacea for the perceived 'security deficit' caused by the planned removal of border checkpoints.⁹²² The traditional customs checkpoints, which were to be abolished, could effectively be replaced by a new and unprecedented system which would enable police officers to pursue suspects across the frontier and issue alerts to border police stations. During the negotiation of the Convention, the original Schengen participants invited the European Commission to send representatives to attend and observe the negotiations.⁹²³ Provision was made in the Convention for the framework to be incorporated, altered by or replaced by a wider European initiative.⁹²⁴

The EU Commission strongly encouraged the Schengen participants to ensure full ratification by 1 January 1990 so that the compensatory measures could be evaluated by the EU institutions before the Member States proceeded with the wider abolition of internal border controls throughout Europe in 1992.⁹²⁵ The Schengen initiative was, by and large, considered to be a laboratory or pilot project for 'enhanced cooperation'

⁹¹⁶ *ibid*

⁹¹⁷ *ibid*

⁹¹⁸ *ibid*

⁹¹⁹ Heberton and Thomas (n65) 60

⁹²⁰ Anderson (n240) 156 – 158

⁹²¹ *ibid* 156 – 158

⁹²² Anderson et al (n63) 57 - 61

⁹²³ *ibid*

⁹²⁴ *ibid*

⁹²⁵ *ibid*

and broader integration at the wider European level.⁹²⁶ In fact, the Schengen Convention was considered to be so favourable and legally balanced that Portugal, Spain, Italy and Greece all voluntarily signed up to the Schengen Convention before their subsequent adoption and ratification of the Maastricht Treaty.⁹²⁷

The only EC Member States not to sign up to the Convention were the UK, Ireland and Denmark. Ireland and the UK avoided participating in the Schengen Convention due primarily to the fact that they were island nations which did not suffer porous borders and immigration problems to the same extent as countries on continental Europe.⁹²⁸ Denmark was initially reluctant to get involved in the Schengen initiative primarily because it was cautious about undermining the integrity of the Nordic Passport Union which had abolished all border controls between Denmark, Sweden and Norway in the 1970s.⁹²⁹ Denmark's 68 kilometre land border with Germany was already highly porous but if Denmark unilaterally joined the Schengen Convention at the outset, which it was keen to do, it would have exposed Sweden and Norway to the full brunt of unchecked immigration at the Danish-German border. Once Sweden and Norway proved receptive to the Schengen initiative, Denmark successfully applied for membership in 1995. The Danish Police not only use the Schengen framework to pursue suspects into Northern Germany but it is now the primary procedural framework regulating the pursuit of suspects across the 8km long Oresund Bridge which connects the greater Copenhagen area to Malmo in Sweden.⁹³⁰ The police district of South Jutland routinely uses the hot pursuit provisions to pursue suspects into Northern Germany and the complementary surveillance provisions are often used to keep GPS tracking devices activated as vehicles travel to and from Sweden and Germany to avoid charges of unlawful surveillance.

Ireland and the UK subsequently opted into various aspects of the Schengen policing framework. The UK Government applied to join the full gamut of cross-border policing provisions of the Schengen Convention in 1999.⁹³¹ However France, a founding member of the Schengen Convention, rejected the UK's application to join the Convention's provisions for cross-border hot pursuit due primarily to the fact that the UK and France already had very specific procedures for police cooperation in place. The Channel Tunnel is the only physical rail and road link connecting England to continental Europe and police cooperation therein was already regulated by the Anglo-French Treaty of Canterbury 1986, the Channel Tunnel Act 1987 and the 1991 Protocol Concerning Frontier Controls and Policing, Cooperation in Criminal Justice, Public Safety and Mutual Assistance Relating to the Channel Fixed Link.

The various bilateral Channel Tunnel protocols provided for the establishment of a unique 'control zone' in Dover which would contain French officials who could conduct all police, passport and documentary checks for passengers before they

⁹²⁶ Benyon et al (n64) 180

⁹²⁷ *ibid* 57

⁹²⁸ *ibid* 44, 45

⁹²⁹ Kruize (n266) 170

⁹³⁰ Langsted (n236) 19

⁹³¹ Council Decision concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (2000/365/EC); Council Decision on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland (2004/926/EC)

embarked on a train for France.⁹³² A comparable ‘control zone’ in Calais, containing English officials, was to carry out similar functions before trains departed for England.⁹³³ The English control zone in Calais originally consisted of officials from the Immigration Service supported by detectives from the Kent Special Branch but this job is now carried out by officials from the UK Border Authority (UKBA).⁹³⁴ The control zones were considered to be sovereign territory in a similar fashion to an embassy in the sense that any offences detected within the control zones were to be treated as offences committed within the jurisdiction of the country operating the control zone.⁹³⁵ The primary rationale behind the establishment of the control zones was to carry out exit and entry checks simultaneously so that passengers would not be subjected to laborious checks at the points of disembarkation, leading to much faster travel times.⁹³⁶ It was readily apparent that powers of ‘hot pursuit’ were impractical since police officers had ample time to stop and board a train before it left the domestic jurisdiction or to request their counterparts to locate and arrest a passenger on the other side before they exited the control zones.

The UK was however permitted to participate in the Schengen Convention’s cross-border surveillance provisions. The nature of a surveillance operation very often demands that a suspect is not stopped and arrested until the investigating police officers have gathered the requisite evidence. Undercover police officers who board a Euro-star train travelling through the Channel Tunnel are naturally reluctant to disembark at the border for fear that their foreign counterparts may not be able to plan and execute a surveillance operation quickly enough to take over a surveillance operation before a passenger disembarks. Moreover, crucial evidence may be missed as an operation is handed over between different surveillance teams. It may also be beneficial for the visiting police officers to assist the local surveillance team due to their knowledge about the nature of the case, the modus operandi of the suspect and the identities and backgrounds of likely associates.

The UK enacted the Schengen cross-border surveillance provisions by way of the Crime (International Cooperation) Act 2003. However the Home Secretary, in cooperation with the Association of Chief Police Officers (ACPO), introduced a Circular in 2005 which established very strict guidelines for the conduct of a cross-border surveillance operation in the UK.⁹³⁷ The Circular outlined that prior authorisation should be secured in advance of a border crossing but that in cases of urgency foreign officers could continue to maintain surveillance within the State for up to five hours while a request for assistance was being considered as long as they bring themselves to the immediate attention of the local territorial police force, the National Crime Agency or the Home Office upon entering the jurisdiction.⁹³⁸

The Circular definitively outlined that foreign officers who were engaging in a surveillance operation were prohibited from stopping, questioning, arresting or

⁹³² Roy Ingleton, *Mission Incomprehensible: the linguistic barrier to effective police co-operation in Europe* (Multilingual Matters Avon 1994) 70

⁹³³ James Sheptycki, *In Search of Transnational Policing* (Ashgate 2002) 113 - 119

⁹³⁴ Heberton and Thomas (n65) 89 - 91

⁹³⁵ Ingleton (n932) 70

⁹³⁶ Heberton and Thomas (n65) 89 - 92

⁹³⁷ Home Office Circular 3/2005

⁹³⁸ *ibid* para 4

entering private places independently and were required to operate under the direction and control of the relevant territorial police force upon arrival in the UK.⁹³⁹ Moreover, the Circular required the relevant domestic territorial police force to assume full operational control of the surveillance operation as soon as practicable within the five hour window.⁹⁴⁰ The rigid and highly proscribed nature of the UK's cross-border surveillance provisions suggest that police chiefs and the Home Office are particularly uncomfortable with the idea of visiting foreign police officers employing police powers in the UK.

Remarkably, Ireland has almost entirely avoided the adoption of the Schengen cross-border policing framework despite the fact that it shares a 300 mile land border with Northern Ireland. Ireland has only joined the SIS provisions of the Schengen Convention which it mainly uses for immigration and customs purposes.⁹⁴¹ It is readily apparent that neither Ireland nor Northern Ireland has applied to join the Schengen hot pursuit and surveillance provisions due primarily to long-standing political and social animosities between the two States.⁹⁴² More particularly, when the Irish police force was first established in the 1920s no legal provisions were established to facilitate cooperation with the Royal Ulster Constabulary (RUC) in Northern Ireland, with no clear intention to do so in the future.

As Walsh conveys, the nascent Irish police force was proactive in its efforts to distance itself from its counterpart in Northern Ireland.⁹⁴³ The public perception of the RUC was tainted at the outset for visiting many injustices on the Irish citizenry in its previous guise as the Royal Irish Constabulary (RIC), which had jurisdiction over the whole island during the preceding decades.⁹⁴⁴ The RIC was largely synonymous with the eviction of tenant farmers and the brutal suppression of protests, riots and rebellions resulting in the death of thousands of peasants and protestors seeking property rights, civil rights and democratic representation.⁹⁴⁵ Such was the disdain of the Irish public towards the RIC that during the war of independence between 1919 and 1921 some 442 RIC constables and auxiliaries, known as the Black and Tans, were killed and thousands of officers assaulted and threatened.⁹⁴⁶ The new Irish Police force itself had suffered a traumatic few years in the mid-1920s as it strived to differentiate itself from the RUC by deploying unarmed, locally recruited and working-class professional police officers.⁹⁴⁷ A number of new Irish Garda officers were murdered and assaulted by the IRA and its illegal Republican Police before the new force was eventually accepted by the general public.⁹⁴⁸

⁹³⁹ *ibid* paras 3 - 5

⁹⁴⁰ *ibid* 5

⁹⁴¹ Council Decision 2002/192/EC concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L64/20)

⁹⁴² McGarry and O'Leary (n660) 5 – 20, 172 – 176, 397, 398

⁹⁴³ Walsh (n43) 11, 12, 101 - 106

⁹⁴⁴ Graham Ellison and Jim Smyth 'Bad Applies or Rotten Barrels? Policing in Northern Ireland' in Marenin (n88) 175 - 179

⁹⁴⁵ Gregory Allen, *The Garda Siochana: Policing Independent Ireland 1922-82* (Gill and MacMillan 1999) 5 - 52

⁹⁴⁶ Conor Brady, *Guardians of the Peace* (Gill and Macmillan 1974) 1 – 35

⁹⁴⁷ *ibid* 23 – 31, 71 - 95

⁹⁴⁸ *ibid*

The antagonistic relationship between the Irish Garda Siochana and the Northern Irish RUC did not improve significantly over the course of the 20th Century. In the latter half of the 20th Century, the RUC was long considered to be particularly heavy-handed when dispersing protestors promoting universal civil rights and voicing their concerns over religious prejudices within the public service.⁹⁴⁹ Ellison and Smyth note that the RUC on occasion baton charged largely peaceful protestors for simply carrying the Irish flag, which was prohibited.⁹⁵⁰ Critically, in the force's efforts to locate and investigate members of the IRA, which was actively committing terrorist atrocities on the streets of Northern Ireland in name of an independent Ireland, RUC officers shot and killed numerous unarmed and innocent Catholics. Along with the British Army which patrolled alongside the RUC in the 1970s, disproportionate force was used with remarkable regularity resulting in over 300 civilian fatalities between the late 1960s and the early 1990s.⁹⁵¹ The Stalker and Sampson inquiries which were established to examine 19 unarmed fatalities between 1980 and '82 and the perceived existence of a shoot-to-kill policy within the RUC suggested that some particular police and military units were carrying out summary executions of suspected Irish terrorists.⁹⁵² In one case, the RUC was accused of unlawfully crossing the Irish border to covertly keep terrorist suspects under surveillance before summarily executing them when they crossed back into Northern Ireland.⁹⁵³ There were also claims that RUC Special Branch officers were actively colluding with militant loyalists and manipulating and staging crime scenes so that police officers were not prosecuted for corruption.⁹⁵⁴ Nationalists and Catholics who were arrested and detained also frequently complained that the RUC subjected them to brutal beatings and oppressive interrogation techniques throughout the normal custody process and during the controversial process of internment.⁹⁵⁵

Brady succinctly observes that the RUC effectively painted itself as a partisan police force which prioritised British rule and patronage over Irish civil liberties.⁹⁵⁶ McGarry and O'Leary convey that the Northern Irish Police Authority was also perceived to be highly prejudiced since it conducted no major and comprehensive public enquiries throughout the 1970s and regularly claimed that the RUC was the best police force in the world.⁹⁵⁷ The prevailing situation meant that the Irish public south of the border, their politicians and police officers invariably sympathised with the plight of Irish men and women in Northern Ireland and decried the tactics and ethos of the RUC.⁹⁵⁸ The attitude of the Irish public was particularly well exemplified by protests in Dublin

⁹⁴⁹ Graham Ellison and Jim Smyth, *The Crowned Harp: Policing Northern Ireland* (Pluto Press London, 2000) 44 - 79

⁹⁵⁰ *ibid*

⁹⁵¹ *ibid* 116 - 132

⁹⁵² *ibid*

⁹⁵³ An Taoiseach, Statement to Dail Eireann on alleged Activities of the RUC (Debate Vol 349:8 & 348:9, 1984)

⁹⁵⁴ Ellison and Smyth (n949) 134 - 149

⁹⁵⁵ *ibid* 80 - 97

⁹⁵⁶ Brady (n946) 2

⁹⁵⁷ John McGarry and Brendan O'Leary, *Policing Northern Ireland: Proposals for a New Start* (Blackstaff Press Belfast 1999) 99 - 103

⁹⁵⁸ Dermot Walsh, 'Police Cooperation across the Irish Border: Familiarity Breeding Contempt for Transparency and Accountability' (2011) 38:2 *Journal of Law and Society* 305, 306

in the 1970s which resulted in the burning of the British embassy in Ireland in support of the hunger strikes by nationalist prisoners in Northern Ireland.⁹⁵⁹

To avoid extending a modicum of legitimacy to the conduct of the RUC, the Irish government for a long time avoided forming any official agreements with the RUC and the Irish Garda Commissioner avoided publicising the nature or degree of any ongoing cooperation for fear of igniting a public backlash. More particularly, RUC police officers as well as Irish Gardaí ran a significantly high risk of being targeted by terrorist groups if it was suspected that police officers were engaging in cross-border police cooperation.⁹⁶⁰ Conway reports that a number of police officers stationed at the Irish land border suffered physical assault and suffered petrol-bombings in order to keep tensions high and security and political cooperation at a minimum.⁹⁶¹

Although the dynamic has vastly improved since the 1980s, the Schengen policing provisions have not yet found favour in Ireland. The Irish and UK governments called for the development of closer, more permanent ties in the Sunningdale Agreement 1973, the Anglo-Irish Agreement 1985 and the Anglo-Irish Agreement 2002 but without major effect. The Sunningdale Agreement, for instance, helped to formalise the establishment of radio and telephone lines in order to facilitate the issuance of alerts, the exchange of intelligence and the coordination of operations between several Irish and Northern Irish police stations along the 300 mile land border.⁹⁶² The 1985 Agreement, subsequently, required the Irish and Northern Irish police chiefs to develop a cross-border work programme which would facilitate the exchange of information; joint threat assessments; the coordination of operations and border patrols, rapid communication, the secondment of liaison officers and joint training.⁹⁶³ However the respective chiefs of police were reportedly unable to reach consensus over the vague objectives of the work plan and a new comprehensive regime for information exchange and operational cooperation never materialised.⁹⁶⁴ The police chiefs reportedly indicated to government that many of the problems were outside of the police chiefs' remit since processes such as the posting of liaison officers demanded new legislation which would set out the formal powers, privileges and immunities of seconded officers.⁹⁶⁵

The 1985 Agreement also established an Anglo-Irish Intergovernmental Conference, renamed the British-Irish Council in 2002, of officials from both States which was required to meet every three months to suggest and develop new ways to enhance cross-border cooperation in political, legal and security matters. The Conference encouraged more regular high-level strategic meetings between the Irish and Northern Irish police chiefs, who had already been meeting at least bi-annually on foot of the 1973 Agreement.⁹⁶⁶ It also encouraged the superintendents of border police stations

⁹⁵⁹ John Brewer et al, *The Police, Public Order and the State* (2nd edn, Palgrave Macmillan 1996) 99 - 101

⁹⁶⁰ O'Loan (n475) 114

⁹⁶¹ Conway (n395) 128 – 132

⁹⁶² S Dunn et al, *Cross-Border Police Cooperation in Ireland* (Centre for Peace and Development Studies University of Limerick 2002) 22

⁹⁶³ Anglo-Irish Treaty art 9

⁹⁶⁴ Sean Flynn, 'Gardai, RUC in security talks' *Irish Times* (Dublin 27 February 1986) 7

⁹⁶⁵ Dunn et al (n962) 29

⁹⁶⁶ Conor Cleary, 'RUC and Garda cooperation is kept very quiet' *Irish Times* (Dublin 18 July 1979) 10

and the respective heads of the detective branches to meet at least biannually to review and strengthen day-to-day cooperation.⁹⁶⁷

The Anglo-Irish Agreement 2002, which largely restated the policing objectives of the 1985 Agreement, subsequently held the promise of more structured cooperation in light of the transformation of the RUC into the Police Service of Northern Ireland (PSNI) and the devolution of security and justice powers to the Northern Ireland Executive pursuant to the Good Friday Peace Agreement 1998.⁹⁶⁸ The police chiefs subsequently published a 'three-year cross-border policing strategy' in 2009 which outlined their intention to establish a joint Garda Síochána/ PSNI Tasking and Coordination Group (T&CG) to review operational procedures; to introduce new interoperable radio systems; and to create of a manual of guidance in relation to cross-border operations but there was no mention of introducing a Schengen-type framework of hot pursuit and surveillance.⁹⁶⁹

From an accountability and transparency perspective, the implementation of the Schengen provisions would clearly be highly beneficial at the Irish land border for the simple reason that the absence of an operational framework means that criminals can escape justice if foreign police units cannot be contacted and mobilised quickly enough to intercept a hot pursuit. The Irish land border was arbitrarily designed in 1920, cutting through the middle of townlands, farmlands and hundreds of concession roads which provide multiple routes for the cross-border escape of a suspect.⁹⁷⁰ Remarkably, the absence of a compatible radio system means that urgent inter-force communications must be relayed from central dispatch to central dispatch thereby significantly delaying urgent communications between police teams.⁹⁷¹ The thawing of relations and the passage of time suggests that the general public are undoubtedly more receptive to the introduction of systems of cross-border police cooperation than at any other time over the past century but unfortunately there are no concrete plans to introduce a framework of hot pursuit and surveillance. Regrettably, the Irish government and the police chiefs continue to portray a superficial 'image' of police cooperation at the Irish border, purporting that cooperation operates at a very high level, with quick response times and to the fullest extent possible.⁹⁷² This is clearly not the case since the Schengen policing framework would clearly enhance the ability of the respective police forces to bring offenders to justice.

The Schengen cross-border policing framework, to all intents and purposes, is the primary mechanism for cross-border hot pursuit and surveillance throughout Europe. Most importantly, the Schengen regime has become so central to the EU cross-border policing regime that any new EU Member States are forced to comply with the code of procedure upon joining the Union.⁹⁷³ One of the main reasons behind the decision to incorporate the Schengen framework within the EU regime in 1997, even though almost all of the EU Member States had already joined the initiative on a bilateral

⁹⁶⁷ Smithwick Report (n422) 20, 21, 40

⁹⁶⁸ Clifford Shearing, 'The curious case of the Patten Report' in Doyle (n475) 28 – 35

⁹⁶⁹ Cross-Border Policing Strategy (Garda Síochána Publications 2009) 3, 4

⁹⁷⁰ Dunn et al (n962) 14 – 30

⁹⁷¹ *ibid*

⁹⁷² Minister of Justice Alan Shatter, Priority Questions: North-South Cooperation (Dail Eireann Debate Vol 729:4, Thursday 7 April 2011)

⁹⁷³ Antonio Vitorino, 'New European borders and security cooperation: promoting trust in an enlarged Union' in Anderson and Apap (n84) 11 – 17

basis, was to force the ten accession States planning to join the EU in the early 2000s to accede to the framework. The Schengen Convention is clearly considered to be fundamental to the security of the inner and outer borders of the EU Member States.

It is submitted that the Schengen Convention 1990 serves as a fundamental pillar of cross-border policing in the EU not only because of the types of cooperation that it facilitates but because of the ethos that it represents. It preceded the entire EU project by a number of years and the level of detail that it afforded to matters of basic procedure, powers, liability and monitoring appeared to amount to a benchmark or standard of transparency and accountability that the Europol Convention later replicated. The shape and form of the intelligence processes, structures and requirements outlined in the Schengen Convention with respect to the SIS are remarkably similar to those subsequently adopted in the Europol Convention 1995.

The Schengen Convention was arguably representative of an ethos and standard of legal precision, procedural clarity and accountability that future cross-border frameworks would mimic. The thesis will show in the chapter on ‘complaint and inquiry as EU law and policy’ that the level of detail and the focus on accountability evident within the Schengen Convention and the subsequent Europol Convention was engendered in part by the involvement of highly specialised working groups of police officers and judicial officials and, most importantly, by the scrutiny, inquiry and mediation of the national parliaments. The processes of dynamic input, arbitration and conciliation clearly produced a framework for cross-border policing that was largely considered to be balanced, effective and legally warranted. However the thesis will argue that the EU institutions quickly lost sight of the ethos and key ingredients of the Schengen Convention and subsequent Europol Conventions as it amassed more autonomous powers and functions pursuant to the Amsterdam Treaty.

Mutual Police Assistance & Joint Investigation Teams

The last major area of EU procedural law that the thesis will address is the relatively ambiguous area of mutual police assistance. The term ‘mutual assistance’ is generally used to refer to the exchange of evidence between judicial authorities and police forces but its use is wide ranging and highly ambiguous.⁹⁷⁴ Measures of mutual police assistance frequently include processes of information sharing, operational cooperation and common investigative techniques, which represent three distinct objectives of the Lisbon Treaty. Moreover, the former areas of information sharing and operational cooperation were originally regulated by and large by the Europol and Schengen initiatives, resulting in a significant degree of conceptual and functional overlap. Furthermore, the Europol and Schengen constructs are also concerned with the exchange of evidence. Europol is concerned primarily with the collection, exchange and analysis of information in order to support investigative evidence gathering. Similarly, the Schengen Convention facilitates information sharing and powers of hot pursuit and surveillance so that suspects can be identified, searched and pursued for evidentiary purposes.⁹⁷⁵

⁹⁷⁴ Anderson (n240) 158, 159

⁹⁷⁵ Nadelmann (n241) 4

The ambiguous use of the term ‘mutual assistance’ is well reflected in a number of transnational legal instruments. The Benelux Treaty on Extradition and Mutual Assistance 1962 for example contained frameworks for hot pursuit across borders, extra-jurisdictional police powers, the exchange of evidence between courts and the harmonisation of judicial processes across jurisdictions. Similarly, Article 2 of the Constitution of Interpol 1956 states that the aim of the organisation is ‘to ensure and promote the widest possible mutual assistance between all criminal police authorities’. Nevertheless, Interpol’s activities fall largely within the realm of information exchange and analysis. Although various aspects of the Schengen and Europol frameworks could potentially be considered under the legal concept of ‘mutual assistance’, colloquially it has taken on more specific procedural and administrative connotations, particularly since the introduction of the Council of Europe’s European Convention on Mutual Assistance in Criminal Matters 1959. When academics, police officers and judicial officers refer colloquially or juridically to ‘mutual assistance’ it is usually the legal and administrative processes originally enumerated in the 1959 Convention that they refer to.

The 1959 Convention primarily provided for the streamlined and simplified transmission of requests for police and judicial assistance between the participant States.⁹⁷⁶ Requests for assistance traditionally covered anything from a request for a duplicate copy of a case file, a request for old forensic evidence or even for urgent property searches to be carried out to gather evidence that can potentially assist a foreign criminal investigation. The Convention outlined that letters of request for mutual assistance should be drawn up by a local judge or magistrate with jurisdiction over the relevant offence in question.⁹⁷⁷ Letters of request, known as *commission rogatoires*, should detail the nature and exigencies of the case along with the relevant local laws prohibiting the specific offence.⁹⁷⁸ If the specific offence is an offence in the requesting State but not an offence in the requested State then property searches or arrests cannot be carried out as requested under the principle of *nullum crimen, nulla poena sine lege*. More particularly, letters are to be accompanied by a domestic warrant to show that the requested measures are, at least, considered lawful, necessary and proportionate in the requesting State even though such warrants have no lawful effect in the executing State.

In addition, the Convention provided that letters should be sent ideally to a designated national central authority, preferably the ministry of justice, for the purposes of being screened and forwarded to the most appropriate judicial authority. It encouraged the participant States to allow their judicial authorities to send letters of request directly to familiar foreign judicial authorities using bilateral and international police channels such as Interpol as intermediaries.⁹⁷⁹ A key element of the Convention was the removal of the ministries of foreign affairs from the mutual assistance process. Prior to the 1950s, in order for a court to issue a search warrant for the purposes of assisting a foreign criminal investigation or prosecution, the application generally needed to be screened and approved by the respective ministry of foreign affairs beforehand.⁹⁸⁰ The difference in substantive and procedural criminal laws between States across Europe

⁹⁷⁶ Rijken (n116) 170 – 219

⁹⁷⁷ *ibid* 196 - 219

⁹⁷⁸ European Convention on Mutual Assistance in Criminal Matters (1959) s 2 – s 5

⁹⁷⁹ *ibid* s 4 – s 6

⁹⁸⁰ Fosdick (n362) 318 - 335

meant that it was highly impractical, often impossible, for judges to take the time and effort to access foreign criminal codes, invariably enumerated in a foreign language. Judges typically needed to do so in order to ensure that a foreign request for police assistance met all of the relevant domestic legal standards of legality, necessity and proportionality. As such, diplomatic and judicial courtesy demanded that foreign applications be directed to the ministry of justice via the ministry of foreign affairs so that officials in the ministerial departments could secure, translate and cross check the relevant documentation in partnership with their foreign ministerial counterparts before the application was forwarded to the relevant judge for consideration. This meant that a relatively simple request generally had to travel from the requesting detective through the offices of the local police chief to the justice ministry and on to the foreign ministry so that it could be communicated through diplomatic channels to the relevant foreign ministry, then onto the foreign justice ministry and the foreign police chief until finally reaching the foreign police officers, prosecutors or judges for possible execution. Not only was the application system highly bureaucratic but the requested evidence, whether old forensic materials or new evidence gathered during a property search, once secured would have to be transmitted back through the same bureaucratic channels.

A major disadvantage with the system was that the preliminary considerations of the diplomatic channels were not only detrimentally slow but the ministries typically demanded a wealth of information about the case and the foreign legal system that far exceeded the standard applied to routine local warrants.⁹⁸¹ Moreover there was little certainty that the application would eventually find approval.⁹⁸² Some Member States, such as Spain and France, were reportedly well known for adding onerous conditions and for taking an inordinate amount of time to process requests through the designated central authorities.⁹⁸³ Nadelmann remarks that the idea of extra-territorial jurisdiction, practiced effervescently by the USA, was almost entirely illusory since foreign States often refused to acknowledge requests for evidence or extradition on the basis of incompatibility or sovereignty.⁹⁸⁴

The aim of the 1959 Convention was to reduce the element of political variance from the processes of request and exchange within Europe by outlining in relatively precise terms what information a request should contain and by removing the ministries of foreign affairs from the process. Anderson comments that the objective of the Convention was ultimately to minimise the ‘kaleidoscope’ of political and professional views and interests that influenced the process.⁹⁸⁵ It was effectively a procedural framework or code of procedure designed to induce a measure of procedural clarity and legal precision, to give more shape to the idea of the ‘rule of law’ in cross-border policing and judicial matters.

The CoE was not only interested in establishing common processes and procedures for the handling of requests for assistance but it also managed to reconcile its Participant States’ self-interests in order to form common values and minimum standards which gave further definition to the ‘rule of law’ in numerous other areas.

⁹⁸¹ Rijken (n116) 221 - 239

⁹⁸² *ibid* 181 - 208

⁹⁸³ *ibid* 208 - 234

⁹⁸⁴ Nadelmann (n241) 5, 316 - 320

⁹⁸⁵ Anderson (n240) 188 - 190

Landmark conventions included the European Convention on Human Rights 1950, a European Extradition Convention in 1957, the Convention on the Suppression of Terrorism 1977, the Convention for the Protection of individuals with regard to the Automatic Processing of Personal Data 1981 and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime in 1990 amongst others. Not only did it manage to secure the consensus of the Participant States to adopt these ground-breaking instruments but it did so with remarkable speed and efficiency while the issues were still considered, on a political level at least, as emerging and often contentious issues.⁹⁸⁶ The 1981 Data Convention, for example, was introduced in the midst of the first generation of computer mainframes and established new mechanisms for safeguarding information privacy.⁹⁸⁷ Under the data protection guidelines, all participating states were encouraged to enact national legislation to regulate the storage of data on individuals and establish a national regulatory institution to oversee the maintenance, retrieval and use of personal information by State bodies. The initiative was modelled in part on data protection institutions established in Hesse, Germany in 1970 and later in France in 1978.⁹⁸⁸ Both the Schengen Convention 1990 and the Europol Convention 1995 made direct reference to the 1981 Data Convention, requiring its Participant States to fulfil the obligations set out therein.

The EU's Convention on Mutual Assistance in Criminal Matters

The EU institutions moved to further streamline the processes of mutual police and judicial assistance following a systematic review of the processes in each Member State in 1998.⁹⁸⁹ The review teams found, by and large, that it was not uncommon for requests between neighbouring European countries to be sent directly between judiciaries wherein only a duplicate copy was being sent through the bureaucratic ministerial channels to ensure procedural formality.⁹⁹⁰ The study appeared to suggest a widespread, but by no means unanimous, change in attitude of lower courts to the acceptability of foreign requests for assistance. On foot of the review, the EU Council of Ministers issued a 'Joint Action on good practice in mutual legal assistance in criminal matters' in 1998 which encouraged courts to send letters of request directly to one another where possible.⁹⁹¹ A 'Joint Action' was essentially a Maastricht Treaty era instrument which enabled the Justice Ministers to form a mutually agreeable strategic plan within the confines of their existing domestic regulatory and policy functions.⁹⁹² More controversially, following a subsequent EU summit in Tampere, Finland in 1999, the Heads of State and Government decided to streamline the process even further by incorporating the principle of 'mutual recognition', which had long been used in the EU's economic community policy area.⁹⁹³

The concept of mutual recognition effectively revolved around the premise that judiciaries would be required to officially recognise the courts of neighbouring

⁹⁸⁶ Anderson et al (n63) 222 - 249

⁹⁸⁷ Benyon (n64) 178

⁹⁸⁸ Heberton and Thomas (n65) 79, 80

⁹⁸⁹ Rijken (n116) 171 - 240

⁹⁹⁰ Council of the European Union, *Evaluation report on Denmark on Mutual Legal Assistance and Urgent Requests for the Tracing and Restraint of Property* (1999) 1.1 – 2.12.4

⁹⁹¹ Joint Action 98/427/JHA s 1 – s 5

⁹⁹² Maastricht Treaty of the European Union [1993] art K.3.2 (Joint Actions)

⁹⁹³ Tampere European Council 15 and 16 October 1999 Presidency Conclusions

jurisdictions as authoritative equals to the greatest extent possible without seeking further validation or legal clarity from their ministries of justice or foreign affairs.⁹⁹⁴ The concept rested primarily on the assumption that each Member State guaranteed minimum procedural human rights standards across their investigative, prosecution and detention processes in accordance with the jurisprudence of the European Court of Human Rights (ECtHR).⁹⁹⁵ The implication was that judiciaries should simply assume that the minimum standards that are required to issue a letter of request and warrant have been met.⁹⁹⁶

One of the major controversies around the desire to incorporate the principle of mutual recognition in criminal matters was the fact that it suited some judiciaries in Europe but not others. The principle had long been applied informally within the Benelux, Nordic systems and federal German systems in particular.⁹⁹⁷ Fijnaut observes that since the Benelux Treaty 1962 encouraged prosecutors and courts to exchange letters of request directly, prosecutors had even become accustomed to making oral requests instead of using formal letters.⁹⁹⁸ Den Boer conveys that judges accepted such practices because Belgium, the Netherlands and Luxembourg had been harmonising or ‘tuning’ their basic criminal laws, investigative procedures and professional practice for the purposes of cross-border police cooperation since the early 20th Century.⁹⁹⁹ She observes that the degree of understanding, trust and professionalism which had developed was highly unique and largely unknown in other areas of Europe.¹⁰⁰⁰

However, many other national court systems were not nearly as familiar with their neighbouring police and judicial systems to the same extent. France, Spain and the UK, for instance, were historically reluctant to engage in systematic judicial cooperation with each other due to significant differences in criminal laws, policing processes and, most importantly, long standing political tensions.¹⁰⁰¹ They did not share nearly the same trust, understanding and routine cooperation that was evidently identifiable within the Benelux, Nordic and German regions.¹⁰⁰²

Nevertheless, the principle of mutual recognition was incorporated in spirit in the EU Convention on Mutual Assistance in Criminal Matters 2000.¹⁰⁰³ The EU Convention largely reiterated the processes outlined in the prior CoE Convention on Mutual Assistance 1959. It encouraged courts to send letters of requests directly between themselves but still required copies of letters of request to be sent to designated national central authorities, usually the ministries of justice. The EU Convention also

⁹⁹⁴ Occhipinti (n781) 81 – 85

⁹⁹⁵ Walsh (n40) 6

⁹⁹⁶ *ibid*

⁹⁹⁷ Toine Spapens, ‘Joint Investigation Teams in the European Union: Article 13 JITs and the Alternatives’ (2011) 19:3 EJCCLCJ 248

⁹⁹⁸ Fijnaut (n914) 118 – 133

⁹⁹⁹ Monica Den Boer, ‘Towards a Governance Model of Police Cooperation in Europe’ in Lemieux (n85) 42 – 61

¹⁰⁰⁰ *ibid* 43

¹⁰⁰¹ Rijken (n116) 208 - 234

¹⁰⁰² Den Boer (n999) 43

¹⁰⁰³ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000) OJ C197/10

proceeded to regulate some very specific areas of mutual assistance concerning the transfer of criminal and civil judgments, writs, warrants, prisoner transfers, the use of tele-conferencing in criminal trials as well as the exchange of letters of request within the context of a Joint Investigation Team (JIT). The new concept of a Joint Investigation Team in particular provided for the structured secondment of foreign police officers and prosecutors for the purposes of assisting with cross-border criminal investigations. Such secondments had traditionally been subject to the diplomatic letter of request process.

The simple secondment of foreign police officers or even prosecutors to an investigative unit can potentially provide significant added value to ongoing investigative work. Foreign detectives with key knowledge of particular foreign criminals and criminal gangs may be able to identify key information or material relatively quickly due to their knowledge of the transient criminals under investigation. In the context of a surveillance operation, they can potentially identify voices and persons known to them and immediately understand the language and terminologies of the individuals concerned.¹⁰⁰⁴ Short secondments are particularly popular during major events such as the Olympics and the UEFA football world cup so that foreign officers can identify travelling football hooligans and extremists known to them.¹⁰⁰⁵ Most importantly, the participation of a seconded official can, in effect, create a *de facto* joint command whereby investigations into a cross-border criminal network across two jurisdictions can be synchronised and intelligence files collated.¹⁰⁰⁶ Such collaboration can avoid duplication, misunderstandings and communication and information gaps.¹⁰⁰⁷ As Anderson conveys, joint investigations can ultimately succeed where separate parallel would otherwise fail.¹⁰⁰⁸ He observes that joint investigations can also enhance feelings of trust and camaraderie between the participant detective bureaus which can ultimately lead to further collaborations and greater intelligence exchanges in the future.¹⁰⁰⁹

Although secondments could traditionally be facilitated by way of letters of requests pursuant to the CoE Convention 1959, the new EU Convention aimed to clarify and simplify the process. It provided that a single Agreement signed at the start of a joint investigation would function as an overarching letter of request which could facilitate the secondment of officers, the execution of investigation measures and the sharing of evidence and criminal records within the jurisdiction of operation without the need for further or multiple letters of request.¹⁰¹⁰ Courts were even encouraged to accept requests for mutual assistance from domestic police officers or prosecutors who were seconded to a foreign JIT as if they were still operating within the domestic jurisdiction.¹⁰¹¹ The Convention elaborated that an Agreement should outline, at the very least, the nature and objectives of the case, the exact content of the team, the role

¹⁰⁰⁴ Ingleton (n932) 129

¹⁰⁰⁵ Alexandra De Moor and Gert Vermeulen, 'The new principal task for Europol to support Member States in connection with major international events: The blurring of boundaries between law enforcement and public order?' in Verhage et al (n822) 126 - 128

¹⁰⁰⁶ Rijken (n116) 7

¹⁰⁰⁷ *ibid*

¹⁰⁰⁸ Malcolm Anderson, 'Trust and Police Cooperation' in Anderson and Apap (n84) 35 – 46

¹⁰⁰⁹ *ibid* 44

¹⁰¹⁰ EU Convention on Mutual Assistance in Criminal Matters (n961) art 13

¹⁰¹¹ *ibid*

of the seconded officials, the expected duration of the investigation and the Member State in which the JIT would be located.¹⁰¹²

Most importantly, to preserve the supremacy of territorial jurisdiction in a similar fashion to the Schengen Convention, seconded officers were only legally entitled to be present when investigative measures were being carried out but could potentially be entrusted to carry out investigative measures subject to the approval and direction of the local commander and the relevant police forces involved.¹⁰¹³ The relevant domestic police commander was to have full powers of direction and control over the seconded officers.¹⁰¹⁴ The Convention also brought structure and clarity to the ambiguous legal issue of the liability of seconded officers. It provided that any foreign police officers or prosecutors seconded to the team under the terms of the EU Convention would assume the legal status of a comparable official of that country with respect to offences committed against them or by them.¹⁰¹⁵ Any damages paid by the host State on behalf of the seconded officers were to be repaid by the seconding State.¹⁰¹⁶ The Convention also provided for more short-term secondments in the context of controlled deliveries under the same conditions.

Furthermore, the Convention made express provision for the participation of Europol analysts in JITs in line with a previous requirement enumerated in the Amsterdam Treaty 1997.¹⁰¹⁷ It was well appreciated that Europol's analysts, who had almost unfettered access to the EIS and expert analytical skills, would readily enhance and complement the ability of the participating detectives to collate and analyse any information or intelligence gathered and shared.¹⁰¹⁸ Europol's Director at the time, Jürgen Storbeck, had been calling for such a role for Europol in multilateral joint investigations since the organisation was first established.¹⁰¹⁹ The Member States subsequently ratified a Protocol to the Europol Convention in 2002 to enable analysts to leave Europol Headquarters to join a foreign JIT temporarily. Moreover, a subsequent amendment to Article 16 of the Protocol served to ensure that the diplomatic immunity of Europol's analysts could be waived in respect of any offences committed by the analysts themselves upon the decision of the Europol Director. Blanket diplomatic immunity was afforded to Europol's analysts pursuant to the Europol Convention in order to ensure that they could not be called upon to testify by a prosecutor or defendant's defence team and therefore forced to divulge sensitive information derived either from a JIT's investigative activities or from Europol's own information system. Most importantly, the subsequent Europol Decision 2009 also provided that Europol could formally issue requests to Member State police forces or prosecution services to participate in JITs on the basis of its intelligence analyses, requiring any refusals to be accompanied by a written explanation.¹⁰²⁰ It remained the preserve of the participant police forces and prosecution services to individually decide whether to comply with such requests.

¹⁰¹² *ibid*

¹⁰¹³ *ibid* 13.6

¹⁰¹⁴ *ibid* 13.5

¹⁰¹⁵ *ibid* 15

¹⁰¹⁶ *ibid* 16

¹⁰¹⁷ Treaty of Amsterdam amending the Treaty of the European Union [1997] art 30

¹⁰¹⁸ Conny Rijken and Gert Vermeulen (eds) 'Joint Investigation Teams in the European Union: From Theory to Practice' (TMC Asser Press 2006) 188 - 194

¹⁰¹⁹ Walker (n107) 254

¹⁰²⁰ Council Decision 2009 establishing the European Police Office (2009/ 371/JHA) s 7

The EU's Mutual Assistance Convention 2000 was still undergoing the ratification process when the USA suffered the 11 September terrorist attacks. In the immediate aftermath, the JHA Council identified the JIT provisions of the Mutual Assistance Convention as a priority measure that needed to be implemented as soon as possible in order to actively investigate and prosecute terrorist groups in Europe in a cohesive manner.¹⁰²¹ The Council took the remarkable decision of bypassing the Convention's ongoing ratification processes within the national parliaments by introducing a Framework Decision on Joint Investigation Teams 2002 which copied the relevant provisions from the Mutual Assistance Convention verbatim. The use of Framework Decisions as alternatives to Conventions and, more particularly, their undemocratic flavour will be discussed in-depth within the chapter on 'complaint and inquiry as EU law and policy'.

On a national level, the UK subsequently enacted the JIT Framework Decision 2002 by way of sections 103 and 104 of the Police Reform Act 2002, Denmark incorporated it by way of Act No. 258 of 8 May 2002 and Ireland enacted it by way of the Criminal Justice (Joint Investigation Teams) Act 2004. The Westminster Government, in particular, issued a complementary Circular to the Police Reform Act 2002 which outlined the precise extent to which English police forces could engage with the construct. The Circular reinforced the tenet that the territorial police forces and any relevant national agencies should respond favourably to foreign requests to establish JITs but it emphasised that they were under no obligation to establish or participate in one if an alternative way of conducting a cross-border investigation was deemed to be more appropriate.¹⁰²² The Circular also contained the particularly telling double-standard that foreign officers participating in a UK-based JIT were not permitted to exercise coercive powers such as search and seizure but that UK officers seconded to a foreign JIT could be bequeathed with full police powers if permitted by the host government.¹⁰²³ Like the UK's approach to the Schengen Convention, it is readily apparent that the Government and broader public are uncomfortable with the idea of foreign police officers operating in the UK with the benefit of coercive police powers. The Government also had to subsequently introduce the Crime (International Cooperation) Act 2003 in order to address the fact that the earlier Criminal Justice (International Cooperation) Act 1990 did not list police officers as competent authorities to issue a request for mutual legal assistance, only prosecutors and judicial officials. This effectively meant that the UK had to amend a long standing legal rule, which was designed to facilitate prosecutorial and judicial supervision and scrutiny, in the interest of giving effect to a largely marginal cross-border policing measure.

The EU ultimately hoped that the new streamlined procedural regime for joint investigation teams across Europe would not only assist and simplify cooperative efforts against transnational organised crime networks but that it would also placate calls amongst radical politicians and practitioners to create an executive or federal policing competency within Europol.¹⁰²⁴ The EU's mutual police assistance regime effectively established a highly descriptive code of procedure pertaining to the submission of letters of request, the establishment of simplified joint investigation

¹⁰²¹ Council Framework Decision 2002 on Joint Investigation Teams (2002/465/JHA) Preamble

¹⁰²² Home Office circular 53/2002 para 2 - para 7

¹⁰²³ *ibid* para 13

¹⁰²⁴ See Anderson et al (n63) 283

teams and the secondment of officers. Almost all of the major administrative steps in the letter of request and joint investigation team processes were outlined. The European procedures for mutual assistance have since been extended to the USA through an EU - US Mutual Legal Assistance Treaty which provides for the exchange of evidence and the establishment of JITs under almost identical conditions.¹⁰²⁵ Mutual assistance processes between the USA and EU Member States were traditionally regulated by way of bilateral mutual assistance treaties. Notable ones included bilateral agreements with Switzerland from 1973, the Netherlands from 1981, Italy from 1982 and Belgium from 1988 amongst others.¹⁰²⁶ Anderson remarks that the US is notable for its pursuit of bilateral cooperation treaties, unsurpassed by any other nation-state in the modern era, facilitating the issuance of thousands of requests for evidentiary assistance and extradition every year.¹⁰²⁷

Limiting the grounds for refusal

More recently the EU has outlined its intention to intimately regulate almost all forms of requests for mutual assistance between police forces and judicial authorities in Europe.¹⁰²⁸ The EU Mutual Assistance Convention 2000 was followed by a number of highly specific, bespoke measures. A Framework Decision on the freezing of property and evidence in 2003 required courts to mutually recognise a properly structured foreign warrant pertaining to the freezing, confiscation and forfeiture of potentially vital and at-risk evidence.¹⁰²⁹ The Framework Decision provided that requests could be rejected only if there was a distinct possibility of an adverse effect on an ongoing criminal investigation or national security.¹⁰³⁰ A much broader European Evidence Warrant (EEW) was subsequently introduced by Framework Decision in 2005 so that a 'standard' warrant could be used to request almost all forms of evidence already in the possession of another State.¹⁰³¹ Quite remarkably, even before the EEW came into force, the EU moved to replace it with an even more expansive European Investigation Order (EIO) which is designed to function as a standard warrant that can be used to not only request evidence already in the possession of the State but to request a wide array of investigative measures. It is envisaged that police forces, prosecutors and judicial officials can potentially use the proposed European Investigation Order (EIO) to request foreign police forces to carry out investigative measures ranging from property searches to electronic surveillance, communication interceptions, bank account monitoring and the taking of bodily samples using a standard application form.¹⁰³²

Most importantly, the EEW and the EIO are premised not only upon the principle of mutual recognition but they are designed to be more authoritative than traditional

¹⁰²⁵ Council Decision 2009 on the conclusion on behalf of the European Union of the Agreement on mutual legal assistance between the European Union and the United States of America 2009/820/CFSP

¹⁰²⁶ See Nadelmann (n241) 324 – 376

¹⁰²⁷ Anderson (n240) 150 - 152

¹⁰²⁸ Stockholm Programme (2010) OJ C 115 part 3 and Hague Programme (2005) OJ C 236 part 3

¹⁰²⁹ Council Framework Decision 2003 on the execution in the European Union of orders freezing property or evidence (2003/577/JHA)

¹⁰³⁰ *ibid* s 4 – s 8

¹⁰³¹ Council Framework Decision 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (2008/978/JHA)

¹⁰³² Stockholm Programme (n1028) part 3

letters of request by limiting the grounds for refusal that a court can rely upon.¹⁰³³ Courts are effectively expected to take the integrity of the request at face value and can only delay or reject a request if there is a distinct possibility of an adverse effect on an ongoing criminal investigation or national security. However, much like the broader application of mutual recognition, an obvious discrepancy in the EU's approach is that judges of a common law, adversarial tradition generally expect to scrutinise the integrity of any application for a warrant by questioning the applicant police officers in court. They do so to ensure that the principles of legality, due process and fundamental human rights are respected. By requiring common law judges to take foreign applications for warrants at face value without the ability to question the applicant police officers in person undoubtedly undermines the integrity of the criminal justice system by eroding crucial judicial safeguards.

Furthermore, although the principle of mutual recognition is premised upon the existence of similar judicial standards across the EU in many continental systems warrants and letters of requests can be issued independently by prosecutors absent of any comparable judicial scrutiny. If a common law court accepts such a warrant at face value it could potentially be authorising a warrant that has not been subject to any judicial scrutiny or adversarial examination. Judges would effectively be unable to make the same basic enquiries of foreign police officers and prosecutors that they would of domestic officers and officials in many cases. To treat a judicial warrant as a mere superficial formality in the interests of transnational cooperation and expediency over and above legal integrity arguably risks pushing the criminal justice system towards Packer's 'crime control' model.¹⁰³⁴ Packer's rudimentary conceptualisation of 'crime control' places great faith in the integrity and virtue of police officers and prosecutors at the expense of far more formidable, appropriate and necessary due process protections.¹⁰³⁵

The EU has not only confined its new ethos to evidentiary matters but it has also extended it to the simple sharing of information and, more particularly, to the sharing of profile identifiers. The EU Framework Decision on 'simplifying the exchange of information and intelligence between law enforcement authorities of the Member States', better known as the 'Swedish Framework Decision' in 2006, requires police forces to respond to requests for information from foreign police forces or EU agencies such as Europol in the same manner and with the same expediency as they would for requests between local police units under conditions not stricter than those applicable at local levels.¹⁰³⁶ It holds that response times should not exceed eight hours upon receipt of an urgent matter or fourteen days if the request is of a less serious nature.¹⁰³⁷ The new obligations are referred to as the 'principle of availability'.¹⁰³⁸

With respect to profile identifiers, the original five Schengen participants together with Austria and Spain became discontented with the speed of EU policy negotiations in the mid-2000s and formed a new regional Convention 'on the stepping up of cross-

¹⁰³³ *ibid*

¹⁰³⁴ See Packer (n273) 9 - 22

¹⁰³⁵ *ibid*

¹⁰³⁶ Council Framework Decision 2006/960/JHA, s 1 – s 3

¹⁰³⁷ *ibid*

¹⁰³⁸ Hague Programme (n1028) s 2

border cooperation, particularly in combating terrorism, cross-border crime and illegal immigration’, better known as the Prum Convention 2005.¹⁰³⁹ The Convention was negotiated and enacted outside of the EU legal framework pursuant to Article K7 of the Amsterdam Treaty which facilitated ‘enhanced cooperation’ between Member States in the absence of wider EU consensus.¹⁰⁴⁰ The Amsterdam Treaty 1997 not only facilitated ‘enhanced cooperation’ but provided that the EU could incorporate regional conventions that were adopted by at least half of the Member States acting together.¹⁰⁴¹ Such ‘EU’ conventions would only apply to those Member States that opt into them.¹⁰⁴² Following the accession of ten additional Member States to the Union in the early 2000s, the Lisbon Treaty provided that the EU could incorporate such regional conventions once they are adopted by at least nine Member States.¹⁰⁴³

With respect to policing matters, the Prum Convention required the Participant States to develop common registries and technological linkages so that their national crime fingerprint, DNA and vehicle registration databases could be remotely accessed by approved foreign authorities on a hit/ no hit basis.¹⁰⁴⁴ In a similar fashion to the Europol information system, foreign authorities cannot simply browse the national databases but can merely enter a search term, whether a name, vehicle registration number, fingerprint or DNA profile, and their search will return a hit or no hit result.¹⁰⁴⁵ They must then approach the Participant State of ownership to access the data. Fijnaut and Spapens observe that the Prum Convention has the potential to greatly reduce the administrative workload behind some 300 letters of request that are regularly sent between Germany, Belgian and Dutch police forces on an annual basis, many of which pertain to requests for the vehicle registrations of stolen cars.¹⁰⁴⁶

The Convention also allows for police border crossings to avert imminent physical threats to individuals under conditions no different to the Schengen hot pursuit framework. In addition, a legal basis was established for the setting up of joint information centres staffed with seconded liaison officers as well as more peculiar activities such as the use of armed air marshals on domestic flights.¹⁰⁴⁷ In a similar fashion to the Schengen Convention, the Prum Convention contains provisions enabling the entire Convention to be subsumed by the EU project.¹⁰⁴⁸ However, unlike the Schengen Convention, the Member States only reached a consensus to incorporate the information-sharing fingerprint, DNA and vehicle database provisions by way of the Prum Decision 2008.¹⁰⁴⁹

¹⁰³⁹ Prum Convention 2005 on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal immigration, s 2 to s 15

¹⁰⁴⁰ Treaty of Amsterdam (n133) art 34

¹⁰⁴¹ *ibid*

¹⁰⁴² *ibid*

¹⁰⁴³ Consolidated Version of the Treaty on the Functioning of the European Union [2010] OJ C83/84 Title V Article 87.3; Consolidated Version of the Treaty on European Union [2010] OJ C83/27 Title IV Article 20

¹⁰⁴⁴ Prum Convention (n1039) s 1 to s12

¹⁰⁴⁵ *ibid*

¹⁰⁴⁶ Cyrille Fijnaut and Toine Spapens, ‘The Meuse-Rhine Euroregion: a laboratory for police and judicial cooperation in Europe’ in Lemieux (n85) 104 - 115

¹⁰⁴⁷ Prum Convention (n1039) s 17 to s 32

¹⁰⁴⁸ *ibid* s 1

¹⁰⁴⁹ Council Decision 2008/615/JHA

Another initiative to horizontally inter-link databases across the EU area has been pursued by the EU in recent years but has been impeded by major concerns over necessity and data protection. The Commission's regular five year programmes have consistently featured a point of action which calls for the examination of ways in which information can move between Europol, the SIS, the Visa Information System (VIS), the European Dactyloscopy System (Eurodac) and the proposed European criminal records database (ECRIS).¹⁰⁵⁰ The VIS is primarily an EU-managed central database which holds personal details on visa applicants across the EU Member States largely for the benefit of national immigration services. Similarly, Eurodac is an EU database of fingerprint profiles and associated personal details of asylum applicants, deported persons and applicants refused entry to a Member State, administered mainly for national immigration purposes. The most significant problem with the initiative is that police authorities are afforded significant freedom to gather criminal information and intelligence for the particular purposes of investigating crime, not to employ such information for immigration and asylum purposes. The Schengen Information System already allows for criminals and terrorists to be flagged so that they can be identified and apprehended when entering or exiting the Union. To use criminal intelligence for other purposes risks rendering unlawful or unconstitutional the very purposes for which such information and evidence was gathered in the first instance.

Conclusion

This chapter has largely avoided conducting in-depth critical and comparative analyses of the various mechanisms and processes. It strives to convey first and foremost that the EU institutions have actively regulated various aspects of cross-border police cooperation through a number of key procedural frameworks. Procedures for analysing and exchanging information have been enumerated in the Europol Convention and Decision; the conduct of operational cooperation is outlined in both the Schengen Convention and the Mutual Assistance Convention while the development of common investigative techniques has been facilitated by various instruments, not least the Framework Decision on the freezing of property and evidence and the proposed European Investigation Order. The EU institutions have, to all intents and purposes, strived to address the perceived internal security deficit by filling the perceived deficit with common procedural codes.

The thesis has consigned the key analytical arguments and criticisms to subsequent chapters in order to effectively sketch out the key EU measures on cross-border policing. Although the EU's procedural frameworks cannot be compared like for like with the national codes of procedure within the Member States, the bare frameworks of the EU measures arguably show that the ethos of procedural clarity and, more particularly, legislative responsibility for providing such clarity has transcended to the EU level. It appears to be no longer sufficient that police procedure, whether within States or between States, can be determined or interpreted by police officers themselves but must be prescribed by highly formulaic, programmatic codes of procedure.

The EU cross-border policing measures are arguably representative of the modern tenet that police powers and processes should be formulated with sufficient precision

¹⁰⁵⁰ Hague Programme (n1028) part 2

to indicate with clarity the scope of any coercive powers conferred on public officials in order to afford a measure of legal protection against abuse. The statutory provisions which outline the highly detailed administrative responsibilities and procedures incumbent upon Europol National Units and Sirene teams are designed to establish a procedural standard against which police conduct can be measured. Similarly, the procedures enumerated within the Schengen and Mutual Assistance Conventions pertaining to police officers operating in foreign territories define the nature and parameters of police action in the interests of due process and domestic police primacy. The frameworks not only facilitate a degree of cross-border police cooperation that was previously unattainable in some areas but they enhance transparency and accountability by imbuing procedural clarity and legal precision which, by extension, facilitates and enhances the quality of police accountability.

However the thesis has indicated that a fine line exists between using formulaic codes to enhance clarity, understanding and accountability and the use of codes to expedite and simplify cross-border policing which risks undermining the constitutional, legal and administrative standards of the Member States. The EU should arguably be far more concerned with enhancing police accountability and transparency, in the spirit of the Treaty preambles, rather than seeking to simplify and expedite police cooperation by lowering or eroding standards of due process. To do so risks prioritising Packer's ideology of 'crime control' over and above due process protections. The EU appears to be employing procedural frameworks in order to realise the 'ends' of efficiency over and above constitutional, legal and ethical propriety in many respects. Before addressing the mechanisms of complaint and inquiry, the following chapter on 'co-option' will subject the relevant EU frameworks to in-depth critical analysis. Although the EU is clearly attempting to regulate the field of cross-border policing through highly formulaic and programmatic codes of procedure, an important litmus test of the quality of the EU's measures can be gauged by questioning whether and to what extent the Member State police forces are 'co-opting' them in practice.

Ch. 4 Co-option of EU law and policy

The chapter will convey that although the EU measures would appear at face value to be comprehensive there is ultimately a serious mismatch between the formal structures of cross-border police cooperation as expressed in EU instruments and the reality on the ground. It will show that there has long been a lack of enthusiasm for EU measures amongst the Member State police forces due in part to the fact that the EU policy makers tend to prioritise political ambition over practitioner needs.¹⁰⁵¹ This is arguably attributable to the desire of the EU institutions to introduce procedural legal frameworks as a political panacea for the perceived internal security deficit rather than addressing the practical needs of police officers on the ground. However, the chapter makes an exception for the Schengen procedural framework since it was not designed by the EU institutions and was already the dominant legal framework regulating the conduct of police border crossings throughout the EU area prior to its adoption. The chapter focuses specifically on the ‘co-option’ of the major EU measures that the EU institutions can lay claim to, namely the Europol institution and the EU processes of mutual assistance.

The chapter will convey that, instead of enhancing the transparency and accountability of cross-border police cooperation in general, the EU institutions are evidently far more concerned with forcing police forces to use the EU’s own policing measures which are considerably ineffective and unattractive for many purposes. The chapter will show that most of the EU’s own measures are suitable only for a narrow range of cross-border policing needs. It will convey that the EU is, in effect, cheer-leading a number of marquee measures which purport to ‘establish’ cross-border policing but in fact have left a vast expanse of cross-border policing activities untended.

Within this vast untended expanse, police forces tend to pursue policies of informal, low visibility cooperation which satisfies institutional priorities in cross-border law enforcement at the expense of transparency and accountability. Although the practice of using home-grown and informal measures has the unfortunate consequence of sidelining the role of Europol and thereby eschewing transparency and accountability, the bespoke home-grown measures serve a number of crucial functions. They tend to facilitate intimate working relationships between police forces and can consist of rapid and direct channels of communication and cooperation which are fundamentally necessary to progress ongoing criminal investigations.¹⁰⁵²

The thesis will recommend that instead of imposing its preferred procedures upon the Member State police forces, the EU institutions should follow the lead of the English, Irish and Danish governments by striving to introduce legally precise and procedurally clear standards which serve to regulate almost all conceivable forms of cross-border police cooperation in the interests of transparency and accountability. In other words, rather than promoting its own marquee measures, the EU should be working with police forces to enhance the transparency and accountability of the Member States’ home-grown bilateral and multilateral measures in line with conventional domestic policing structures and values. The chapter will also show that

¹⁰⁵¹ Deflem (n70) 29, 30

¹⁰⁵² Nadelmann (n241) 141, 183

new mechanisms of accountability are needed to hold the ‘low visibility’ conduct of cross-border policing to account according to conventional standards.¹⁰⁵³

Europol

Although the Europol Decision 2009 requires the Europol National Units (ENU) to supply Europol with the information and intelligence necessary for it to carry out its tasks, it typically receives very limited information from the Member States.¹⁰⁵⁴ The UK, Ireland and Denmark approach the new Europol Information System (EIS) in a remarkably similar manner. They each established the Europol National Unit (ENU) within a national agency or department, located alongside their respective Interpol NCBs. The English police forces originally established their ENU within the London Metropolitan Police until it was transferred to the stand-alone National Criminal Intelligence Service (NCIS) in 1997 then the Serious Organised Crime Agency (SOCA) in 2006 and eventually to the new National Crime Agency (NCA) in 2013. Ireland established the ENU within its Liaison and Protection Department which is housed alongside the Security and Intelligence Service within the national police headquarters.¹⁰⁵⁵ The Liaison and Protection Service not only maintains the Irish Interpol NCB but manages Ireland police attachés stationed in Irish embassies around the world on a 24 hour basis. Denmark, for its part, set up its ENU in a Communications Centre alongside the offices of the Serious Crime Squad within the national crime unit (NEC) at the National Police Commissioner’s headquarters.

In each case, the ENU shares its office space with the Interpol NCB. In Denmark, the same team of police officers handle the information uploads and incoming requests across the Europol, Interpol and Schengen systems.¹⁰⁵⁶ The ENUs and NCBs typically consist of only a handful of officers who act as administrators and promoters for a wide and ambitious range of requests and projects.¹⁰⁵⁷ The EU’s Action Plan to Combat Organised Crime 1997 had recommended the establishment of ENUs alongside NCBs so that foreign counterparts could become familiar with a single departmental point of contact in each Member State.¹⁰⁵⁸

Unusually, each jurisdiction introduced legislation to formally establish their ENUs. The UK enacted the Europol Act 1996, Ireland introduced the Europol Act 1997, and Denmark passed Implementing Law no. 415 of 1 June 1997.¹⁰⁵⁹ The use of legislation to create a unit within a police force was unusual due to the fact that it was traditionally well within a police chief’s competency to establish and abolish units of a police force.¹⁰⁶⁰ Legislatures typically refrained from regulating the departmental aspects of police forces to ensure police chiefs had the necessary flexibility to rapidly move resources and personnel across the organisation to respond to the day-to-day exigencies of domestic policing. The need and usefulness of distinct police units often

¹⁰⁵³ Anderson (n240) 7

¹⁰⁵⁴ Europol Decision (n862) s 8.4

¹⁰⁵⁵ Informal interview with a team of detectives at the Irish Police Headquarters (Dublin, 27 February 2013)

¹⁰⁵⁶ Informal interview with a detective at the Danish National Police, National Centre of Investigation (Copenhagen, 19 November 2012)

¹⁰⁵⁷ Anderson (n1008) 37

¹⁰⁵⁸ JHA Action Plan 1997 to Combat Organised Crime OJ C 251

¹⁰⁵⁹ Danish Law No. 415 of 1 June 1997 s 2 & s 3

¹⁰⁶⁰ Walsh (n43) 425

became dated as crime trends changed. Moreover, the establishment of police units by the legislature could arguably set a precedent which could encourage newly elected governments to establish an array of policing units to tackle the concerns of their local constituents thereby emboldening the politicisation of the police force. Legislatures are responsible for defining substantive criminal laws and offences, police powers and duties but not the distinct employment of resources and personnel across the police organisation which is the function of the office of police chief.

A major aim of the implementing Acts was apparently to ensure that the respective national data protection commissioners could scrutinise the propriety of data transfers from the national police computers to the Europol Information System (EIS). Ireland and Denmark had already enacted the relevant provisions of the CoE Convention on Data Protection 1981, establishing the office of Irish Data Protection Commissioner and the Danish Data Protection Agency (DPA) respectively. For the explicit purposes of participating in the Europol project, the UK introduced the Data Protection Act 1998 to replace the Data Protection Act 1984, giving the new Commissioner an oversight role over the ENU.¹⁰⁶¹

In terms of co-option, ENUs across Europe are reportedly actively forwarding criminal information and intelligence to Europol in significant volumes. Lemieux's analysis indicates that the intelligence uploads to Europol have been increasing significantly year on year since 2000.¹⁰⁶² The EIS reportedly contained files on 35,585 persons and 174,459 objects pertaining to drug trafficking, human trafficking, counterfeit currency, robbery and fraud in 2010.¹⁰⁶³ Germany reportedly uploaded the most new information to Europol in 2010 followed by France, Belgium and Europol itself using information received from third parties.¹⁰⁶⁴ The connected EIS search function was used 147,345 times the same year.¹⁰⁶⁵ Moreover, investigations supported by Europol's analysts and liaison officers amounted to over 12,000 cases in 2010, supported by a €92 million budget.¹⁰⁶⁶ The process of organising its intelligence files has also resulted in the creation of a number of ancillary databases within Europol. These include an Illicit Laboratory Comparison System (EILCS) which contains detailed photographic and technical information on synthetic drug production and illicit drug laboratories as well as a Bomb Data System which contains a library of photographic and technical data on explosive, incendiary, chemical and nuclear materials amongst other features.¹⁰⁶⁷ A user satisfaction survey conducted by Europol in 2010 indicated that some 57 specific activities carried out by Europol were rated positively and user satisfaction was increasing annually.¹⁰⁶⁸

However, police force engagement with the Europol project hides a number of key elements around the nature of the information sent to Europol and the concomitant working practices. For reasons of data security, the Europol Information System (EIS) was eventually designed to exist as a stand-alone system which was not physically

¹⁰⁶¹ Data Protection Act 1998 s 54

¹⁰⁶² Lemieux (n85) 11, 12

¹⁰⁶³ Europol Review (n855) 12

¹⁰⁶⁴ *ibid* 9 - 12

¹⁰⁶⁵ *ibid*

¹⁰⁶⁶ *ibid* 8

¹⁰⁶⁷ *ibid* 27-31

¹⁰⁶⁸ *ibid* 8

connected to the national police computers or intelligence databases of the Member State police forces in order to safeguard the security and integrity of the national police computer systems from unauthorised foreign access. A primary function of each ENU is to manually upload all relevant information and intelligence to the EIS. In practice, this typically consists of moving electronic data from one computer system to another, often using a single computer screen or interface.¹⁰⁶⁹ However, not all criminal information and intelligence pertaining to cross-border matters must be uploaded to the Europol system. Data that could prejudice ongoing investigations, prosecutions or state security can be withheld.¹⁰⁷⁰

England, Ireland and Denmark have taken a remarkably similar approach in determining whether and to what extent information and intelligence is passed to Europol on a systematic basis. The job of preparing intelligence uploads to the EIS was largely removed from the ENUs within the jurisdictions and instead assigned to analysis units within the respective national criminal intelligence bureaus.¹⁰⁷¹ The main rationale was that the national criminal intelligence analysts and detectives would not only ensure that information was relevant and cutting edge but their expertise on domestic investigations meant that they were in a strong position to judge what information could prejudice ongoing investigations, prosecutions or state security and should therefore be withheld. The role of the national criminal intelligence services in preparing files on behalf of the ENU effectively demotes the role of the ENU desks to a mere administrative function in practice, akin to the Interpol NCB.

The role of the national intelligence analysis teams in providing the data uploads to the EIS shows that the participant States continue to prize the integrity of their national databases and police files over and above the spirit of cooperation. This is hardly surprising considering the fact that the Europol Convention was drafted and painstakingly negotiated in order to allay widespread concerns about the security and integrity of foreign police data systems. Den Boer observes that police officers were generally wary of sharing information and intelligence with foreign counterparts long before the introduction of the Europol project and will continue to be wary and distrustful long afterwards.¹⁰⁷² She suggests that the long-drawn out process leading up to Europol's establishment and the lukewarm reaction to it thereafter reflects not only a continued lack of trust between foreign police officers but a particular lack of trust and confidence in the Europol Information System.¹⁰⁷³

Guille observes that the acute lack of trust between Europol participants means that Europol not only receives a lesser quantity of intelligence than its founders expected but that the information it does receive is frequently of a low-grade quality and often outdated.¹⁰⁷⁴ Fijnaut and Paoli's research indicates that Europol's analysts do not

¹⁰⁶⁹ *ibid* 11

¹⁰⁷⁰ Europol Decision (n862) s 7 & 8

¹⁰⁷¹ Informal interview with a team of detectives at the Irish Police Headquarters (Dublin, 27 February 2013); Informal interview with a detective at the Danish National Police, National Centre of Investigation (Copenhagen, 19 November 2012); Informal discussion with detectives at the UK and Danish National Bureaus at Europol Headquarters (The Hague, October 2012)

¹⁰⁷² Monica Den Boer, *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* (European Institute of Public Administration Maastricht 2002) 159

¹⁰⁷³ *ibid*

¹⁰⁷⁴ Guille (n80) 35, 36

receive the bulk of their intelligence data from spontaneous uploads from the Member States but must rely by and large on the annual reports submitted by each Member States and must follow-up them up with requests for additional information in order to build Europol's intelligence files and threat assessments.¹⁰⁷⁵ Gerspacher and Lemieux's interviews with Europol officials indicated that the lack of quality data means that Europol is not only unable to reach its full potential but struggles to achieve its basic objective which is to stimulate cross-border police cooperation across Europe.¹⁰⁷⁶ Brady reports, for instance, that upon Europol's request for information for one of its Organised Crime Threat Assessments in the mid-2000s it received 500 pages of a report from one Member State but only received one page from another.¹⁰⁷⁷ Den Boer remarked in the late 1990s that Europol receives so little information from the Member States that it is considered by many police intelligence officers to be a 'lame duck'.¹⁰⁷⁸

Europol's counter-terrorism role

Another particularly under-appreciated aspect of the relationship between the national intelligence departments, the major detective bureaus and their ENUs is the fact that the national intelligence departments which are evidently a vital lifeline for the ENUs generally do not contain the country's full library of counter-terrorism data. England's counter-terrorism police files are maintained by the London Metropolitan Police Special Branch, designated as SO15, while Denmark's national special branch, known as the PET, has its own database largely unconnected to the national police computer. Although the Irish police force is a unitary, highly centralised police force it too facilitates a similar disconnect between counter-terrorism bureaus and the national crime bureau. The Irish Police Security and Intelligence Service oversees two sub-directorates, one for serious and organised crime and the other for counter-terrorism but the units responsible for each area maintain their personnel and files in different buildings at opposite ends of Dublin city. The Central Detective Unit (CDU) is based in the Phoenix Park and the Special Detective Unit (SDU) works from Harcourt Street in Dublin City centre.

Raab observes that counter-terrorism police departments are generally permitted to maintain information and intelligence in databases which are not subject to the routine scrutiny of data protection commissioners as long as they adhere to the simple condition that the information and intelligence they collect, which invariably breaches data protection laws, privacy rights and more often than not would be deemed inadmissible in a court of law, is not shared or released to anybody unconnected to the immediate counter-terrorism investigation under any circumstances.¹⁰⁷⁹ Anderson et al remark that counter-terrorism or 'high policing' is by its very nature highly secretive.¹⁰⁸⁰ These counter-terrorism databases are largely unconnected to the national criminal intelligence services, namely the UK NCA and the Danish NEC respectively. NCA and NEC officers and analysts must normally apply to the counter-

¹⁰⁷⁵ Fijnaut and Paoli (n264) 246, 247

¹⁰⁷⁶ Gerspacher and Lemieux (n868) 69, 70

¹⁰⁷⁷ Hugo Brady, 'Europol and the European Criminal Intelligence Model' (2008) 2:1 Policing 103 – 109

¹⁰⁷⁸ Den Boer (n243) 71

¹⁰⁷⁹ Raab (n846) 125 – 127

¹⁰⁸⁰ Anderson et al (n63) 263

terrorism departments to get access to their files. Denmark's PET database for example is exempt from standard data protection laws and the oversight of the data protection committee but it must be inspected periodically by a unique committee appointed by the Minister for Justice, called the Wamberg Committee.¹⁰⁸¹ The Home Office has plans to transfer the LMPs central counter-terrorism function to the NCA, pursuant to the Crime and Courts Act 2013 but the switch has not yet been approved.

The fact that the central counter-terrorism departments in England, Ireland and Denmark remain somewhat separate from the respective national 'criminal' intelligence services suggests that the intelligence files that the national services upload to Europol are particularly, if not profoundly, bereft of comprehensive counter-terrorism intelligence.¹⁰⁸² Occhipinti's research indicates that Europol's counter-terrorism analysts are receiving only the most minimal amount of counter-terrorism intelligence from the Member States.¹⁰⁸³ The Europol Director made public his concerns over the amount and quality of counter-terrorism data submitted to Europol in the aftermath of the September 11 attacks in the US by stating that the participant police forces were only paying 'lip service' to the organisation.¹⁰⁸⁴ The situation was hardly unexpected since the acute lack of clarity over the nature and extent of Europol's competency to handle counter-terrorism intelligence had resulted in Europol's counter-terrorism competency being postponed for a period of two years, only coming into force in 2000.¹⁰⁸⁵ Walker notes that even though counter-terrorism cooperation was the original catalyst behind the establishment of Interpol and Trevi, the collection, storage and analysis of counter-terrorism intelligence files remains closely guarded by national counter-terrorism bureaux.¹⁰⁸⁶

Counter-terrorism police units reportedly prefer to use informal networks for information sharing and conferencing on a case by case basis. Key networks include the Counter Terrorism Group (CTG) which was developed under the umbrella of the informal Club de Berne network established in the 1970s but is now affiliated with the EU's Sitcen.¹⁰⁸⁷ Sitcen was originally established within the EU's Common Foreign and Security Policy (CFSP) 'second' pillar following the Madrid bombings in 2004 to develop intelligence and to encourage counter-terrorism police units and national security services to cooperate with one another.¹⁰⁸⁸ Similarly, the Police Working Group on Terrorism (PWGOT) was a forum set up independently by representatives from the major counter-terrorism police units from England, Ireland, the Netherlands, Belgium and Germany following the assassination of the British Ambassador to The Hague by the IRA in 1979.¹⁰⁸⁹ The PWGOT quickly grew to include police special branches and security services from all EC Member States including Norway, Sweden

¹⁰⁸¹ PET Report 2008 – 2010 (Politiets Efterretningstjeneste, 2010) 21 - 25

¹⁰⁸² John D Occhipinti, 'Parallel paths and productive partnerships: the EU and US on counter-terrorism' in Lemieux (n85) 171

¹⁰⁸³ *ibid*

¹⁰⁸⁴ Occhipinti (n781) 148 - 150

¹⁰⁸⁵ Council Decision 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property (OJ C 26)

¹⁰⁸⁶ Neil Walker, 'European integration and European policing: a complex relationship' in Anderson and Den Boer (n82) 31

¹⁰⁸⁷ Deflem (n650) 20, 119, 138

¹⁰⁸⁸ Occhipinti (n1082) 171

¹⁰⁸⁹ Benyon et al (n64) 187 - 190

and Finland.¹⁰⁹⁰ The aim of the group was to meet informally on a bi-annual basis in order to develop common counter-terrorism strategies and share relevant intelligence. The PWGOT established its own unique rapid communication system between the participant counter-terrorism units which enabled written and graphic material to be transmitted speedily and securely throughout the fifteen country network.¹⁰⁹¹ Annual information and training conferences were also held covering topics such as the activities of the Provisional IRA in Europe and the preservation of evidence at the scene of a terrorist attack.¹⁰⁹² Participants in the PWGOT have reportedly stated to researchers that they tend to trust each other implicitly and normally exchange information immediately and without question.¹⁰⁹³ Many Member State counter-terrorism units also deal bilaterally with non-EU states such as the United States. Germany and the US, for instance, signed a bilateral agreement concerning the sharing of counter terrorism information in 2008.¹⁰⁹⁴

Bruggeman observes that in light of the practical needs and exigencies of both 'ordinary' and 'special' detective bureaus there is little likelihood that the culture and ethos of detectives will naturally change in order to accommodate Europol's needs.¹⁰⁹⁵ Moreover, the very fact that counter-terrorism information is highly sensitive indicates that even if national criminal intelligence services are granted unfettered access to counter-terrorism intelligence they will presumably choose to withhold such data from Europol in the interests of national security and investigative integrity in a similar fashion to the way that they handle data pertaining to ordinary crime.¹⁰⁹⁶ It appears that one of the only ways to enhance information-sharing is to develop robust processes which foster greater trust between counter-terrorism bureaus.

Rather than prioritising the simple conveyance of intelligence, as Europol does, the EU should arguably be focusing on developing general codes of procedures and codes of ethics to ensure that counter-terrorism cooperation is being conducted according to procedurally clear standards. Most importantly, in the interest of transparency and accountability, it should be focusing on establishing oversight bodies, such as the Danish 'Wamberg' parliamentary committee, to oversee the conduct of cross-border counter-terrorism cooperation so that systemic malpractice or opportunities for greater transparency can be routinely identified. Detectives evidently need to know that the EU serves their needs and interests rather than the other way around.

Europol's liaison function

Like their Interpol counterparts, Europol's liaison officers are considered to be fundamental components of the Europol project since they have the capacity to become highly influential experts on international criminality, which not only helps to

¹⁰⁹⁰ *ibid*

¹⁰⁹¹ Heberton and Thomas (n65) 95, 96

¹⁰⁹² Benyon (n64) 188 - 190

¹⁰⁹³ Bresler (n800) 162

¹⁰⁹⁴ Monar (n873) 61

¹⁰⁹⁵ Willy Bruggeman, 'A vision of future police cooperation with a special focus on Europol' in Jaap De Zwaan and Flora Goudappel (eds) *Freedom, Security and justice in the European Union* (TMC Asser Press 2006) 209 - 217

¹⁰⁹⁶ See Kenneth Robertson, 'Practical Police Cooperation in Europe: the intelligence dimension' in Anderson and Den Boer (n82) 116, 117

give direction to the organisation but can shape and influence the nature of participation of their domestic police forces.¹⁰⁹⁷ Den Boer remarks that the fact that European liaison officers must work together on a daily basis and tend to use a common language, namely English, means that some major obstacles to cooperation are overcome, particularly language, knowledge and access in the first instance.¹⁰⁹⁸ Moreover, the simple participation of practitioners and government officials in working groups and policy-making forums has the potential to build a significant degree of trust between police forces.¹⁰⁹⁹ Loader conveys that ELOs serve to create an important 'European police professional identity' which engenders trust and camaraderie.¹¹⁰⁰

Nadelmann's research indicates that liaison officers share a common bond or camaraderie by virtue of both their physical proximity as well as the fact that they are no longer considered to be 'normal' police officers vested with standard police powers but 'knowledge brokers' who are highly dependent upon the cooperation and integrity of one another and the support and trust of their domestic police forces.¹¹⁰¹ Anderson remarks that liaison officers effectively represent an international professional community of expert transnational intelligence officers who can develop overviews and stimulate cross-border police operations like no other brand of police officer.¹¹⁰² The close working relationships between liaison officers means that ELOs can effectively reassure their domestic police teams that their foreign counterparts can be trusted.¹¹⁰³ Gerspacher and Lemieux posit that liaison officers can essentially serve as 'entrepreneurs', not only supplying Europol with information but stimulating the demand for its assistance and support.¹¹⁰⁴

Europol has also long been interested in establishing international liaison networks with police forces outside of the EU in order to enhance the international dimension of EU-based investigations.¹¹⁰⁵ A distinctive international dimension was added to Europol's liaison network in more recent years.¹¹⁰⁶ Liaison bureaus from more than 17 non-EU countries, including Eastern European and North American countries have been added to Europol's liaison department. In the aftermath of the September 11 attacks, an agreement between the US and Europol facilitated the secondment of US liaison officers to Europol, the stationing of a Europol representative in Washington and the participation of US representatives in EU policing working groups.¹¹⁰⁷ The United States liaison bureau within Europol contains representatives from the FBI, DEA and Homeland Security.¹¹⁰⁸ The USA bureau originally had limited access to the EIS due in part to the lack of a national data-protection supervisory authority in the

¹⁰⁹⁷ Lemieux (n85) 6, 7

¹⁰⁹⁸ Den Boer (n999) 57

¹⁰⁹⁹ Anderson (n1008) 44 – 46

¹¹⁰⁰ Ian Loader, 'Policing, securitization and democratization in Europe' in Tim Newburn and Richard Sparks (eds), *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control* (Willan 2004) 56, 57

¹¹⁰¹ Nadelmann (n241) 190

¹¹⁰² Anderson (n240) 13

¹¹⁰³ Rijken (n116) 229

¹¹⁰⁴ Gerspacher and Lemieux (n868) 72 - 76

¹¹⁰⁵ Anderson (n1008) 39

¹¹⁰⁶ Fijnaut (n886) 260

¹¹⁰⁷ Occhipinti (n781) 174

¹¹⁰⁸ Bowling and Sheptycki (n75) 54

USA.¹¹⁰⁹ However, this was overcome in 2002 following a number of data protection guarantees by the US.¹¹¹⁰ Similarly, Europol and Interpol have both exchanged representative liaison officers to promote cooperation and information flows across the two organisations.¹¹¹¹

The addition of an international liaison dimension is important for the simple fact that the new intelligence created within Europol's analysis department and the activities of the liaison department and crime centres may have possible connections with criminal or counter-terrorist investigations outside of the EU area and vice versa. Moreover, the USA's policy of aggressively stationing senior officials with expertise in drug trafficking, human trafficking and counter-terrorism in embassies across the world has helped it to develop an extensive repository of criminal intelligence and foreign police contacts which could be of great value to Europol participants.¹¹¹² Denmark, for its part, has been staunchly advocating the sharing of liaison officers stationed by the EU Member States outside of the EU area. Upon Denmark's initiative, the EU introduced a Joint Action in 1996 and a subsequent Decision in 2003 calling for Member States to coordinate and share any liaison officers posted to countries outside of the EU.¹¹¹³

In practice, the English police forces maintain a sizeable liaison bureau at Europol consisting of detectives seconded from the London Metropolitan Police, various other territorial police forces, the National Crime Agency and the UK Border Authority amongst others. Denmark decided in 2010 to recall its police attaches stationed in Danish embassies within the EU and transferred or centralised their functions within the Danish liaison bureau at Europol.¹¹¹⁴ Interpol had previously proposed the posting of all bilateral liaison officers in Europe to its European Liaison Bureau within its own headquarters prior to the establishment of Europol but Denmark was one of the first countries to bring the idea to fruition, albeit opting for Europol instead of Interpol.¹¹¹⁵ Denmark's enthusiasm for the Europol project is particularly well reflected in the fact that its National Police Commissioner served as Deputy Director of Europol between 2003 and 2006, shortly before his appointment as National Police Commissioner. Bresler remarks that the secondment of senior officers to management positions within transnational or international policing constructs was traditionally considered to be a backward career step but that no longer appears to be the case.¹¹¹⁶ Kleiven reports that the idea of centralising all EU-based liaison officers within Europol is gradually gaining traction as Sweden signalled its intention to do the same in 2012.¹¹¹⁷

Ireland, on the other hand, has generally seconded only two senior detectives to its liaison bureau at Europol, normally two counter-terrorism officers together with a

¹¹⁰⁹ Occhipinti (n781) 165, 166

¹¹¹⁰ Occhipinti (n1082) 175

¹¹¹¹ Stockholm Programme (n1028) section 4

¹¹¹² Nadelmann (n241) 214

¹¹¹³ Joint Action of 14 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union providing for a common framework for the initiatives of the Member States concerning liaison officers (96/602/JHA); Council Decision 2003/170/JHA of 27 February 2003 on the common use of liaison offices posted abroad by the law enforcement agencies of the Member States

¹¹¹⁴ Europol Review (n855) p55

¹¹¹⁵ See Anderson (n240) 170

¹¹¹⁶ Bresler (n800) 398, 399

¹¹¹⁷ Maren Kleiven, 'Nordic police cooperation' in Hufnagel et al (n713) 66 – 69

customs official. A team of two police officers ensures continuity if one of the officers retires or transfers to another post. Ireland's liaison bureau is located alongside the the UK bureau by virtue of the fact that Europol's Management Board tries to co-locate the liaison bureaus of neighbouring countries in order to engender day-to-day contact and collaboration. Several technologically-advanced purpose-built conference rooms are also maintained at Europol headquarters to enable Europol Liaison Officers or visiting detectives to plan and coordinate arrests, property searches, surveillance operations or controlled deliveries in real-time across multiple jurisdictions.

Ireland's comparable lack of engagement with Europol's liaison function appears to have its roots in a long-standing degree of caution around the deployment of Irish police officers to foreign jurisdictions. A Garda Síochána Act introduced in 1989, long before the Europol project was established, explicitly provided that Garda officers could only be seconded abroad, with police powers, as part of a UN peace-keeping or observer mission. More importantly, it explicitly provided that seconded officers must remain under the direction and control of the Commissioner.¹¹¹⁸ Irish police attaches stationed abroad were exempt from these provisions as Irish embassies abroad are considered to be Irish jurisdictional territories.¹¹¹⁹ Even Ireland's liaison officers at Interpol and the EDU were considered to be exempt as the officers were seconded on an advisory basis, without police functions, and remained under the direction and control of the Commissioner.¹¹²⁰ Ireland was clearly cautious about the governance and control of Irish police officers operating beyond the domestic jurisdiction so much so that a number of Irish police officers were forced to resign their membership of the force and subsequently reapply if they wished to represent Ireland on the investigative taskforce of the International Criminal Tribunal for the Former Yugoslavia (ICTY).¹¹²¹ ELOs are non-operational so the use of coercive police powers was not an issue but they needed to retain the status of police officers in order to maintain their access to the national police computers as well as the ability to divulge information as part of a Europol-centred operation.

The Irish Europol Act 1997 thus amended the Garda Síochána Act 1989 to expressly enable the Irish police Commissioner to second officers abroad to function as police officers as part of the Europol project.¹¹²² The relevant provisions in the Garda Síochána Act 1989 were subsequently repealed and replaced by the Garda Síochána Act 2005, which appear to be modelled by and large on comparable English legislative arrangements.¹¹²³ The current provisions effectively split the force's secondment possibilities into two fields: police participation in peacekeeping and international policing. The first section provides for police participation in voluntary peacekeeping missions outside of the State in order to carry out duties of a police character with the UN or any other international organisation.¹¹²⁴ The second section enables the Commissioner to assign eligible members of the Garda Síochána for service outside of the State to carry out liaison duties with Europol or any other

¹¹¹⁸ Garda Síochána Act 1989, s2 repealed by Garda Síochána Act 2005, s4

¹¹¹⁹ Dunn et al (n962) 29

¹¹²⁰ Garda appointed to new European drugs unit, *Irish Times* (Dublin 1 March 1995) 5

¹¹²¹ Minister for Justice Mr Michael McDowell, Dail Eireann Debate Vol 566 No 5 (2003) Second

Stage

¹¹²² Europol Act 1997, s 5

¹¹²³ See English Police Act 1996, s. 25

¹¹²⁴ Garda Síochána Act 2005, s 51

foreign law enforcement agency or international organisation subject to the agreement of the Minister for Justice.¹¹²⁵ The Act provides that the Minister may also authorise the secondment of customs officers to Europol.

In terms of its 'added value', the detective bureaus within the three jurisdictions are frequently involved in property searches and surveillance operations coordinated through Europol. The Europol liaison bureaus regularly engage in collaboration, particularly in the context of controlled deliveries of drug consignments across their domestic police areas. Ireland has reportedly undertaken its biggest drug interceptions, counterfeiting and cybercrime investigations through Europol.¹¹²⁶ However the significance of the Europol liaison department clearly pales in comparison to the volume of cooperation carried out across more informal mechanisms for direct liaison between police forces within Europe.¹¹²⁷ The London Metropolitan Police has long stationed detectives to major cities such as Paris, Hamburg, Rotterdam and Antwerp to develop relationships with foreign detective bureaus and, in particular, to keep tabs on prominent criminals and suspected terrorists dating as far back as the 1880s.¹¹²⁸ At present, English police forces have liaison officers stationed across the EU, Eastern Europe, the Americas, Asia and further afield.¹¹²⁹ They maintain a particular focus on high-profile transit countries for drugs in Europe, such as Spain and the Netherlands, as well as producer-countries in South America and the Middle-East.¹¹³⁰

Similarly, Ireland has stationed liaison officers in embassies in The Hague, Paris and Madrid since the 1990s. The officer originally posted in The Hague was responsible for direct police liaison with the Netherlands, Germany and Belgium while the liaison officer in Madrid was responsible for developing links with police forces in Spain, Portugal and Morocco.¹¹³¹ A significant volume of direct cooperation between Irish police officers and their UK counterparts reportedly occurs via an Irish liaison officer stationed in the Irish embassy in London and a UK liaison officer stationed in Dublin. Ireland's embassy-based police attaches are managed and coordinated by a distinct unit of the national Liaison and Protection Section known as the Bureau of Liaison (BdL).¹¹³²

Nadelmann's research indicates that there has been an explosion of bilateral liaison officers from Western European countries stationed throughout Europe and across the globe since the 1970 and '80s. He convincingly argues that the widespread use of embassy-based bilateral liaison officers is directly attributable to the pioneering approach of the US which has aggressively stationed its organised crime and drug

¹¹²⁵ *ibid*

¹¹²⁶ Martin Callinan, 'Police Cooperation and Security in the EU' in Eugene Regan (ed), *European Criminal Justice Post-Lisbon: An Irish Perspective* (The Irish Institute of International and European Affairs 2012) 57 – 59; See also Jim Cusack, 'Joint action leads to £1.2 billion cocaine haul' *Irish Times* (Dublin 12 July 1999) 5; Jim Cusack, 'Gardai to discuss human trafficking with UK officials' *Irish Times* (Dublin 18 September 2000) 5; Arthur Beesly, 'Massive paedophile ring broken, say police' *Irish Times* (Dublin, 17 March 2011) 14

¹¹²⁷ Walker (n107) 229, 230

¹¹²⁸ Heberton and Thomas (n65) 95 - 101

¹¹²⁹ House of Commons Home Affairs Committee, 14th Report of Session (2008-2009) 3

¹¹³⁰ *ibid*

¹¹³¹ Garda Communiqué (Garda Siochana March 2004) 12

¹¹³² Garda Annual Report (Garda Siochana 1999) 45

detectives throughout Europe, Asia and South America since the 1960s in order to promote the merits and possibilities of structured and systemic cross-border police cooperation.¹¹³³ US law enforcement agencies had long stationed liaison officers in major European cities, dating back to the 1860s, to combat the illicit flow of jewellery and diamonds into the US and to build cases against the Italian-American mafia.¹¹³⁴ However the US significantly increased its liaison presence in the 1970s in order to tackle the increasing flow of hard drugs across the US border as part of its new ‘war on drugs’ campaign.¹¹³⁵ Anderson observes that although America claimed extraterritorial jurisdiction for drug crimes affecting the US, it was of no legal or practical significance without the cooperation of the police forces, courts and governments of the foreign countries concerned.¹¹³⁶

Nadelmann reports that the US Drug Enforcement Agency (DEA) stationed some 228 liaison officers in 43 foreign locations in 1976 increasing to some 300 agents across 70 different foreign locations by the 1990s.¹¹³⁷ Similarly, the Federal Bureau of Investigation (FBI) also developed its international profile from the 1970s, increasingly stationing legal attaches, known as Legats, in US foreign embassies for the purpose of developing working relationships, gathering intelligence and stimulating cooperation primarily in the area of counter-terrorism.¹¹³⁸ At present, it is not unusual for American embassies to contain liaison officers from the DEA, FBI, Homeland Security, Justice Department, Customs, US Marshalls, Secret Service, and revenue service.¹¹³⁹ Nadelmann observes that most European governments expect US liaison officers to secure the permission of the national police headquarters or national criminal intelligence service as a professional courtesy before dealing with local police units on a case-by-case basis but that in practice liaison officers often ignore protocol and contact detectives and prosecutors directly as needs arise.¹¹⁴⁰ He remarks that liaison officers typically forge relationships with local detectives not via the local police chief but through low-level working relationships, often through social engagements.¹¹⁴¹

Detectives in Europe were reportedly only too keen to develop working relationships with the DEA in order to take advantage of the liaison officers’ access to the US intelligence databases as well as the connected network of DEA liaison officers all around the world.¹¹⁴² Nadelmann reports that European detectives conducting investigations into drug networks linked to South America, Asia or Africa would reportedly contact the DEA to see if its databases or liaison officers in the region held any relevant intelligence before, or even instead of, contacting the relevant foreign police force through Interpol.¹¹⁴³ Nadelmann describes liaison officers as ‘fixers’ and facilitators who are expected to be able to make direct and immediate contact with relevant local detectives upon receiving a request for information or assistance from

¹¹³³ Nadelmann (n241) 2, 106, 107

¹¹³⁴ *ibid* 27 – 29, 90 – 106, 131 - 133

¹¹³⁵ *ibid*

¹¹³⁶ Anderson (n240) 161, 162

¹¹³⁷ Nadelmann (n241) 2, 3, 141 - 160

¹¹³⁸ *ibid*

¹¹³⁹ *ibid*

¹¹⁴⁰ *ibid* 202 - 206

¹¹⁴¹ *ibid* 109, 110, 146 – 148

¹¹⁴² *ibid*

¹¹⁴³ *ibid* 214

their domestic police units.¹¹⁴⁴ Bowling and Sheptycki refer to liaison officers as international or ‘global police’ officers, even though their work on secondment is almost entirely intelligence or knowledge based.¹¹⁴⁵ They describe the bilateral liaison officer as the IT technician, the diplomat, the entrepreneur, the legal ace, the spy and the field operative.¹¹⁴⁶

Occhipinti’s noted in 2010 that many countries, particularly the US, continue to prefer the direct and simple nature of bilateral cooperation rather than the more formal bureaucratic approaches of Europol and Interpol.¹¹⁴⁷ This means that the bilateral routes and networks are as important as the formal international institutions, if not more so. Guille’s comparative study of numerous EU countries indicates that the mechanisms of informal bilateral cooperation are not only preferred by practitioners but that they appear to work far more effectively than the emerging formal constructs of international police and judicial cooperation.¹¹⁴⁸ Following the September 11 attacks, for instance, both the New York Police Department (NYPD) and the London Metropolitan Police reportedly increased the number of liaison officers they have stationed around the world.¹¹⁴⁹ Nadelmann suggests that the bilateral liaison construct should be considered to be as legitimate, effective and as necessary as Europol and Interpol.¹¹⁵⁰

Furthermore, there are an array of bilateral and multilateral liaison officers who are not based within embassies but regularly travel to meet with their foreign counterparts to discuss border criminality and develop joint strategies as part of a structured forum. The territorial police force in Kent, England, for example, has a long-standing relationship with police forces from France, Belgium and the Netherlands.¹¹⁵¹ Due to the prevalence of the maritime smuggling of stolen vehicles, art work, antiques, drugs, weapons and illegal immigrants across the Strait of Dover throughout the 20th Century, detectives from the Kent Police and French Police de L’Air et des Frontiers (PAF) in Calais, France met regularly from 1968 onwards to coordinate operations. The regular joint intelligence forum of senior detectives is known as the Cross Channel Intelligence Conference (CCIC).¹¹⁵² Detective branches from Dutch and Belgian police forces, particularly those from shipping ports such as Rotterdam, also regularly attend the meetings.¹¹⁵³ Johnson reported in 2002 that CCIC working groups meetings consisted of members of the Dutch national police, the Belgian federal police, the Rotterdam Police, and the UK NCS and NCIS as well as representative from the Kent Police and the Essex, Hampshire and Suffolk Constabularies.¹¹⁵⁴

¹¹⁴⁴ *ibid* 190, 191

¹¹⁴⁵ Bowling and Sheptycki (n75) 1 - 9

¹¹⁴⁶ *ibid* 87 - 93

¹¹⁴⁷ Occhipinti (n1082) 175

¹¹⁴⁸ Guille (n80) 26 - 39

¹¹⁴⁹ Deflem (n650) 74 - 76

¹¹⁵⁰ Nadelmann (n241) 108

¹¹⁵¹ Sheptycki (n933) 18 – 35

¹¹⁵² *ibid* 18 - 42

¹¹⁵³ Malcolm Anderson, ‘The British Perspective on the Internationalisation of Police Cooperation in Western Europe’ in Fijnaut (n914) 27

¹¹⁵⁴ E. Johnson ‘Case Report Operational Mallard from the Cross Channel Euroregion’ in Monica Den Boer and Toine Spapens (eds), *Investigating Organised Crime in European Border Regions: Law Enforcement and Judicial Cooperation with Regard to Organised Crime: A Comparison between European Border Regions* (Tilburg University 2002) 34 - 45

As part of the CCIC initiative, the Kent Police established its own European Liaison Unit (ELU) to deal with enquiries concerning investigations of a cross-channel nature.¹¹⁵⁵ Members of the liaison unit were usually fluent French speakers or could avail of an intensive language training programme.¹¹⁵⁶ An innovative ‘Police Speak’ project was even developed by the participants to encourage officers to remove ambiguous words from voice and written communications.¹¹⁵⁷ The English word ‘attend’, for example, was to be avoided, as it could be confused with the French word ‘attendre’ which means ‘to wait’.¹¹⁵⁸ Direct cooperation through the CCIC was reportedly quite successful leading to the coordination of numerous surveillance operations, arrests and evidence seizures in the various jurisdictions.¹¹⁵⁹

Sheptycki’s seminal research indicates that much of the CCIC’s work is small-scale in nature, usually involving the investigation of forged documents, counterfeit materials and vehicle thefts.¹¹⁶⁰ He reported that after the discovery of a number of bodies in an airtight container in Dover in 2000, within 24 hours numerous intelligence meetings had been held between the Kent Constabulary, the Dutch national police and various prosecutors.¹¹⁶¹ The subsequent investigation involved the secondment of officers and the exchange of letters of request pertaining to mobile phone data, CCTV footage, documents seized during property searches in both countries, forensic evidence of shoeprints, cigarette butts and grocery receipts from purchases, eventually leading to a number of convictions in both the Netherlands and the UK.¹¹⁶² Guille reports that English police forces frequently use the Kent liaison bureau to contact counterparts in the French, Belgian and Dutch police instead of going through the ENU or NCB and vice versa.¹¹⁶³

To a similar extent, Danish police forces participate in the Nordic Police and Customs Cooperation Group (Politi-og Toldsamarbejde I Norden) (PTN), which was established in 1984.¹¹⁶⁴ Initially the PTN involved regular scheduled meetings of the major drug investigation police units in the Nordic countries, known as the ‘E6 meetings’, but its remit quickly expanded to cover other areas of organised crime.¹¹⁶⁵ One of the major initiatives of the Group was to coordinate and share all of their liaison officers stationed in embassies abroad. The foreign liaison officers, known as ‘Nordic’ liaison officers are expected to represent the interests of any of the Nordic States if requested.¹¹⁶⁶ There are approximately 33 Nordic liaison police officers stationed in 17 countries throughout the world, 9 of which are Danish police officers.¹¹⁶⁷ The Group also participates in a Task Force on Organised Crime in the Baltic Sea Region which was established by the foreign ministers of the Nordic States

¹¹⁵⁵ Sheptycki (n933) 48 - 64

¹¹⁵⁶ Benyon et al (n64) 206

¹¹⁵⁷ Ingleton (n932) 44, 60 to 67, 76

¹¹⁵⁸ *ibid*

¹¹⁵⁹ Sheptycki (n933) 29 – 35, 41, 52, 53

¹¹⁶⁰ *ibid* 125, 126

¹¹⁶¹ Johnson (n1154) 40 - 47

¹¹⁶² *ibid*

¹¹⁶³ Guille (n80) 31, 32

¹¹⁶⁴ Kruize (n266) 171

¹¹⁶⁵ Per Gammeldgard, ‘International Police Cooperation from a Norwegian Perspective’ in Daniel J Koenig and Dilip K Das (eds), *International Police Cooperation* (Lexington Books Oxford 2001) 233, 234

¹¹⁶⁶ Kleiven (n1117) 65, 66

¹¹⁶⁷ Council Report (n990) 2.4.7

as well as those of Germany, Estonia, Latvia, Lithuania and Russia in 1996 in order to facilitate greater police and judicial cooperation. The Nordic countries, in particular, are attractive markets for synthetic drugs and counterfeit goods trafficked from the Eastern Baltic region due to the high prices that they can achieve in Scandinavia.¹¹⁶⁸ The Baltic Sea Taskforce reportedly contributed to the establishment of a Nordic Baltic Police Academy in 1997 to enhance the capacity of the Baltic States' police forces prior to their accession to the EU.¹¹⁶⁹

Various other regions in Europe also have similar arrangements in place, not least the Benelux States. A much lauded example is a working group established by municipal police chiefs from the Netherlands, Belgium and Germany within the Aachen border region or 'Euro-region' in 1969.¹¹⁷⁰ Known as NeBeDeAg-Pol (the Netherlands, Belgian, Deutsch, Aachen Police Venture), the working group of police chiefs established direct telex and radio connections between police stations, held regular intelligence meetings, appointed liaison officers for particular crime types, published local procedures for arranging hot pursuit and surveillance and even ran language courses for police officers.¹¹⁷¹ Spapens indicates that the Dutch-Belgian-German border region is afflicted with marauding criminal gangs known for specialising in drug trafficking, burglaries, jewel thefts, car thefts and bank robberies.¹¹⁷²

In more recent years, the Belgian, Dutch and German police forces established a joint Police Information and Communication Centre (EPICC) within the Euro-region pursuant to the Benelux Convention on Police Cooperation and the Treaty of Enschede.¹¹⁷³ The latter Treaty of Enschede was formed in particular to allow for German police officers to cross into the Netherlands without authorisation in the event of a major disaster within the border area in order to assist with crowd control, traffic management and search and rescue.¹¹⁷⁴ It also encouraged Dutch courts to handle requests for mutual police assistance and evidence exchanges from German police within the border region in a similar fashion to requests received from the other Benelux States.¹¹⁷⁵ Staffed with liaison officers and intelligence analysts, the EPICC serves to rapidly process requests for assistance and facilitates structured intelligence sharing on forms of criminality affecting the border area.¹¹⁷⁶ Since 2005, Benelux, German and French police forces in the Aachen border region have also been participating in joint motorway patrols, known as Joint Hit Teams (JHT) on the roads exiting the Netherlands in order to catch 'drug tourists' trying to smuggle drugs into the surrounding countries.¹¹⁷⁷ A network of prosecutors from the respective countries was also established to stimulate further collaboration, known as the Bureau Euro-region Samenwerking (BES).¹¹⁷⁸ Fijnaut and Spapens note that there have been talks

¹¹⁶⁸ Risto Pullat, *Organized Crime Related Drug Trafficking in the Baltic Sea Region* (Estonian Police Board Tallin 2009) 91 – 95

¹¹⁶⁹ Kleiven (n1117) 66 - 68

¹¹⁷⁰ Anderson (n240) 152

¹¹⁷¹ Fijnaut (n914) 125 - 129

¹¹⁷² Toine Spapens, 'Police Cooperation in the Dutch Border Areas' in Fijnaut and Ouwerkerk (n873) 83 – 86

¹¹⁷³ Fijnaut and Spapens (n1046) 116, 117

¹¹⁷⁴ Spapens (n913) 168 - 175

¹¹⁷⁵ *ibid*

¹¹⁷⁶ *ibid*

¹¹⁷⁷ *ibid*

¹¹⁷⁸ Fijnaut and Spapens (n1046) 118 - 120

to amalgamate the EPICC and the BES into a network called 'JustPol' but the initiative remains tentative.¹¹⁷⁹

Joint police stations have also become increasingly popular throughout continental Europe. A Belgian police force operates a joint police station with a neighbouring German police force in the border area of Eupen and with French police in the border area of Courtrai.¹¹⁸⁰ Similarly, France and Germany established a Police and Customs Cooperation Centre (PCCC) at Kehl on foot of the Mondorf Agreement 1997.¹¹⁸¹ Staffed with some 65 officers, the Kehl station carries out a mainly administrative function, enabling each of the seconded officers to access their own domestic databases of police records, stolen items, counterfeit documents, fingerprints and DNA samples so that information can be exchanged rapidly.¹¹⁸² Felsen reports that the Franco-German Saarbrücken agreement had previously led to the development of compatible radio networks and multi-lingual joint border control stations at Kehl, Neuenberg and Saarbrücken from 1989, which the PCCC effectively built upon.¹¹⁸³

Although the detective bureaus at the Irish land border do not participate in a permanent formal cross-border policing taskforce along the lines of the Kent CCIC or the Euro-region EPICC, they have formed case-specific taskforces which meet on a weekly or monthly basis until the relevant case is resolved.¹¹⁸⁴ On a more regular basis, detectives often travel across the border to hold informal meetings on a case by case basis.¹¹⁸⁵ Due to the fact that terrorist bombings, shootings, bank robberies, currency counterfeiting, fuel smuggling, car thefts, gun-running, drug trafficking and human trafficking are frequently perpetrated by criminals and criminal groups residing in one jurisdiction but operating in the other, it is not unheard of for detectives from the serious crime and counter-terrorism bureaus to cross the border several times a month to discuss cases.¹¹⁸⁶ One RUC border superintendent was known to travel south of the border up to 10 times a month in the early 1980s, visiting stations all across the border to generate cooperation, before he was murdered by the IRA during one such border crossing.¹¹⁸⁷ Throughout the 1970s and '80s it was not unheard of for detectives to keep suspects that were wanted by the neighbouring police force under surveillance until they crossed the border at which point the neighbouring police force was notified so that the suspect could be arrested.¹¹⁸⁸

Detectives from the Irish Police and the PSNI continue to depend heavily on informal bilateral relationships and ad hoc meetings to share intelligence and coordinate cross-border investigations.¹¹⁸⁹ The absence of a legal framework along the lines of the

¹¹⁷⁹ *ibid*

¹¹⁸⁰ Brice De Ruyver et al 'Schengen and Undercover Policing Methods: Should National Laws Follow Suit?' in Monica Den Boer (ed), *Undercover Policing and Accountability from an International Perspective* (European Institute of Public Administration, Maastricht 1997) 143 - 149

¹¹⁸¹ Den Boer (n999) 47

¹¹⁸² Oliver Felsen, 'European police cooperation: the example of the German-French Centre for Police and Customs Cooperation Kehl' in Hufnagel et al (n713) 73 - 81

¹¹⁸³ *ibid* 74 - 78

¹¹⁸⁴ Sean Flynn, 'Gardai sent new task force to Border areas', *Irish Times* (Dublin 11 Jan 1986) 1

¹¹⁸⁵ Dunn et al (n962) 14

¹¹⁸⁶ Walsh (n764) 38 - 44

¹¹⁸⁷ Smithwick Report (n422) 22 - 31, 144 - 146

¹¹⁸⁸ Dunn et al (n962) 14 - 26

¹¹⁸⁹ Sean Flynn, 'RUC in Dublin for talks on Border Security', *Irish Times* (Dublin 10 Jun 1987) 1

Schengen Convention means that unless detectives go through the highly impractical and bureaucratic process of submitting and securing a letter of request for the purposes of a short meeting, they must ordinarily cross the border as a civilian without any police powers or immunities.¹¹⁹⁰ The procedure is not unusual since numerous police officers travel across Europe in a similar civilian capacity, without any official status or letter of request, in order to discuss cases with foreign police officers and magistrates before instigating formal cross-border police cooperation. However it is slightly more peculiar in the sense that it has long been popular on continental Europe for border areas to have networks and legal frameworks in place to stimulate and facilitate structured cooperation within the border zone. There are effectively no broad mechanisms designed to oversee the regular but haphazard conduct of cross-border policing at the Irish land border.

The disparate forms of cross-border police liaison throughout Europe ultimately show that the Europol liaison bureau is little other than a bit-part player. The Europol liaison bureau appears to be one of a number of multi-lateral liaison constructs and, more particularly, relatively marginal to the needs of the police forces within the English Channel, Benelux, Nordic and Baltic regions. Anderson conveys that the academic practice of conceptualising cross-border policing through the lens of a centralised-state model versus a purely decentralised-state model tends to erroneously and illogically place informal or direct embassy-based bilateral liaison in competition with formal or institutional Europol-based liaison.¹¹⁹¹ He conveys that, to the contrary, bilateral and international forms of liaison should not be perceived to be in conflict but complementary to one another.¹¹⁹² Bilateral cooperation through embassy-based police officers or through simple border meetings facilitates direct and flexible communication and information exchange whereas international institutional structures such as Europol can play a crucial intelligence analysis and coordinating role.¹¹⁹³ Member States should be in no doubt of the continued importance of both forms.¹¹⁹⁴

A major concern from an accountability and transparency perspective is that the EU has not taken substantive steps to enhance the transparency or quality of the informal structures and processes in place at the land borders throughout Europe. The EU has promoted the virtues of its Europol construct while effectively leaving a significant volume of cross-border police cooperation to be conducted in relative 'low visibility'. The EU should clearly conduct a major 'rethink' of its approach to information sharing within the EU so that a vast expanse of police liaison is not being neglected in favour of promoting the virtues of a single intelligence agency in The Hague. Europol clearly has an important role to play but so too do a number of bilateral networks and mechanisms throughout Europe. It is remarkable that the EU has not done more to enhance the transparency and accountability of such constructs that are at once so fundamental to the conduct of cross-border police cooperation in Europe.

¹¹⁹⁰ Conway (n395) 134 - 136

¹¹⁹¹ Anderson (n240) 161 - 180

¹¹⁹² *ibid*

¹¹⁹³ *ibid* 169, 192

¹¹⁹⁴ Benyon et al (n64) 285 - 290

Mutual police assistance & joint investigation teams

The EU's novel framework for Joint Investigation Teams (JIT) has gained remarkably little traction within the Member States. In total, only 40 EU JITs were established between 2004 and 2009 across the entire 27 Member States.¹¹⁹⁵ A considerable number of the JITs were established bilaterally between France and Spain as part of their investigations into ETA.¹¹⁹⁶ More particularly, Block observes that almost all of the JITs were bilateral collaborations between no more than 2 countries, raising questions about the capacity of the JIT framework to facilitate ground-breaking multi-lateral investigations that could target, investigate and prosecute EU-wide criminal networks.¹¹⁹⁷

Block indicates that the general avoidance of the JIT instrument is due largely to the fact that the JIT provisions were belatedly included in the Mutual Assistance Convention 2000 without any significant feasibility studies being conducted.¹¹⁹⁸ He suggests that very little effort was made to accommodate the conventional legal rules and values of the constituent police forces across the EU area.¹¹⁹⁹ Instead, the initiative was included largely upon the recommendation of the German government and modelled by and large on the German JITs used across the separate Lander.¹²⁰⁰ Since the JIT framework did not fit the working practices of various Member States, police forces have tended to eschew the instrument in favour of simpler, more flexible and practicable measures.¹²⁰¹

The UK's experience in particular has been indicative of the unappealing aspects of the JIT construct. One of the UK's first engagements with the new EU measure was the establishment of a JIT between the now defunct National Crime Squad (NCS) and the Dutch police force.¹²⁰² The NCS, which has since been replaced by the National Crime Agency (NCA), was in the course of investigating a drug-trafficking network and had identified a number of persons in the Netherlands intimately connected to the case. The prosecution of the London-based members of the network did not depend upon the assistance of the Dutch Police.¹²⁰³ However following a number of failed attempts by various EU Presidencies to establish a successful JIT, the Netherlands and the UK Governments were actively encouraging their respective police forces to realise a successful one.¹²⁰⁴

The NCS duly made contact with the relevant Dutch police force, discussed the merits of a JIT and subsequently submitted a formal letter of request to establish a JIT so that officers from the NCS could participate in a communication interception operation by the local Dutch Police.¹²⁰⁵ As per the JIT Framework Decision, following the

¹¹⁹⁵ Spapens (n997) 240 – 250

¹¹⁹⁶ *ibid*

¹¹⁹⁷ Ludo Block, 'EU Joint Investigation Teams: Political ambitions and police practices' in Hufnagel et al (n713) 87 – 103

¹¹⁹⁸ *ibid*

¹¹⁹⁹ *ibid*

¹²⁰⁰ *ibid*

¹²⁰¹ Lemieux (n85) 9, 10

¹²⁰² Rijken and Vermeulen (n1018) 8 - 10

¹²⁰³ *ibid* 2 - 10

¹²⁰⁴ *ibid*

¹²⁰⁵ *ibid* 47 - 49

acceptance of the letter of request the participants had to negotiate a JIT Agreement which was to include details on the composition of the team, time limits, locations, foreign participants, their entitlements and ownership of information amongst other issues. However during the negotiation of the Agreement, the NCS learned that its seconded detectives could be required to fully disclose their knowledge of the main English investigation at a subsequent Dutch criminal trial.¹²⁰⁶ As standard, a judge in the UK can permit the non-disclosure of police information in the interests of safeguarding an ongoing covert surveillance operation under the principle of public interest immunity (PII) but the legal protocol in the Netherlands was less clear cut. There was immediate concern that the possibility of having to disclose operational details in a Dutch court could jeopardise the ongoing investigation in England.¹²⁰⁷

The English participants subsequently decided to second officers to the Netherlands who had limited knowledge of the ongoing drugs case in the UK. The seconded officers were briefed only on non-sensitive issues.¹²⁰⁸ Any sensitive information was classified and sent through Europol so that the sources of information could be protected by virtue of the diplomatic immunity of Europol's own staff.¹²⁰⁹ In hindsight, it would have been far more straightforward if the English detectives had instead sent a simple letter of request to the Dutch police to carry out a communication interception on its behalf. The seconded officers had no knowledge of the case and were therefore unable to exchange working intelligence.¹²¹⁰ Their presence in the Netherlands was effectively a token gesture in order to meet the requirements of a JIT.

Fijnaut's research indicates that the JIT construct is largely impractical for police cooperation within the Benelux States for the simple fact that the Benelux police forces have long avoided using formal written letters of request where possible.¹²¹¹ Fijnaut observes that since the Benelux Treaty 1962 encouraged prosecutors and courts to exchange letters of request directly, prosecutors have become accustomed to making oral requests instead of using formal letters.¹²¹² Prosecutors have long treated requests from other areas of Benelux by analogy, as if such requests had come from the local police force or prosecution service. Moreover, secondments are typically facilitated by way of 'travel orders' which enable police officers to enter the neighbouring jurisdiction under the command of the local police force and enjoy the same legal privileges and liabilities as officers from that State.¹²¹³ Den Boer notes that the Benelux system works relatively harmoniously because Belgium, the Netherlands and Luxembourg have been harmonising or 'tuning' their basic criminal laws, investigative procedures and professional practice for the purposes of cross-border police cooperation since the early 20th Century.¹²¹⁴

¹²⁰⁶ Annelies Balcaen, 'Law Enforcement Information exchange in the Operational Phase of a JIT' in Rijken and Vermeulen (n1018) 96 - 104 referring to Dutch Criminal Code of Procedure Article 552q

¹²⁰⁷ *ibid*

¹²⁰⁸ *ibid*

¹²⁰⁹ *ibid*

¹²¹⁰ *ibid*

¹²¹¹ Fijnaut (n914) 118 – 124

¹²¹² *ibid* 118 – 124

¹²¹³ *ibid* 122 – 133 referring to Benelux Treaty s. 26 – s. 28

¹²¹⁴ Den Boer (n999) 43

The same is largely true of the Nordic States which introduced a Nordic Police Cooperation Agreement 1972 and a Nordic Mutual Legal Assistance Agreement 1974. The two agreements essentially established enhanced variations of the CoE Mutual Assistance Convention 1959, along the same lines of the Benelux Treaty 1962.¹²¹⁵ Although the 1972 Agreement was revised in 2002 with new guidance on EU Joint Investigation Teams, Danish police prosecutors generally use the traditional processes to secure foreign warrants through simple oral applications meaning that the JIT framework loses much of its appeal.¹²¹⁶ Like the Benelux States, the EU JIT construct only becomes relevant in practice when the Nordic countries engage in cooperation with a police force outside of Scandinavia.

Denmark has participated in 9 JITs between 2002 and 2012, almost all of which involved the German police force responsible for the region or Land of Schleswig-Holstein which straddles the land border with Denmark. Danish detectives attached to the Danish police district of South Jutland frequently travel across the border to Schleswig-Holstein to assist the local police during surveillance operations.¹²¹⁷ JITs are considered to be particularly useful due to the simple fact that Schleswig-Holstein was historically a contested area, changing hands between Denmark and Germany on a number of occasions dating back to the Middle Ages, while remaining home to many Danish speaking criminal networks which operate on both sides of the land border.¹²¹⁸

By and large, instead of utilising the EU JIT framework a number of Member States appear to have reformulated some of its key concepts through alternative measures.¹²¹⁹ Spapens indicates that some investigators from the Benelux States have creatively generated an overarching letter of request, renewable every month, which enables investigative actions to be carried out without the need for multiple letters of request and, most importantly, without actually committing resources towards establishing a joint case file, a joint command or the secondment of officers.¹²²⁰ Similarly, Ireland moved in 2008 to develop its own bespoke legal framework for specific forms of joint investigation. The Irish Criminal Justice (Mutual Assistance) Act 2008 enables the Irish police force to choose between establishing a JIT or more simply to invite foreign officers to Ireland to participate in operations, particularly controlled deliveries, whilst affording them the full immunities and liabilities outlined in the JIT Act. The 2008 Act explicitly provides that the novel secondment provisions outlined in the EU JIT Framework Decision, which provide for police powers, immunities and liabilities, shall be applied to officers who are seconded outside of the JIT framework.¹²²¹ Ireland effectively copied the successful formula used in the JIT Framework Decision and applied it to a separate bespoke mode of cooperation.

¹²¹⁵ See Gammelgard (n1165) 232 - 234

¹²¹⁶ Thomas Elholm and T Fodge, 'Denmark' in Anthony Moore and Mario Chiavario (eds), *Police and judicial cooperation in the European Union* (Cambridge University Press 2004) 57 referring to Nordic agreement on mutual assistance of 26 April 1974

¹²¹⁷ Peter Kruize and Eric Langhoff, 'Case report on the Euroregion Sonderjylland – Schleswig Holstein' in Den Boer and Spapens (n1154) 95

¹²¹⁸ Spapens (n913) 164

¹²¹⁹ Spapens (n997) 257 - 260

¹²²⁰ *ibid*

¹²²¹ Criminal Justice (Mutual Assistance) Act 2008, s 88 – s 92

To a similar extent, the UK's Police Reform Act 2002 somewhat presciently described an 'international joint investigation team' as any team or taskforce established pursuant not only to the EU Mutual Assistance Convention but to any other EU instrument, the Schengen Convention, the Council of Europe Convention on Mutual Assistance or any international agreement to which the UK was party.¹²²² The UK's broader conceptualisation reflected the fact that the CoE Convention on Mutual Assistance in Criminal Matters 1959, the EU Convention on Mutual Assistance and Cooperation between Customs Authorities 1997, known as the Naples II Convention, and the UN Convention against Transnational Organised Crime 2000, had all established vague legal bases for joint investigation teams, and most importantly, had all preceded the EU JIT initiative.¹²²³ It effectively ensured that the concept of a 'joint investigation team' was not monopolised by the EU JIT construct. Remarkably, the EU Commission requested the Government to legislate specifically for the EU JIT with greater legal clarity but its overtures were refused by the Home Secretary who issued a more informal and flexible Circular to clarify the manner in which the EU JIT instrument should be applied in practice.¹²²⁴

Ireland, for its part, has completely eschewed the EU JIT instrument in practice. Detectives from the Garda Síochána and the PSNI continue to exchange traditional letters of request when undertaking 'parallel' investigations, without the establishment of a joint command and the formal secondment of officers. Parallel investigations have reportedly led to numerous drug seizures, counterfeit currency seizures, weapon finds and arrests in recent years.¹²²⁵ The British-Irish Parliamentary Assembly reported in 2009 that even though no EU JITs have been established in Ireland, cooperation at the border was 'excellent', based on the informal home-grown communication channels and working relationships built up between the police stations and detective departments on both sides of the border.¹²²⁶ Ireland typically adopts the same ethos in respect of cross-border police investigations with other jurisdictions, opting for parallel investigations over and above formal joint investigations. The Irish Police frequently undertakes property searches, communication interceptions and surveillance operations on foot of information and requests received through Europol and Interpol.¹²²⁷

The main problem with parallel investigations, from a transparency and accountability perspective, is that the absence of an overarching taskforce which works to establish and maintain joint intelligence files and joint plans means that police officers might naively or negligently omit to share crucial intelligence and information.¹²²⁸ As Walsh points out a parallel investigation could fail where a single JIT could have

¹²²² Police Reform Act 2002, s 103 & s 104

¹²²³ Naples II Convention on mutual assistance and cooperation between customs administrations, art 24; UN Convention on Transnational Organised Crime, art 19

¹²²⁴ Rijken and Vermeulen (n1018) 44 – 46; See Home Office circular 53/2002

¹²²⁵ Parliamentary Debate, Written Answers – Intergovernmental Conferences (Dail Eireann, Wednesday 1 April 1998) Vol 489 No 4

¹²²⁶ British-Irish Parliamentary Assembly, *Report on Cross-Border Cooperation between police forces* (Doc No. 149, 2009) 2

¹²²⁷ Garda Síochána, *Annual Report of the Garda Síochána* (2010) 6; 'How Kildare raid lifted lid on cartel's global operation' *Irish Times* (Dublin 26 May 2010) 5; 'Gardai raid premises in inquiry into people smuggling' *Irish Times* (Dublin 24 June 2008) 9; Arthur Beesly, 'Massive paedophile ring broken, say police' *Irish Times* (Dublin 17 March 2011) 14

¹²²⁸ Walsh (n958) 320 – 323

succeeded.¹²²⁹ Moreover, it raises the issue of responsibility. In the absence of a joint command, both police forces might naively assume that the other is putting considerable resources into the investigation and prosecution of specific individuals. Critically, there were significant criticisms over the parallel investigations pursued by the Irish and Northern Irish police forces into the terrorist bombing of Omagh in 1998 which was designed to derail the Good Friday Peace Agreement 1998.¹²³⁰ Critics claimed that intelligence sharing both before and after the attack was sporadic and haphazard exposing the disjointed nature of police cooperation at the border.¹²³¹ The Patten Commission stated that the Belgian response to the aftermath of the Heysel stadium disaster in 1985 exemplified a much more appropriate style of joint investigation since it involved the immediate secondment of officers and the establishment of a defacto joint command.¹²³² Mulcahy reports that interviews with Northern Ireland police officers in the 1990s suggested that the Garda Siochana's contribution to Northern Irish criminal cases was considerably 'small' in reality.¹²³³

One of the Patten Commission's terms of reference was to make recommendations to enhance police cooperation across the Irish border.¹²³⁴ Its final report was unsurprisingly critical. The Commission categorically found that the respective police forces and governments were not doing enough to exploit the scope for structured cooperation in comparison with other European police forces.¹²³⁵ It recommended the immediate establishment of a joint database concerning cross-border criminality, the interoperability of relevant IT and communication systems, the posting of liaison officers from each service to the neighbouring forces, the development of a joint disaster plan and the introduction of joint training regimes.¹²³⁶ Many of its recommendations mirrored the work programme outlined in the Anglo-Irish Agreement 1985 which had called for the development of work programmes to facilitate the exchange of information; joint threat assessments; coordinated operations and the secondment of liaison officers amongst other initiatives.¹²³⁷ Regrettably, although both governments established working groups to consider the Patten recommendations, the only recommendations that were subsequently developed through to fruition was the development of a joint disaster plan in 2002 and a cooperative training framework in 2003.¹²³⁸ However, both initiatives were considerably lacking in substance. The joint disaster plan was developed following a one-day exercise while the training regime set out in the Garda Siochana Act 2003 resulted in only one long-term officer secondment by the end of 2010.

It is submitted that the establishment of a permanent taskforce between the Irish and Northern Irish Police forces along the lines of the Anglo-French CCIC, the Benelux EPICC or the Benelux-German NeBeDeAgPol, would greatly enhance the transparency and accountability of the detectives responsible for investigating and

¹²²⁹ *ibid*

¹²³⁰ Dunn et al (n962) 29

¹²³¹ *ibid*

¹²³² Patten Commission (n44) 100 - 103

¹²³³ Aogan Mulcahy, 'The impact of the Northern Troubles on Criminal Justice in the Irish Republic' in O'Mahony (n756) 286, 287

¹²³⁴ Patten Commission (n44) 101 - 103

¹²³⁵ *ibid*

¹²³⁶ *ibid*

¹²³⁷ Anglo-Irish Treaty Article 9

¹²³⁸ Dunn et al (n962) 28 - 31

prosecuting cross-border crime in Ireland. Such a taskforce should compile joint intelligence dossiers, develop threat assessments, draw up coordinated strategies, monitor the establishment of joint investigations and, most importantly, publish periodic reports on its successes and challenges. Where the police chiefs could previously point to the lack of legislation to underpin such a construct, the EU JIT provisions and the secondment provisions within the Garda Síochána Act 2005 and the Criminal Justice (Mutual Assistance) Act 2008 can all be used to underpin the effective establishment of such a taskforce.

Although the JIT framework is unattractive to police forces in the Nordic and Benelux regions because they enjoy more fluid forms of cooperation, it appears to be particularly suitable in the Irish context. As Walsh conveys, JITs could be used to facilitate a modicum of formal cooperation, transparency and accountability where none exists.¹²³⁹ At the very least, the establishment of a JIT at the Irish land border would give the appearance that something was being done and enable members of the public to scrutinise the performance of their police forces to a minimal extent.¹²⁴⁰ The fact that Europol analysts were seconded to Ireland to assist with the forensic analysis of an illicit counterfeit currency production laboratory in 2010 and again in 2012 to assist with the collation of intelligence as part of a ‘parallel’ Garda and PSNI investigation into cross-border prostitution and human trafficking suggests that the respective detective bureaus and police chiefs recognise the benefits of joint intelligence collation.¹²⁴¹ A more formal, permanent construct could greatly enhance transparency and accountability on a day-to-day basis.

The EU JIT construct evidently ranks amongst the most unfavourable forms of joint investigation available to the Member States’ police forces. Den Boer remarks that the JIT instrument is symbolic of the growing sentiment amongst practitioners that the EU’s measures are overly bureaucratic and, in many cases, barely workable.¹²⁴² Any potential future moves by the EU to force cooperation through the use of JITs would be unwise considering the fact that many police forces can deal with an array of cases using much simpler, more responsive and faster channels of communication. For the EU to prescribe mandatory cooperation through JITs would presumably encourage police officers to pay lip serve to the construct, while continuing to engage in cross-border cooperation through more creative casual and informal means.

One of the most pressing concerns from an accountability and transparency perspective is that the EU appears to be promoting a largely unwanted marquee construct while leaving a vast field of investigative cooperation largely unregulated, disjointed and opaque. The EU’s prioritisation of the JIT instrument seems remarkably misplaced considering the vast practices and processes of cross-border police cooperation that it is leaving marginalised and untended. It appears that the EU measure was designed to enhance the ‘image’ of the EU’s security measures over and above the needs of the Member State police forces since the measure tried to monopolize the concept of ‘joint investigation teams’ without actually affecting the conduct of all other forms of joint investigation teams, whether loosely structured parallel investigations or formal networks such as the CCIC. It is submitted that the

¹²³⁹ Walsh (n958) 320 - 323

¹²⁴⁰ *ibid*

¹²⁴¹ Europol Annual Review (n855) 41, 42

¹²⁴² Den Boer (n999) 43

EU should be focusing not on introducing grandiose, exhibitionistic measures such as the EU JIT but should be focusing more particularly on enhancing the transparency, accountability and, by extension, the effectiveness of the broader field of investigative cooperation. It should arguably be focusing on encouraging the development of regional networks across Europe and, most importantly, require such taskforces to regularly publish details about their successes as well as their challenges. Such openness and transparency would undoubtedly help to foster greater feelings of security and safety amongst the public and would enable the legislature to take clear and responsive action to overcome any trenchant legal obstacles.

Conclusion

Although the Europol and JIT constructs represent the EU's marquee initiatives in the area of cross-border policing both measures affect only a relatively small volume of police cooperation. Europol does not systematically receive the volume of intelligence that it was designed to process and the Member States' detective departments, particularly the counter terrorism bureaus, continue to share vast quantities of information and intelligence bilaterally. JITs, on the other hand, are a relatively marginal form of investigative cooperation. Although the previous chapter outlined that the EU measures appeared at face value to be regulating the different forms of police cooperation within Europe they are considerably marginal in reality.

Of particular concern is the fact that the EU's cross-border policing strategy revolves around the two marquee constructs without much concern for the tangential forms of informal and home-grown police cooperation. In other words, the EU appears to have hedged its bets with the Europol and JIT initiatives despite the evidence suggesting that, although they are useful in various respects, they do not meet some of the basic needs of police officers and are habitually being avoided. Although the EU institutions are tasked to enhance police cooperation within the EU area it is remarkable that they seem to be avoiding responsibility for the quality of other forms of police cooperation. The EU seems to be interested only in promoting those frameworks that attach the 'EU label' which suggests that it values political 'image' over police conduct and accountability in practice.

It is submitted that the EU needs to rethink its approach to cross-border policing and embrace the ethos of the Member States' approaches to criminal procedure. In line with the spirit of PACE, RIPA and Public Order Acts, the EU should seek to accommodate and, most importantly, regulate all of the different procedural courses of action that a police officer can choose in the context of cross-border policing. The UK Acts and the similar Danish AJA serve to accommodate police discretion or choice while engendering a high standard of conduct which, in turn, greatly facilitates accountability. To realise a similar ethos at the transnational or supranational level, the EU must extend its gaze far beyond the Europol and JIT constructs to focus on enhancing the standards of other forms of investigative police cooperation, not least the temporary and permanent regional taskforces established bilaterally between the Member States' police forces. It could clearly do so through codes of ethics, procedural codes and mechanisms of oversight and inquiry.

It appears that the EU institutions cannot claim to have 'established' cross-border police cooperation in line with Article 87 of the Lisbon Treaty for they have left the

vast field of cross-border police cooperation largely untended. Moreover, the narrow measures that the EU has introduced have not been widely co-opted by the Member States' police forces in practice. The EU has only established measures with a limited scope and marginal impact. The next chapter will proceed to examine the extent to which the EU regime holds police officers and relevant policy officials accountable for the conduct of cross-border police cooperation in Europe, whether within the confines of the EU's own measures or across the broader spectrum of cross-border policing.

Ch. 5 Complaint and inquiry as EU law and policy

This chapter will address whether and to what extent the EU has developed mechanisms that require police officers, policy makers and the institutions to which they belong to explain, justify and answer for their conduct through disciplinary, legal and democratic means. As the thesis has already outlined, the enhancement of police accountability is not one of the five primary cross-border policing objectives outlined in the Lisbon Treaty. The Lisbon Treaty appears to prioritise the operational objectives of enhancing information collation, the development of common investigative techniques, the development of operational measures, the empowerment of Europol and the coordination of police training over and above the accountability of the police officers engaging in cross-border police cooperation. To echo Herbert Packer's famous model, the EU treaties appear to prioritise the 'ends' or objectives of crime control over and above the 'means' of due process.¹²⁴³

Cursory research undertaken by Den Boer in 2002 and 2010 indicates that the EU has not absorbed the mechanisms or ethos of legal accountability and democratic accountability in line with conventional values.¹²⁴⁴ Harfield reached a similar tentative conclusion in a journal article on transnational investigations in Europe in 2011.¹²⁴⁵ Their arguments centred around the fact that the EU Member States have marginalised the role of the European Court of Justice and the European Parliament in cross-border policing matters. Such observations are not difficult to make considering the fact that neither the Court of Justice of the European Union (CJEU) nor the European Parliament were afforded substantive roles in cross-border matters in the original Maastricht Treaty or in the subsequent Europol Convention introduced pursuant to it. The reasons for their omission will be analysed in the sections on legal and democratic accountability.

The chapter will proceed to draw direct correlations between the conventional legal and constitutional values of the Member States and the nature of the maturing EU project. Most importantly, it will critically evaluate the ability of the extant signalling mechanisms to deliver police accountability in light of the EU 'codes' in place and the prevailing degree of police 'co-option' on the ground in the Member States. The chapter will address whether and to what extent the general norms of democratic scrutiny and legal and administrative accountability apply effectively to EU cross-border cooperation and, more particularly, whether and to what extent cross-border cooperation is being conducted under the close executive control of police chiefs, ministers and civil servants to the exclusion of public input. To facilitate comparisons with the chapter on complaint and inquiry at the national level the same analytical lenses will be used.

Disciplinary accountability

The analysis of the mechanisms of disciplinary accountability at the national level indicated that police management, particularly sergeants and inspectors, are crucial

¹²⁴³ See Packer (n273) 9 - 22

¹²⁴⁴ Monica Den Boer, 'Towards an Accountability Regime for an Emerging European Policing Governance' (2002) 12:4 Policing and Society 281 – 283; Den Boer (n999) 58 - 60

¹²⁴⁵ Clive Harfield, 'Transnational Criminal Investigation and Modes of Governance' (2011) 5:1 Policing 3 – 14

for determining whether and to what extent police officers adhere to high moral, ethical and legal standards of conduct. By consistently disciplining officers for malpractice or by habitually covering up for persistent malpractice, police management effectively establishes a 'sense of permission' or 'perception of reality and purpose' of what is acceptable conduct. Police managers essentially play a large part in shaping the types of choices made by police officers. Foucault's observation that how a person conducts himself or 'behaves' is determined to a significant extent by the manner in which the person is conducted or 'directed and regulated' by institutions of governance appears to hold particularly true in the policing context.¹²⁴⁶

Moreover, the thesis showed that the modern codes of procedure coupled with the relatively recent evolution of civilian complaints bodies replete with investigative powers have served to narrow the discretionary field. The same ethos should arguably hold true for cross-border police cooperation. Surely the establishment of an external agency for the purposes of supervision and review is crucial to ensure that police officers and managers conduct themselves according to prescriptive standards instead of eschewing them in favour of more secretive approaches which engender loyalty and job security over and above honesty and accountability. To a similar extent, surely a normative code of ethics and programmatic procedural codes are required to set standards of conduct against which police actions or inactions can be measured.

Remarkably, the EU has made no attempt of note to ensure that cross-border policing is being carried out according to such standards. Europol's Management Board is largely responsible for setting Europol's administrative priorities and ensuring that the agency's Director subsequently achieves them. However there are no mechanisms of sanction or reprimand to ensure that Member State police forces submit fulsome intelligence to Europol rather than vague intelligence files which can amount to little more than a few pages. With respect to the Schengen and JIT constructs, police officers temporarily visiting another Member State, whether engaged in a hot pursuit pursuant to the Schengen Convention or as part of a Joint Investigation Team, are simply to be treated as police officers of that State with respect to any offences committed by them. Instances of misconduct such as discourtesy and disobeying instructions are to be dealt with primarily by the errant police officer's domestic police force.¹²⁴⁷ It is expected that any forms of misconduct will be reported in the post-operation report and exchanged between commanders so that disciplinary action can be taken to ensure that improper conduct does not go unreported or unpunished.¹²⁴⁸

Although Europol publishes an annual report and the officers involved in Schengen pursuits and JITs are required to submit a post-operation report, a major problem from an accountability perspective is that no notable internal or external mechanisms of supervision and review exist to convincingly ensure that substandard, unethical or unlawful practice is brought to light. As outlined in the chapter on complaint and inquiry within the Member States, the weight of evidence indicates that police managers and their subordinates have a tendency to eschew legal and procedural probity in the interests of self-preservation and noble-cause corruption in the absence of systematic supervision and control. To all intents and purposes, police officers can

¹²⁴⁶ See Foucault (n284) xix to xxiv, 193

¹²⁴⁷ Home Office circular 53/2002 para 14

¹²⁴⁸ *ibid*

systematically flout the rules and principles of the Europol and JIT constructs with a considerable degree of impunity.

It is submitted that the EU needs to do much more to hold police forces to account for the quality of their cooperation. More particularly, the EU needs to extend its gaze beyond the Europol, Schengen and JIT measures to ensure that police officers are systematically conducting themselves ethically, lawfully and transparently when engaging in more informal forms of bilateral and regional cooperation. The EU does not need to go to the extent of imposing financial sanctions but the mere application of a code of ethics, the introduction of a duty to publish reports or the establishment of an agency for procedural oversight would greatly enhance the transparency and accountability of cross-border policing. The new Standing Committee on Internal Security (CoSI), for example, is not concerned with the general procedural oversight of police officers on the ground but with ensuring that the EU agencies such as Europol, Eurojust and Frontex are meeting their objectives and are cooperating with one another in line with the relevant treaties and legal frameworks.

Remarkably the EU has not sought to enhance the transparency or accountability of cross-border police cooperation in the EU by introducing any of the suggested measures. Instead it has introduced its marquee Europol and JIT constructs which it continues to promote instead of addressing the much wider expanse of investigative cooperation. It seems incredible that the Council of Europe introduced a Code of Police Ethics in 2001 enumerating some 65 principles ranging from human rights to public consultation, civilian oversight and parliamentary accountability but that the EU, which is the institution tasked with enhancing cross-border policing and has the legal authority to make such a code legally binding, has avoided taking such measures. It is submitted that the EU approach to cross-border policing needs a major rethink in order to engender transparency and accountability across the popular forms of police cooperation which have remarkably lacked such attentiveness thus far. Before moving to examine the issues of legal and democratic accountability, the thesis will further argue that the EU could potentially take some novel steps in the concomitant areas of police training and the coordination of national investigative agencies in order to engender higher standards of officer conduct and by extension greater transparency and accountability.

National coordination of police cooperation

It is submitted that one way that the EU could enhance the transparency and accountability of cross-border policing is to require the national agencies that are responsible for cross-border policing to adhere to clear reporting requirements. The chapter will show that such an endeavour should not be considerably difficult since remarkably similar national structures have evolved in England, Ireland and Denmark which direct and control cross-border policing activities across the respective jurisdictions. The respective national agencies have evolved in two areas, namely serious and organised crime and counter-terrorism. The national functions in the area of serious and organised crime are carried out by the National Crime Agency (NCA) in England, the National Bureau of Criminal Investigation (NBCI) in Ireland and the NEC Serious Crime Squad in Denmark. In the area of counter-terrorism, the national function is the responsibility of the London Metropolitan Police Counter-Terrorism Command (SO15) in England, the Special Detective Unit (SDU) in Ireland and the

PET in Denmark. Although the agencies have undergone various reconstructions in recent years, each agency has a rich history and has enjoyed a relatively stable function over time.

In general, a degree of national coordination and priority setting is considered to be crucial to counteract drug trafficking, human trafficking and terrorism since without them it can become unclear which detective bureau is responsible for taking the lead in investigating the major criminals and criminal networks that span multiple local police areas.¹²⁴⁹ Moreover, detectives are reportedly far more disposed to investigating straight-forward cases that can bring a greater chance of success and plaudits rather than exerting considerable time and effort on resource intensive and challenging investigations. Furthermore, due to the relatively small chances of success in proportion to the financial resources and manpower needed to undertake a major investigation, police chiefs tend to be reluctant to allocate a tranche of the fixed police budget to a major investigation without being presented with convincing evidence or assurances that a conviction is likely. Ayling et al point out that detective bureaus are generally expected to present a financial ‘business case’ which outlines their plans for the case, with a particular emphasis on the expected financial costs involved.¹²⁵⁰ National oversight is also considered to be crucial for ensuring that ‘rivalries’ between detective bureaus do not cause information or cooperation to be withheld by detectives out of some misplaced sense of loyalty to their own colleagues and police chief.¹²⁵¹ Benyon et al note that rivalries are a long-standing feature of decentralised police forces, pointing to historic rivalries between the territorial police forces in England, the Police Judiciaire, PAF and Gendarmerie in France and the regional police forces in Spain.¹²⁵²

The national agencies not only help to clarify responsibilities but they also serve to collate intelligence in the various crime areas.¹²⁵³ The National Intelligence Model (NIM) developed by English police forces, for example, requires police officers to designate whether case uploads to the national police computer are specific to the local area (level 1), whether they are of a regional nature (level 2) or whether they have national or cross-border dimensions (level 3).¹²⁵⁴ Tasking and Coordination Groups (TCG) within each police force are typically required to develop crime analyses, threat assessments, targets, priorities and strategies across each of the three levels.¹²⁵⁵ The respective national agencies focus particularly on collating level 2 and level 3 type intelligence in liaison with the TCGs in order to develop national overviews, threat assessments, strategies and develop ‘new intelligence’ by identifying and exploring links.¹²⁵⁶

Although the concept of ‘intelligence-led’ policing is not new since detective bureaus have long relied on paper-based databases to identify linkages between cases and have long used crime occurrences to identify crime hotspots, the rapid evolution of new

¹²⁴⁹ Heberton and Thomas (n65) 125, 126

¹²⁵⁰ Julie Ayling et al, *Lengthening the Arm of the Law* (Cambridge University Press 2009) 1 - 17

¹²⁵¹ Bittner (n144) 66, 67

¹²⁵² Benyon et al (n64) 49

¹²⁵³ Reiner (n48) 194

¹²⁵⁴ James (n640) 2 - 6

¹²⁵⁵ Mike Maguire and Tim John, ‘Intelligence Led Policing, Managerialism and Community Engagement’ (2006) 16:1 *Policing and Society* 69 - 73

¹²⁵⁶ James (n640) 5, 6

computer technologies since the 1970s has enabled huge volumes of information to be stored, shared, accessed and searched to an unprecedented extent.¹²⁵⁷ Bayley notes that the IT revolution not only assisted the agencies carrying out national functions but the evolutionary changes also naturally demanded the establishment of more ‘centralised’ databases maintained by central intelligence analysis units and agencies so that such benefits could be exploited.¹²⁵⁸ The London Metropolitan Police, for example, established a National Drugs Intelligence and Immigration Unit in the 1970s for the purposes of collating easily accessible case files to combat the growing flow of new hard drugs such as heroin into the UK.¹²⁵⁹ Other major ‘national’ databases established within Scotland Yard included a National Office for the Suppression of Counterfeit Currency, a National Football Intelligence Unit (NFIU) to counteract football hooliganism, a Public Sector Corruption Index, a Paedophile Index and a National Domestic Extremism Unit (NDEU) amongst others. Sheptycki remarks that there was an almost simultaneous centralisation of intelligence processes and agencies in the spirit of ‘intelligence-led policing’ throughout Europe in the 1980s and ‘90s.¹²⁶⁰ Similarly, Den Boer comments that the new computer and information technologies had a major ‘centralising’ effect on police forces.¹²⁶¹

In practice, in the area of serious and organised crime, the UK’s National Crime Agency (NCA) is responsible for coordinating ‘regional’ and ‘national’ investigations into organised crime, drug trafficking, human trafficking, weapon trafficking, cybercrime and economic crime across the dozens of police divisions or Basic Command Units throughout England. Although the Agency was established in 2013, its basic functions were carried out by various agencies dating back to the 1960s. Its predecessors included the Serious Organised Crime Agency (SOCA) in the 2000s, the National Crime Squad (NCS) and the National Criminal Intelligence Service (NCIS) in the 1990s, the Regional Crime Squads (RCS) in the 1970’s and ‘80s and the ‘flying squads’ of the London Metropolitan Police dating back to the 1830s.¹²⁶² In the latter respect, the central detective units within the capital cities of London, Dublin and Copenhagen all carried out an organic and highly pragmatic ‘national’ detective function throughout the 19th Century.¹²⁶³ The large volume of crime occurrences that they encountered coupled with a higher critical mass of police officers engendered vast repositories of criminal intelligence and highly-skilled detectives unknown elsewhere in the respective jurisdictions.¹²⁶⁴ Expert detectives that were most amenable to travelling throughout the country to assist and bolster the investigative capacity of rural police departments were typically known as ‘flying squads’ in the various jurisdictions.¹²⁶⁵

Each new ‘national’ agency established in England throughout the 20th Century effectively replaced, subsumed or amalgamated its predecessors. Most importantly, each construct was responsible, at the time, for effectively the same function. They

¹²⁵⁷ Sheptycki (n99) 51 - 59

¹²⁵⁸ Bayley (n244) 147

¹²⁵⁹ Tony Bunyan, *The History and Practice of the Political Police in Britain* (Quartet London 1977) 80 - 85

¹²⁶⁰ Sheptycki (n99) 56, 57

¹²⁶¹ Den Boer and Doelle (n849) 151 – 157

¹²⁶² Sheptycki (n99) 59 - 61

¹²⁶³ Bunyan (n1259) 66, 67

¹²⁶⁴ Fosdick (n362) 274 – 292

¹²⁶⁵ Allen (n945) 110 – 112

were each responsible for the collation of the intelligence files and criminal databases maintained by the local detective bureaus to ensure that police officers could access a single ‘master’ database and, most importantly that such intelligence work was used to coordinate investigations into high profile criminal networks.¹²⁶⁶ Each ‘national’ version in England, bar the numerous RCS initiatives, also housed the Interpol NCB, the Schengen desk and more recently the Europol National Unit.¹²⁶⁷

Until the establishment of the NCA in 2013, none of its predecessors had enjoyed any powers of direction and control over the disparate detective bureaus throughout England. The NCS, NCIS and RCS were largely administrative agencies designed to support the needs of the territorial police forces. They were expected to encourage detective bureaus to engage in cooperation based on a convincing intelligence file collated at the national level with the sweetener of a ring-fenced police budget provided by Parliament.¹²⁶⁸ The nine original Regional Crime Squads (RCS) established in 1964 were essentially ad hoc bureaus of detectives who were seconded from the four to five police forces within a particular region in order to coordinate their investigations into the major organised crime networks active in the area.¹²⁶⁹ They were supervised by a management team which contained the participant chief constables who retained full power of direction and control over their own participating officers.¹²⁷⁰

The NCS, on the other hand, effectively amalgamated the remaining Regional Crime Squads into a national agency in 1997 but without the benefit of any authoritative powers to force cooperation to occur between the police territories.¹²⁷¹ The complementary NCIS, which was first established within Scotland Yard in 1991, was designed to focus predominantly on the collation and dissemination of level 2 and level 3 intelligence data.¹²⁷² Heberton and Thomas indicate that the decision to establish the NCIS was undoubtedly inspired in part by the emerging calls at the European level for the establishment of national departments to engage with the proposed Europol project.¹²⁷³ Scotland Yard already contained a number of functioning intelligence bureaus, not least the National Drugs Intelligence Unit (NDIU), so the NCIS was somewhat of a convenient label under which they could all be grouped together and eventually hived off into a more easily identifiable independent entity. Den Boer points out that each of the ‘national’ bureaus had long been geared predominantly towards national not international needs so even though the NCIS served to hive them off into a separate national entity by 1997 there was nothing to suggest that the primary domestic focus of the constituent units would change.¹²⁷⁴ Levi suggests that the establishment of the NCIS and the NCS also had political importance for they gave the impression that something was being done

¹²⁶⁶ Goldstein (n297) 396, 397

¹²⁶⁷ Heberton and Thomas (n65) 97

¹²⁶⁸ Benyon et al (n64) 159, 191

¹²⁶⁹ James Sheptycki, ‘UK’ in Den Boer (n266) 509

¹²⁷⁰ Benyon et al (n64) 159, 191

¹²⁷¹ Police Act 1997, s 30, s 31, s 52 – s 55

¹²⁷² See Den Boer and Doelle (n849) 30 - 34

¹²⁷³ Heberton and Thomas (n65) 97, 116 – 118, 133, 202

¹²⁷⁴ Den Boer (n243) 62 - 69

about organised crime at the national level and, most importantly, assumed a degree of responsible for it.¹²⁷⁵

Most importantly, some unique powers were developed for SOCA in 2005. SOCA, which amalgamated the NCS and NCIS, was similarly bereft of any powers of direction and control but it could controversially bestow full police powers duties, privileges and immunities onto civilian investigators or experts employed by the Agency on a case by case basis.¹²⁷⁶ The initiative was designed not to usurp the statutory powers and responsibilities of police officers but largely to enable civilian investigators with acute knowledge of a particular case, criminal or technical expertise to lawfully participate in operations under the guidance and instruction of detectives from a territorial police force.¹²⁷⁷ Nevertheless, SOCA was abolished in 2013 for the primary reason that its investigations were taking too long to complete, four years on average, as well as the fact that the value of criminal assets seized by the Agency within its first five years paled in comparison to the money invested in it.¹²⁷⁸ In other words, SOCA was expected to do what the territorial police forces could not and often would not do and the Agency was supposed to do it quickly.

The NCA, which has since subsumed SOCA, not only retained the novel features of its predecessor but the Director of the new agency was bestowed with the power to issue operational directions to any territorial police chief in England concerning the investigation of serious and organised crime.¹²⁷⁹ The NCA Director General is also appointed by and can be dismissed by the Home Secretary who is also responsible for issuing strategic directions to the Agency.¹²⁸⁰ This relatively undemocratic feature is far removed from the governance and oversight of the previous NCS and NCIS which were accountable to bespoke National Service Authorities which contained representatives from the territorial police forces.¹²⁸¹ The authority of the NCA is now comparable in many ways to the Irish Police force's National Bureau of Criminal Investigation (NBCI), effectively moving the English policing model closer to the Irish model of a unitary, centralised police force. Nevertheless, as Ayling et al note, like many other police systems throughout Europe, the English system cannot be described as decentralised or centralised since the local system is designed to be highly decentralised, falling under local political influence and control, whereas the national agencies such as the NCA are considerably centralised, remote from intimate communal concerns.¹²⁸² A degree of nationalisation or centralisation is ultimately important for inter-force or inter-divisional cooperation whereas a complementary degree of localisation or decentralisation is important for community relations.¹²⁸³

From an international perspective, the recent decision to bestow the NCA with powers of direction and control is not highly unusual since it brings the UK closer into line with Ireland but the Government must be careful not to continue down the Irish route

¹²⁷⁵ Michael Levi, 'The Making of the United Kingdom's Organised Crime Control Policies' in Fijnaut and Paoli (n264) 833 - 838

¹²⁷⁶ Serious Organised Crime and Police Act 2005, s 5, s 37

¹²⁷⁷ White Paper: One Step Ahead – a 21st Century Strategy to Defeat Organised Crime (March 2004)

¹²⁷⁸ Home Affairs Committee (n1129) 3 – 5

¹²⁷⁹ Crime and Control Act 2013, s 5.5

¹²⁸⁰ *ibid* s 3; Schedule 1 Part 2 s 7, s 8

¹²⁸¹ Police Act 1997, s 26 – s 35, Schedule 1 Part 1

¹²⁸² Ayling et al (n1250) 35 - 42

¹²⁸³ Walker (n107) 29

of eschewing local democratic accountability in favour of a highly centralised, remote police force. More particularly, the decision to bestow the NCA with executive powers of direction and control does not appear to be directly attributable to any particular EU initiative but rather appears to be the consequence of a litany of failed experimental ‘national’ constructs designed to engender police cooperation dating back to the 1970s.

Denmark, for its part, maintains a similar national criminal investigation department known as the Nationalt Efterforsknings-Stottecentre (NEC) within the National Police Commissioner’s headquarters (Rigspolitiet).¹²⁸⁴ The Serious Crime Squad within the NEC is responsible for encouraging the different police forces to cooperate in relevant cases of serious crime, to develop national overviews of serious crime occurrences and to respond to requests for investigative assistance from the police districts. Much like the UK’s NCIS, the NEC was effectively rebranded in 1997 in response to European calls to establish easily identifiable points of contact for the purposes of cross-border policing. The national agency was formerly known as the ‘Kriminalpolitiet’ between 1938 and 1997.¹²⁸⁵

To a similar extent, the Irish Police transformed its long-standing Central Detective Unit (CDU) into the National Bureau of Criminal Investigation (NBCI) in 1997.¹²⁸⁶ In essence, England, Denmark and Ireland all re-branded their national ‘ordinary crime’ detective bureaus in 1997. The UK formally established the NCS and NCIS, Denmark established the NEC and Ireland instituted the NCBI. They apparently did so in response to the EU’s Action Plan to Combat Organised Crime 1997 which called upon every EU police system to designate a ‘national’ point of contact for serious and organised crime enquiries.¹²⁸⁷ Heberton and Thomas state that the establishment of the units represented a marked centralisation of national policing system as a by-product or ‘recoil effect’ of more enhanced cross-border police cooperation within the EU.¹²⁸⁸ However the more in-depth analysis would indicate that the ‘national’ functions were carried out by other departments long before the 1990s. The effect of the EU initiative was merely to encourage police forces to either re-brand the relevant detective departments by attaching the word ‘national’ as a prefix to their existing title or by hiving off the departments’ functions into a separate national agency.

With respect to counter-terrorism, the London Metropolitan Police has retained its national role for coordinating counter-terrorism investigations and the provision of counter-terrorism police training, a role it has carried out since the 1880s.¹²⁸⁹ Known presently as the Counter Terrorism Command (SO15), it maintains a central intelligence database, coordinates and trains counter-terrorism officers stationed throughout the country and spear-heads the personal protection of both domestic and visiting dignitaries throughout the English mainland.¹²⁹⁰ Like its Irish counterparts, its officers do not have any coercive police powers that differ substantively from

¹²⁸⁴ Frederik Strand, *Efterforskningens Anatomi – Kriminalpolitiet 1863 – 2007* (University of Copenhagen PhD 2009) 376 - 378

¹²⁸⁵ *ibid*

¹²⁸⁶ Allen (n945) 198, 199

¹²⁸⁷ Den Boer and Doelle (n849) 153, 154

¹²⁸⁸ Heberton and Thomas (n65) 116 – 118, 133, 202

¹²⁸⁹ See Bernard Porter, ‘The Origins of the Vigilant State (Weidenfeld and Nicolson London 1987) 19 – 28, 73 – 86, 112 – 123

¹²⁹⁰ Sheptycki (n1269) 531, 532

‘ordinary crime’ detectives or rank-and-file constables.¹²⁹¹ It has unrivalled expertise in forms of terrorism and espionage aimed against the government and key institutions in London and maintains close links with the military intelligence security services (MI5, MI6 and GCHQ) which work to uncover and respond to terrorist networks and espionage emanating from abroad.¹²⁹² Following the rise of drug-related organised crime in the 1980s and the fact that much of the drug supply emanates from developing or failed States abroad, many of which are considered to be hotbeds of terrorism, the UK’s military security services have developed increasingly close links with the organised crime detective bureaus, particularly within Scotland Yard.¹²⁹³ Provision has been made in the Crime and Control Act 2013 to eventually transfer the LMP’s national Counter-Terrorism Command to the NCA upon the direction of the Home Secretary.

To a similar extent, Ireland’s Special Branch or Special Detective Unit (SDU) has been a feature of the national police force since the force was first established in the 1920s.¹²⁹⁴ Like their English counterparts, the detectives’ unique status is denoted not by unique police powers but primarily by their expertise, skillset and focus.¹²⁹⁵ The Irish Special Branch also cooperates particularly closely with the ‘ordinary crime’ NBCI due to the acute existence of an overlapping relationship between organised crime and terrorism in Ireland.¹²⁹⁶ Bank robberies, fuel smuggling, counterfeit currency production, extortion, punishment beatings and shootings are frequently the responsibility of subversive organisations in order to fund and further their broader political aims. Anderson et al note that an intimate link between terrorist organisations and organised crime is a pervasive feature common to countries inflicted with home-grown terrorist groups, not least Ireland and Spain.¹²⁹⁷ Moreover, the national police detective bureaus are increasing forging relationships with their respective military intelligence services to combat the foreign sources of organised crime and terrorism.¹²⁹⁸ The Irish and Danish special branches maintain close links with their national military intelligence agencies, the Irish Defence Force’s Directorate of Intelligence (G2) and the Danish Defence Intelligence Service (DDIS) respectively.

Denmark’s centralised counter-terrorism agency, on the other hand, which is responsible for coordinating and training counter-terrorism officers within each police district, is the PET (Politiets Efterretnings Tjeneste) which dates back to 1951.¹²⁹⁹ It is presently housed within the Rigspolitiet alongside the NEC. Unlike their English and Irish counterparts, Danish PET officers are denoted not only by their skillset in methods of surveillance, concealment, communication interceptions, hostage retrieval, explosives and VIP protection but they also enjoy some unique police powers.¹³⁰⁰ PET officers can, for instance, go to the extent of disrupting or disconnecting telecommunications without a warrant in order to foil the completion of a potentially

¹²⁹¹ Clive Walker, ‘Policy Options and Priorities’ in Van Leeuwen (n764) 14 – 35

¹²⁹² Anderson et al (n63) 164, 173

¹²⁹³ Walker (n1291) 27 - 29

¹²⁹⁴ Brady (n946) 135 to 140

¹²⁹⁵ Walsh (n764) 40 – 51

¹²⁹⁶ *ibid*

¹²⁹⁷ Anderson et al (n63) 103, 104, 164 - 166

¹²⁹⁸ Bunyan (n1259) 156 - 168

¹²⁹⁹ PET Report (n1081) 10, 11, 42, 64 - 67, 73

¹³⁰⁰ *ibid* 30, 31, 76 - 83

serious crime.¹³⁰¹ They may also participate to a significant extent in criminality when operating as an undercover agent, subject to an extensive suite of regulations and guidelines.¹³⁰² Nevertheless, Walker remarks that such unique counter-terrorism powers are rarely called upon and are largely peripheral to the investigation of terrorism since it is the quality of information and intelligence garnered ‘locally’ from witnesses and informants and the basic police powers of search, seizure, surveillance and interception that typically play the most crucial part in investigating and preventing a terrorist attack.¹³⁰³ It is the low-level intelligence that is habitually recorded by police patrolmen about the activities and utterances of recidivist criminals and their associates that is often crucial to intelligence-led policing.

Denmark’s PET is directed and controlled by a Director General who, unusually, does not report to the National Police Commissioner but is appointed by and can be dismissed by the Minister for Justice.¹³⁰⁴ The distinction serves to split the regulatory function between the National Police Commissioner in matters of ‘ordinary’ or ‘general’ crime and the PET Director General in matters of ‘high’ or ‘specific’ crimes of relevance to national security to ensure that there is no confusion.¹³⁰⁵ Although all Danish police officers are subject to regulations issued by the National Police Commissioner, the PET Director General may issue regulations pertaining strictly to PET officers concerning their exceptional statutory powers which are not shared by rank and file police officers.¹³⁰⁶ The PET receives its own budget, publishes its own annual report and maintains an extensive website which contains information and publications on various threats, operations and trends in the terrorism field.¹³⁰⁷

More recently, a number of multi-disciplinary taskforces have been established in Denmark to enhance cooperation between the NEC and the PET. Taskforce East, for example, contains a number of detectives seconded from the NEC, PET and district police forces. It reportedly contributed to the conviction of over 250 low ranking organised crime gang members in 2011 and the arrest of a number of arms-traffickers in 2012.¹³⁰⁸ Moreover, the detective units in the respective jurisdictions, both ordinary and special, have increasingly been able to call upon highly specialised tactical units which are maintained and trained by force headquarters on a permanent basis to carry out highly technical surveillance operations and dangerous operations such as barricade entry and hostage rescue. Denmark maintains a Police Action Force (Politiets Aktionsstyrke) which serves both ordinary and special crime detectives. Similar units are maintained by the Irish Police such as the Emergency Response Unit (ERU) and the National Surveillance Unit. The London Metropolitan Police has a Specialist Crime and Operations Unit (SCO19) amongst others.

It is submitted that the EU could enhance the transparency and accountability of cross-border policing within Europe by simply focusing on enhancing the ‘organisational responsibility’ of these particular national agencies. Each jurisdiction

¹³⁰¹ *ibid* 19, 20

¹³⁰² *ibid* 72, 73

¹³⁰³ Walker (n1291) 34, 35

¹³⁰⁴ PET Report (n1081) 5

¹³⁰⁵ *ibid* 23, 72, 73

¹³⁰⁶ *ibid* 2, 4, 12, 16, 68

¹³⁰⁷ *ibid* 5 - 16

¹³⁰⁸ J Buley, ‘Police vow to jail 300 gang members in 2012’, *Copenhagen Post* (Copenhagen 29 February 2012)

appears, rather simply, to have one national agency for organised crime and one for counter-terrorism matters. The police officers assigned to the two agencies will often be the officers participating in EU JITs, engaging in secondments abroad, responding to requests from Europol analysts and preparing the case files for upload to Europol. Most importantly, it is these national agencies that invariably monitor and inform the police divisions and districts. Moreover, they are centrally involved in establishing and maintaining the informal channels and bilateral mechanisms for cross-border police cooperation that are important and largely inevitable to ensure rapid, appropriate and responsive police cooperation.

Since the national agencies are responsible for coordinating investigations at the national level, they should have a clear view of the full extent of formal and informal police cooperation being carried out within the State. Moreover, police forces are increasingly amalgamating decentralised police forces to make the ‘national’ coordination function even simpler.¹³⁰⁹ The amalgamations of police forces in England prior to 1974 and in Denmark in 2007 were designed in part to enhance the critical mass of rural police forces and, most importantly, to abolish force boundaries that disrupted information exchange between police forces as well as variations in record keeping.¹³¹⁰

By virtue of enhancing the transparency and accountability of the national organisations the EU could, in effect, indirectly enhance the transparency and accountability of a large swathe of cross-border police cooperation within the Member States. Instead, the previous chapter conveyed that the national agencies appear to be withholding intelligence from Europol and avoiding JITs in practice while the EU continues to do little other than consider ways of forcing police forces to utilise its unattractive marquee initiatives. As already mentioned, practical steps that the EU could take to enhance the transparency and accountability of the national agencies include the possible introduction of a legally binding code of ethics, the development of a duty to publish reports and the establishment of external agencies of review in order to ensure that police officers are adhering to an appropriate standard of conduct while engaging in cross-border policing. Such steps would not need to encroach upon the tenets of national security or the pre-eminence of domestic law and order. As Patten outlines, the democratic ideal is that everything should ultimately be made available for public scrutiny unless it is specifically in the public’s best interest for the government to withhold it.¹³¹¹

Collaborative Police Training

One of the EU’s early objectives, outlined in the Paris Declaration 1989, the Maastricht Treaty 1992 and the Lisbon Treaty 2009, was the enhancement of collaborative police training. The thesis did not address the training dimension in the previous chapter on ‘codes’ for the simple fact that the EU’s training initiatives do not require the establishment of operational procedural codes. The training initiatives serve primarily to facilitate the sharing of knowledge about procedural best practices, processes, techniques, technologies and forensics across jurisdictions.¹³¹² As Bayley

¹³⁰⁹ Emsley (n771) 76 – 86

¹³¹⁰ See James (n640) 36 – 38

¹³¹¹ Patten Commission (n44) 36

¹³¹² Lemieux (n85) 16

convincingly argues, training is not central to accountability or sufficient to bring about reform since knowledge or skills will be lost if not immediately applied and maintained through constant supervision and discipline.¹³¹³ The existence of a clear legal basis or code together with the existence of signalling mechanisms of complaint and inquiry are clearly the primary prerequisites for effective police accountability.¹³¹⁴ However the EU's training initiatives will be discussed briefly since they can potentially draw police officers' attention to the need for greater procedural and disciplinary supervision and any emerging methods of best practice. More broadly, it has long been appreciated that collaborative training can breed familiarity and trust amongst senior police officers and enable them to become more familiar with foreign criminal justice system.¹³¹⁵

The EU's earliest effort to promote joint training was the Oisín Programme established by Joint Action in 1996.¹³¹⁶ Programme Oisín consisted largely of an *ad hoc* funding body endowed with a budget of €8 million to be awarded on a competitive basis to joint police training and research projects across the EU.¹³¹⁷ Police forces were encouraged to apply to the Oisín Committee, which consisted of one representative from each member state and a chair from the EU Commission, for up to 70 percent of the costs of a collaborative project.¹³¹⁸ Although the programme was renewed up until 2002, participation in the programme was reportedly poor due in part to the onerous application process and the fact that 30 percent of project costs had to be sourced from existing police budgets.¹³¹⁹ Specialist versions of the Oisín programme were also introduced, most notably Project Falcone which provided training and research funding for projects that focused specifically on organised crime.¹³²⁰ Collaborative training programmes were also established for prosecutors and border guards such as Project Stop (human trafficking), Odysseus (immigration and asylum), Hippocrates (prevention of crime), and Grotius (mutual legal assistance).

The desire for a formal structured regime for joint training was outlined at the Tampere summit of the EU Heads of State and Government in 1999.¹³²¹ The JHA Council subsequently introduced a Council Decision in 2000 establishing a European Police College (Cepol). On foot of the Council Decision, the heads of all of the EU national police colleges were required to meet on an annual basis as the governing board of the new College.¹³²² They were obliged to discuss training priorities and strategies and adopt a coordinated annual training programme of courses which were open to foreign officers across the national police colleges.¹³²³ In other words, the College originally functioned largely as a directory of courses in the Member States.

¹³¹³ Bayley (n510) 65

¹³¹⁴ *ibid* 49 - 61

¹³¹⁵ Anderson (n1008) 42 to 45

¹³¹⁶ Joint Action 97/12/JHA

¹³¹⁷ Subsequent Joint Action 2001/513/JHA, s 1 - s 4

¹³¹⁸ *ibid*

¹³¹⁹ Anderson (n1008) 45

¹³²⁰ Den Boer and Doelle (n849) 1

¹³²¹ Tampere Conclusions (n951) Milestone 47

¹³²² Council Decision of 22 December 2000 establishing a European Police College (CEPOL) (2000/820/JHA) s1 - s 9

¹³²³ *ibid* s 1 - s 6

The Cefol Governing Board could also use its budget to award grants to applicant police forces to carry out courses in a similar fashion to the Oisin Programme.¹³²⁴ The first Cefol Decision was replaced by another Council Decision in 2005 mainly to switch its funding structure from direct inter-governmental contributions to the EU budget.¹³²⁵ The Governing Board originally met at the Danish national police college in Copenhagen before relocating permanently to the English national police training college at Bramshill, which had previously housed the Oisin Committee.

Cefol continues to maintain a directory of national police courses which are open to foreign police forces and provides funding for courses on a competitive basis. Courses have included, amongst others, modules on new EU measures such as JITs or cutting edge investigative or forensic techniques developed by police forces and laboratories within the Member States. New *modus operandi* identified in the areas of terrorism, drug transportation and cybercrime often provide the subject matter for new Cefol courses. Lemieux notes that courses on intelligence analysis and intelligence-led policing, risk management and financial forensics have become increasingly popular in recent years.¹³²⁶ An online electronic database known as the European Police Learning Network (EPLN) was also developed so that police forces can share technical information, lecture slides, research reports and other educational materials. Notices about new courses are typically disseminated by the national Cefol representatives who are normally stationed within the national police academies.

The UK, Ireland and Denmark have all participated in and managed both Oisin and Cefol-funded courses. In recent years, the Police Training College at Bramshill has offered bespoke courses for detectives covering new *modus operandi* such as the use of the haulage industry by organised crime networks. The Danish Police College has run courses on child pornography and Europol amongst others. Although Ireland has never participated in a JIT, it ironically held a seminar on Joint Investigation Teams (JIT) at the Irish Police College as one of the flagship events of Ireland's presidency of the EU in 2004.¹³²⁷ It has also run courses on counter-terrorism, human trafficking, asset seizures, cybercrime, policing airports and controlled deliveries amongst others.¹³²⁸ A two-year part-time Masters course in Forensic Computing and Cybercrime Investigation open to applicants from any EU police forces was introduced in the mid-2000s by University College Dublin (UCD) in collaboration with the Garda Bureau of Fraud Investigation (GBFI) and Cefol.¹³²⁹ In its first year it reportedly had 28 students from law enforcement agencies representing 15 European countries.¹³³⁰

However, much like the EU's Europol and JIT constructs a wealth of bilateral training relationships co-exist alongside Cefol. Various police training colleges in Germany, Austria, Bramshill in England and the FBI/ DEA Academies in Quantico, Virginia

¹³²⁴ *ibid* s 6 & s 7

¹³²⁵ Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL)

¹³²⁶ Lemieux (n85) 13, 14

¹³²⁷ Garda Síochána, *Communique* (December 2004) 14

¹³²⁸ Garda Síochána, *Annual Report* (2000) 7, (2001) 6, (2003) 15, 16

¹³²⁹ Garda Síochána, *Annual Report* (2009) 4

¹³³⁰ *ibid*

have long had an international profile.¹³³¹ Police chiefs and senior police officers were traditionally highly amenable to sending their specialist police officers abroad for a few weeks of specialist training, particularly to ‘centres of excellence’ for counter-terrorism, surveillance, special weapons and forensic techniques and regularly invited foreign trainers from highly-regarded schools to their police academies to give seminars.¹³³² Travelling abroad for management and leadership courses was also popular amongst police officers aiming for promotion to higher positions. The training relationships were ultimately highly pragmatic, organic and practitioner-led.

It is widely appreciated that the long-standing training practices originally contributed to the spread of the use of French-style undercover agent provocateurs; the American-style development of car radio dispatchers and even the use of identifiable blue uniforms for police forces around the world.¹³³³ More particularly, Interpol also provides a major training service for police forces throughout Africa, Asia and South America using both lecture-based and distance-learning online modules.¹³³⁴ Much like Cepol, many of the training programmes promoted through Interpol are funded and provided by participant police forces, particularly the US DEA and FBI and the French Gendarmerie and Police Judiciaire.¹³³⁵

Irish police officers periodically attend training programmes and fellowships at the FBI Academy in Quantico, Virginia and at John Jay College in New York.¹³³⁶ Moreover, MOUs signed between the Irish police and police forces in Hungary and Russia in the early 2000s provide for the temporary secondment of trainers and the exchange of training and technical manuals in areas of bomb disposal and the seizure of criminal assets amongst other areas.¹³³⁷ Northern Irish police officers also received part of their pre-deployment training to a UN peacekeeping mission in Kosovo at the Garda College in Templemore in 1999.¹³³⁸ Garda and PSNI officers occasionally travel across the Irish land border to provide short seminars and attend conferences which do not attract Cepol funding.¹³³⁹ Provisions in the Garda Síochána Act 2005 enable the Garda Commissioner and PSNI Chief Constable to arrange for the long-term training secondment of police officers between the two forces largely for the purposes of knowledge transfer and the development of working relationships.¹³⁴⁰ Seconded officers who opt for a long-term secondment can use the legal framework to inherit all powers, duties and liabilities of the foreign rank in order to participate as a full member of the managerial department for a prolonged period of time. Seconded officers fall under the direction and control of the host police chief and lose their status as a police officer in their original jurisdiction. Although the framework provides that secondments can last for a period of up to three years, it was envisaged

¹³³¹ Frank Gregory, ‘Unprecedented partnerships in Crime Control’ in Anderson and Den Boer (n82) 99 – 103

¹³³² Eamonn Keating, ‘International Police Cooperation: Ireland’ in Koenig and Das (n1165) 183 - 185

¹³³³ Fosdick (n362) 213 - 216

¹³³⁴ Lemieux (n85) 13, 14

¹³³⁵ Anderson (n240) 154, 155, 176 - 181

¹³³⁶ Garda *Communique* (Garda Síochána December 2008) 12

¹³³⁷ Keating (n1332) 184

¹³³⁸ Dunn et al (n962) 64

¹³³⁹ Deputy Mary Wallace, Adjournment Debate – Garda Deployment (Dail Eireann Debate Wednesday 11 March 2009) Vol 677 No 4

¹³⁴⁰ Garda Síochána Act 2005 s 28, s 53 – 56

that most secondments would typically last no more than 12 months in practice.¹³⁴¹ The provisions originally stemmed from the repealed Garda Síochána (Police Cooperation) Act 2003 which was introduced following the Anglo-Irish Agreement 2002 to enhance cooperation in light of the Northern Ireland peace process.

Cepol is ultimately little more than one institution for funding and disseminating information about police training courses amongst many. Nevertheless, it is submitted that instead of encouraging police officers to participate in courses in a piecemeal, haphazard and independent manner, the EU could do more to enhance transparency and accountability in cross-border policing by requiring Cepol to prioritise training courses that focus on key issues of disciplinary accountability such as human rights protections and the roles and responsibilities of police supervisors.¹³⁴² As it stands, the procedures and networks of cross-border policing, whether operational or administrative, are generally only given superficial treatment in the basic entry-level police training curriculums within the Member States.

In terms of basic academy instruction until 2013 each of the territorial police forces in England were responsible for the delivery of their own curriculums according to a set of national occupational standards set by the Home Office.¹³⁴³ The police forces typically minimised classroom instruction in favour of on-the-job training and learning.¹³⁴⁴ Mawby and Wright note that most of the Home Office training standards pertained to vague benchmarks such as problem solving and teamwork which required a simple mark out of ten on the basis of on-the-job performance.¹³⁴⁵ Moreover, England's new College of Police, which was established in 2013 as a non-departmental government body responsible for introducing national police training programmes, does not appear to have taken any significant steps to address the stark absence of police training in cross-border matters. The police colleges in Ireland and Denmark both deliver courses on criminal law, evidence, court procedure, military drill, forensics, treatment of inmates and police organisational structures and procedures to new members but the courses are almost entirely confined to national policing structures, processes and issues.

The EU should arguably be doing more to encourage the incorporation of cross-border policing subjects into national police curriculums in order to improve understanding about cross-border policing and, most importantly, to ensure that the strengths and weaknesses of cross-border policing and the EU project are regularly debated and appreciated within classrooms and police academies. Although codes of procedure and signalling mechanisms of complaint and inquiry are the central ingredients of police accountability, police training should at least serve to bring standards of conduct and procedural best practice to the attention of police officers and their supervisors so that they may be able to form an authoritative 'perception of reality' or 'sense of permission' about what is appropriate, ethical and responsible conduct and what is not.

¹³⁴¹ Garda Síochána, *Annual Report* (2010) 12, 13

¹³⁴² Lemieux (n85) 16

¹³⁴³ Mawby and Wright (n175) 235

¹³⁴⁴ *ibid*

¹³⁴⁵ *ibid*

Legal accountability

Although the mechanisms of ‘legal accountability’ are the most stable of the three dimensions of complaint and inquiry on the national level, the Member States remarkably avoided establishing any relatively comprehensive mechanisms of legal accountability on the EU level until the enactment of the Lisbon Treaty 2009. This chapter will show that although the mechanisms of legal accountability have only a limited capacity to hold officers to account in the context of cross-border policing, there are some crucial steps that the EU could take to enhance police accountability in the judicial sphere.

Ironically, a fundamental element of the Member States’ approaches to the Europol, Schengen and Mutual Assistance instruments was the pragmatic decision to delegate the issue of legal accountability to the domestic structures and processes where possible. Each Europol participant was held to be legally responsible for the quality of information provided and the conduct of their liaison officers. Police officers engaged in hot pursuit under the Schengen Convention or on secondment on foot of the Mutual Assistance Convention were to simply enjoy the legal standing of a domestic officer of the host State. Critically, a fundamental and unique feature of the policing frameworks was that if a successful civil prosecution was brought for harm caused by a visiting police officer, the host State would not have to bear the cost of the financial remedy but it would be the responsibility of the police officer’s own police force to cover any expenses. The movement of police officers across borders was almost exclusively a matter for the domestic legal systems. The practical system left little room for the development of novel judicial mechanisms for police accountability.

Similarly on the supranational level, instead of subjecting the Europol organisation and its staff to the legal differences of numerous legal systems and to protect the integrity of the Europol Information System, the Member States opted to exempt Europol and its staff from the legal nuances by affording them immunity. Europol officials can only be subject to the rule of law in a similar fashion to civilians if their immunity is waived by the Europol Director on a case by case basis.¹³⁴⁶ Only the Data Protection Officer or the JSB can essentially adjudicate on malpractice and must subsequently bring its recommendations to the attention of the Europol Management Board.

The Court of Justice (CJEU) for its part was initially afforded a marginal role in matters of EU cross-border policing. The Court’s jurisdiction will be greatly enhanced pursuant to the Lisbon Treaty once the various instruments are switched to regulations but its involvement was relatively limited under the Maastricht and Amsterdam Treaties. Pursuant to the Maastricht Treaty, the Member States could decide whether and to what extent the CJEU would be afforded a power of interpretation or adjudication under a policing Convention and, more unusually, whether such powers would apply to all participants or whether Member States would each have to individually opt-in to the CJEU’s jurisdiction.¹³⁴⁷

¹³⁴⁶ Europol Decision (n862) s 54

¹³⁴⁷ Maastricht Treaty on European Union Article K 3.2.c

With respect to Europol, the Member States ultimately decided to limit the jurisdiction of the CJEU to the extent that it could only interpret obligations arising under the Europol Convention in the area of data protection upon the application of an appropriate national court. The Member States were required to opt-in to the CJEU provisions which the UK chose not to do.¹³⁴⁸ The government reportedly feared that the CJEU, if empowered to determine breaches of obligations and management disputes under the Europol Convention, would encroach upon the largely unfettered ability of its national counter-terrorism agencies to store and share personal data.¹³⁴⁹ Once the Amsterdam Treaty largely replaced the Convention instrument with Decisions and Framework Decisions, the CJEU was thereafter afforded the jurisdiction to give preliminary rulings on the validity and interpretation of the new instruments.¹³⁵⁰

The residual effect was that the CJEU had some powers of interpretation and adjudication under some conventions and instruments but not others and over some Member States but not others. The contested nature of the CJEU's role conveyed a significant degree of discord and distrust towards the European Court and contributed to a tense, complex and disjointed juridical landscape. Walker observes that the CJEU's juridical framework had developed to meet the needs of market regulation, concerning public and private economic actors, not the complex problems of internal security so the concerns of the Member States were somewhat understandable.¹³⁵¹ Nevertheless, he remarked that the uneven role of the CJEU clearly weakened the EU ideals of solidarity and equality under the rule of law causing a major imbalance between political supranationalism and juridical supranationalism in the area of cross-border police cooperation in comparison to other policy areas, which generated a circuitous problem of legitimacy.¹³⁵²

The CJEU now enjoys a similar power of interpretation across the Europol, JIT and mutual assistance instruments due largely to the introduction of new Decisions and Framework Decisions pursuant to the Amsterdam Treaty. The switch to regulations pursuant to the Lisbon Treaty should reaffirm its role. However, the transformation has had a negligible effect on the issue of police accountability since the Court is concerned primarily with the issue of whether the measures are given their proper effect in principle. In other words, the Court is concerned with evaluating whether the appropriate structures and processes have been established pursuant to the relevant instruments over and above the precise nature of a police officer's engagement with a measure. Most importantly, the Court is not obliged to determine whether and to what extent a measure enhances transparency and police accountability since such attributes are not formal, identifiable treaty objectives. For instance, a not-for-profit interest group known as *Advocaten vor de Wereld* challenged the legality of the Amsterdam Treaty provision to introduce Framework Decisions and Decisions in place of Conventions partially on the basis that the initiative would side-line the role of national parliaments which they argued are crucial for democratic

¹³⁴⁸ Anderson et al (n63) 204 - 209

¹³⁴⁹ *ibid*

¹³⁵⁰ Amsterdam Treaty amending the Treaty on European Union, art 35

¹³⁵¹ Neil Walker, 'In Search of the Area of Freedom, Security and Justice: A Constitutional Odyssey' in Walker (n886) 10, 11

¹³⁵² Neil Walker, 'The Rule of Law and the EU: Necessity's Mixed Virtue' in Gianluggi Palombella and Neil Walker, *Relocating the Rule of Law* (Oxford Hart 2009) 134, 135

accountability.¹³⁵³ However, the Court ruled that even though national parliaments would no longer be involved in the adoption process, the new instruments had treaty-status and were of comparable legal stature to Conventions thereby making the switch legal.¹³⁵⁴ Similarly, although Framework Decisions were used aggressively to establish onerous obligations in the absence of substantive democratic oversight, the CJEU ruled in the landmark *Pupino* case in 2004 that implementing legislation was to be in close conformity with framework decisions in order to give them the closest useful effect possible and enable consistent interpretation, rather than affording Member States a degree of flexibility.¹³⁵⁵

It is submitted that in order for the CJEU to be able to adjudicate on the quality of an EU policing instrument in terms of transparency and accountability then such attributes must be given either treaty-status or routinely announced at the outset of each relevant statutory instrument. The thesis has conveyed that the precise nature of police accountability can be appreciated using the three limbs of codes, co-option and complaint. If the concept of police accountability is afforded treaty status, the Court could potentially determine whether the EU's procedural statutes are legally precise, procedurally clear and human-rights compliant in line with the rule of law (codes), whether new provisions are necessary and proportionate to the needs of public policing (co-option), and whether the relevant structures and processes contain appropriate signalling mechanisms for communicating issues (complaint).¹³⁵⁶

Democratic accountability

The thesis previously outlined that mechanisms of democratic accountability are crucial for facilitating the airing of complaints, concerns, questions and simple misunderstandings by members of the public about the propriety of police actions or omissions. It showed that mechanisms of local democratic accountability facilitate civilian guidance of local police policy whereas the national mechanisms of democratic accountability facilitate public input into and scrutiny of national laws, regulations, codes and policies governing the structures, powers and procedures of the police. The thesis demonstrated that the mechanisms that the national legislature have in place to 'signal' when and to what extent new or amended laws, structures and processes are required are particularly crucial. The chapter will proceed to examine whether and to what extent the EU institutions have incorporated and accommodated these tenets of police accountability in principle and in practice.

The Lisbon Treaty appears at face value to reflect the key principles of democratic accountability. In particular, new measures can only be introduced across the five primary policy objectives through a process of 'co-decision' between the Council of Justice Ministers, known as the Justice and Home Affairs Council (JHA Council) and the directly elected European Parliament. The policy process requires the European Council of Heads of State and Government to define the general political directions and priorities by consensus and the Council of Justice Ministers together with the

¹³⁵³ *Advocaten voor de Wereld v Leden van de Ministerraad* (2009) Case C-303/05 ECR

¹³⁵⁴ *ibid*

¹³⁵⁵ *Criminal Proceedings against Maria Pupino* (2005) Case C-105/03 ECR

¹³⁵⁶ See *S and Marper v UK* (2008) ECHR 1581 for similar judicial reasoning by the ECtHR

European Parliament are subsequently required to jointly exercise legislative and budgetary functions.¹³⁵⁷

To respect the tenet of national sovereignty in matters of domestic law and order, any new measures that concern the movement of police officers across borders, referred to as ‘operational cooperation’, requires unanimity within the JHA Council, a process officially known as the ‘special legislative procedure’.¹³⁵⁸ Operational cooperation includes issues of hot pursuit, investigative secondments and joint investigation teams amongst others. On the other hand, matters of information exchange and minimum rules concerning substantive investigative techniques are subject to Qualified Majority Voting (QVM), known as the ‘ordinary legislative procedure’, since they do not involve the entry of foreign police officers into foreign jurisdictions.¹³⁵⁹ However the thesis has already outlined that the establishment of minimum rules pertaining to the EIO and the application of the principle of mutual recognition has the potential to erode basic judicial and constitutional standards, particularly in common law jurisdictions, so the application of QVM to such matters is considerably premature.¹³⁶⁰ The Treaty does however permit Member States to apply an ‘emergency brake’ to stop the adoption process if such measures threaten to affect fundamental aspects of their criminal justice systems.¹³⁶¹ The same ‘brake’ can be applied to measures which are designed to introduce new ‘euro-crime’ definitions and sanctions.¹³⁶² The Treaty holds that QVM should be used as the default legislative process unless the Treaty explicitly specifies otherwise, largely because the attainment of unanimity within a 28-seat Council can be an onerous challenge.

The co-decision role afforded to the European Parliament is a brand new feature of the legislative process introduced pursuant to the Lisbon Treaty. The JHA Council was previously only required to keep the EU Parliament regularly informed of the initiatives being pursued.¹³⁶³ The process of ‘co-decision’ was a longstanding tradition of the EU’s primary policy area known as the ‘economic community’ but it was not extended to the new policy competency of cross-border policing in 1993 due to the prevailing political perception that policing matters should remain the preserve of the national parliaments and their representative Ministers of Justice.¹³⁶⁴ As Anderson conveys, it was widely appreciated that the nature and form of the domestic criminal justice system was tied to the *raison d’état* of State and Government and that any ceding of power away from central government could serve to erode or undermine its legitimacy.¹³⁶⁵ The founding Maastricht Treaty clearly outlined that the only institutions with the power to introduce new EU cross-border policing legislation were

¹³⁵⁷ Consolidated Version of the Treaty on European Union (2010) OJ C83/22/24 Title III art 14 – art 16

¹³⁵⁸ Consolidated Version of the Treaty on the Functioning of the European Union [2010] OJ C83/83 Title V art 89

¹³⁵⁹ *ibid* art 87

¹³⁶⁰ *ibid* art 82

¹³⁶¹ *ibid* art 82.3

¹³⁶² *ibid* art 83.3

¹³⁶³ Maastricht Treaty on European Union (1993) Title VI art K4 & art K6

¹³⁶⁴ Jorge Monar and Rod Morgan (eds), *The Third Pillar of the European Union: Cooperation in the fields of Justice and Home Affairs* (European Interuniversity Press Brussels 1994) 170 – 178

¹³⁶⁵ Walker (n107) 240 - 257

the national parliaments themselves through the traditional process of ratifying conventions drafted on the European level.¹³⁶⁶

The EU's 'three pillar' structure was designed to reflect the fact that the EU institutions could supra-nationally introduce legislation with respect to economic matters but only the national parliaments could approve new legislative frameworks in the areas of cross-border policing and foreign policy.¹³⁶⁷ The EU Parliament was however bestowed with some influential oversight roles through specific measures. The Europol Decision 2008, for instance, empowered various EU parliamentary committees such as the Committee for Civil Liberties (LIBE) to call upon the President of the JHA Council, the Chairperson of the Europol Management Board or even the Europol Director to appear before it to discuss matters relating to Europol, taking into account Europol's obligations of confidentiality. Furthermore, the Decision transferred Europol's budget, which had previously consisted of direct contributions from the Member States, to the EU institutions in order to bestow the EU Parliament with the power of co-decision strictly in respect of Europol's budget.

To facilitate 'shared' control over the EU's 'internal security' agencies, such as Europol, Eurojust, Frontex and Sitcen, a new committee was established pursuant to the Lisbon Treaty which contains representatives from the JHA Council, the EU Parliament and the EU Commission. The Standing Committee on Internal Security (CoSI) is required to focus specifically on facilitating, promoting and coordinating cooperation between the relevant EU organisations and agencies.¹³⁶⁸ CoSI is required to approve the annual plans of the respective organisations and to develop strategic action plans to identify ways in which cooperation across the EU agencies and Member States can be improved. All of the EU organisations and agencies in the fields of cross-border police and judicial cooperation, including Europol, are required to regularly report to the new oversight committee.¹³⁶⁹ An annual meeting is held between CoSI and the heads of all of the major EU agencies so that opportunities and obstacles can be identified.¹³⁷⁰ Most importantly, CoSI is required to keep the EU parliament and the national parliaments of the Member States informed of its proceedings and reports. It has published thematic reports on organised crime, terrorism and cybercrime in the EU, outlining the roles and impacts of the various organisations.¹³⁷¹

The inclusion of representatives from the EU Commission on the Standing Committee is important for a number of reasons. The EU Commission was empowered to suggest new policy initiatives and proposals in the area of cross-border policing on its own initiative pursuant to the Amsterdam Treaty. It was afforded this role in part to bring greater structure and order to the JHA Council's drafting processes as well as ensuring that the Member States were giving the EU measures their proper effect. It was widely acknowledged that the rotation of chairpersons within the JHA Council working groups every six months in line with the EU Presidency meant that a considerable

¹³⁶⁶ Maastricht Treaty on European Union (1993) Title VI Article K3

¹³⁶⁷ Walker (n107) 244;

¹³⁶⁸ Consolidated Version of the Treaty on the Functioning of the European Union (2010) OJ C83/74 Title V Article 71

¹³⁶⁹ Europol Annual Review (n855) 56

¹³⁷⁰ *ibid*

¹³⁷¹ *ibid*

number of initiatives were only being partially dealt with before the policy agenda was changed to suit the new presiding Member State.¹³⁷² Since the late 1990s, the Commission has maintained a ‘scoreboard’ to keep track of the objectives, actions needed, timetables for adoption and the state of play of all initiatives agreed upon.¹³⁷³ The scoreboard is typically shaped into a programme of action published by the Council every five years. Most importantly, it is the EU Commission that generally encourages senior police practitioners and prosecutors from the Member States to attend expert working groups to consider new policy initiatives.¹³⁷⁴ Working groups are typically established as policy issues arise and disbanded once they are addressed. More long-term working groups have included the Police Cooperation Working Group, the Counter Terrorism Working Party, the Multidisciplinary Group on Organised Crime and the Cross-Border Surveillance Working Group.¹³⁷⁵ Officers who attend such working groups are typically coordinated, briefed and de-briefed by a policy unit attached to their respective liaison bureaux.

Although the introduction of CoSI has undoubtedly enhanced the transparency and accountability of the EU’s agencies, the thesis has already outlined that a similar ethos should be applied to the broader forms of informal and bilateral police cooperation. CoSI has been designed to ask the pertinent questions, namely what is being done, by whom, how well and whether there is room for improvement, but it is unfortunate that its gaze is largely confined to the EU’s marquee structures and processes. A complementary or reformed oversight body is clearly needed if the EU is to attempt to hold the national criminal intelligence agencies, the counter-terrorism branches and the various regional liaison networks to some degree of accountability.

The Lisbon Treaty also outlines a role for national parliaments although the degree of their participation is much reduced from the original ethos outlined in the Maastricht Treaty. National Parliaments must be kept directly informed about the content and status of draft legislative acts by the institutions of the Union.¹³⁷⁶ National parliaments can submit reasoned opinions on EU policies to influence considerations and can even employ a card-based system to signal their concern over proposed initiatives. Moreover, national parliamentary committees are also entitled to participate in any evaluation mechanisms established to inquire into the implementation of the Union policies.¹³⁷⁷ More specifically, they are to be involved in the political monitoring of Europol and the evaluation of Eurojust’s activities.¹³⁷⁸

The EU regime for democratic accountability appears to chime with the relevant structures within the Member States. The Council of Justice Ministers can only introduce measures in full cooperation with the European Parliament which enjoys the power of co-decision. Not only are the Justice Ministers obliged to appear before the European Parliament to convince it of the merits of proposed initiatives but the Parliament’s Committees can also call Ministers and the heads of Europol and Eurojust amongst other agencies to appear before them to outline the nature of their

¹³⁷² Steven Peers, *EU Justice and Home Affairs Law* (3rd edition OUP 2011) 24, 25

¹³⁷³ Occhipinti (n781) 79 – 87

¹³⁷⁴ Rijken (n116) 119

¹³⁷⁵ Ludo Block, *From Politics to Policing* (Eleven International The Hague 2011) 80 - 91

¹³⁷⁶ Consolidated Treaty on European Union (2010) OJ C83/21 Title II Article 12

¹³⁷⁷ *ibid*

¹³⁷⁸ *ibid*

activities and their budgetary needs. CoSI appears to serve as an inspectorate along the lines of the UK's HMIC albeit focused predominantly on the extant EU agencies. The involvement of the national parliaments, together with their respective select committees, bring a more 'local' dimension since they should serve to ensure that measures meet the needs of the domestic police forces and, at the very least, ensure that the measures do not detract from the ability of the domestic police forces to deliver effective local policing functions.

However, in the spirit of conventional approaches to transparency and accountability, the EU Parliament should ideally establish a bespoke select committee for matters of cross-border policing which allows public access to its meetings where possible.¹³⁷⁹ Neyroud and Vassilas convey that the establishment of a bespoke committee is considered crucial for the simple fact that, like their national counterparts, European parliamentarians are elected by and large on the basis of local issues so parliamentary debates rarely address peculiar and marginal issues such as cross-border policing.¹³⁸⁰ A dedicated parliamentary committee, much like the ones which can be found within the Member States, is clearly needed so that its members are compelled to routinely investigate and appraise the conduct of the JHA Council and its measures for cross-border policing in the public interest.

A tainted project

Although the EU regime appears at face value to have enhanced its democratic qualities, it is submitted that the modern regime hides a deeply fractured relationship between the Member States and the EU institutions which continues to affect the form, nature and co-option of the EU measures. The problems revolve by and large around the Amsterdam Treaty 1997. The Amsterdam Treaty controversially provided that the JHA Council could begin to independently introduce new legally-binding procedural frameworks, to be known as Decisions and Framework Decisions, instead of having to formulate new frameworks using the traditional Convention instrument which required the approval of each national parliament.¹³⁸¹ The Council could use the 'Decision' instrument to introduce new legal obligations for the Member States as long as such obligations did not require the approximation of the laws and regulations within the Member States.¹³⁸² The new Framework Decision instrument, on the other hand, could be used by the Council to introduce legally binding minimum rules which required the approximation of laws and regulations within the Member States.¹³⁸³ Although the Treaty provided that Framework Decisions did not have 'direct effect', the CJEU subsequently found in the landmark case of *Pupino* that implementing legislation was to be in close conformity with framework decisions in order to give them the closest 'useful effect' possible to enable consistent interpretation.¹³⁸⁴

The Member States bestowed the Council with independent legislative responsibility in matters of cross-border policing primarily out of fear that the impending accession

¹³⁷⁹ See Peers (n1372) 118 - 120

¹³⁸⁰ Neyroud and Vassilas (n822) 80 - 82

¹³⁸¹ Treaty of Amsterdam amending the Treaty of the European Union [1997] art 34 & art 35 (ex art K.6 & art K.7)

¹³⁸² *ibid*

¹³⁸³ *ibid*

¹³⁸⁴ *ibid* art 35 ex K.7; *Criminal Proceedings against Maria Pupino* (2005) Case C-105/03 ECR

of ten new Member States to the European Union would render unworkable the traditional process of moving Conventions through each and every national parliament.¹³⁸⁵ The previous cohort of Member State legislatures had taken more than three years to ratify the Europol Convention using the Maastricht-era provisions and a further two years on average to ratify each subsequent protocol to the Convention.¹³⁸⁶ It was expected that the expansion of the Union to 25 Member States would render the traditional legislative process even slower and more pedantic.¹³⁸⁷ It was envisaged that the replacement of Conventions with Decisions and Framework Decisions would enable the JHA Council to enhance and amend the existing structures, processes and objectives of cross-border policing with significant flexibility and speed in response to changing circumstances and emerging political priorities. Den Boer indicates that the Member States considered the idea so appealing that the proposal to replace the Convention instrument with Decisions and Framework Decisions, thereby side-lining the traditional role of national parliaments, was ‘hardly discussed’.¹³⁸⁸

Framework Decisions and Decisions clearly prioritised political expediency over and above democratic and judicial controls.¹³⁸⁹ Practitioners and legislators that were familiar with the processes of drafting and ratifying international conventions, whether within the CoE, the UN or the Schengen network, conveyed that a period of negotiation spanning multiple years was normal and, most importantly, necessary in order to substantively formulate a single instrument which could overcome significant political and legal differences between jurisdictions while still respecting key constitutional, legal and administrative values and practices.¹³⁹⁰ Various academics suggested that a better way to reduce the negotiation period was to substitute civil servants with police practitioners and prosecutors within the legislative working groups so that political, procedural, legal and human-rights issues could be ironed out at the outset.¹³⁹¹ Peers suggests that the slow lethargic approaches of the national parliaments could have been remedied with a more straight-forward Treaty provision which limited their deliberations to a short time period, possibly no more than six months.¹³⁹²

Not only were the Amsterdam measures contrary to constitutional tradition but the Member States clearly failed to foresee the remarkable unity and zeal with which the Justice Ministers would approach their new position. On foot of the Amsterdam Treaty, the JHA Council rapidly introduced a haphazard collection of measures that were unprecedented in scope and effect.¹³⁹³ Walker notes that the policy area of ‘Freedom, Security and Justice’ (AFSJ) became the busiest policy area of the EU almost overnight in terms of initiatives proposed.¹³⁹⁴

¹³⁸⁵ Alexandra De Moor and Gert Vermeulen, ‘The Europol Council Decision: A New Legal Basis for Europol’ (2010) 1:2 NJECL 179

¹³⁸⁶ Neil Walker, ‘The Pattern of Transnational Policing’ in Newburn (n175) 127, 128

¹³⁸⁷ *ibid*

¹³⁸⁸ Den Boer (n1244) 280

¹³⁸⁹ Peers (n1372) 2 - 5

¹³⁹⁰ Anderson et al (n63) 77, 78, 131 - 138

¹³⁹¹ *ibid*

¹³⁹² Peers (n1372) 121, 122

¹³⁹³ Jorge Monar, ‘The problems of balance in EU Justice and Home Affairs and the Impact of 11 September’ in Anderson and Apap (n84) 165, 166

¹³⁹⁴ Walker (n1386) 129

Most controversially, the JHA Council proceeded to use their new independent legislative powers to force through measures which national parliaments were previously reluctant to realise. For example, although the Council had previously used Joint Actions to encourage the harmonisation of a number of criminal laws but without convincing the national parliaments to do so *en masse*, the Council proceeded to introduce a raft of new Framework Decisions which required the Member States to enact common criminal offence definitions and sanctions in areas of terrorism, drug trafficking, participation in organised crime, human trafficking, illegal immigration, corruption in the private sector, euro counterfeiting, racism and child pornography amongst others.¹³⁹⁵ Klip remarks that the forceful nature of the Framework Decisions finally gave formal credence to the idea of ‘euro-crimes’.¹³⁹⁶ Peers stated that the new measures effectively established a body of ‘EU criminal law’, whereas he refers to constructs such as Europol and JITs as elements of ‘EU criminal procedure’.¹³⁹⁷

Furthermore, the Framework Decision on Joint Investigation Teams 2002 and the Framework Decision on the European Arrest Warrant (EAW) 2002, which were introduced in the aftermath of the 11 September terrorist attacks in the United States, were both introduced in spite of the fact that national parliaments were in the process of ongoing deliberations and had previously rejected proposed Conventions in the latter area.¹³⁹⁸ Murphy points out that the most ironic feature was that the instruments were not introduced by the EU because of a high degree of trust between the Member State parliaments, police forces and judiciaries but more particularly because of a distinct lack of trust and agreement between them.¹³⁹⁹ The common measures were introduced almost entirely in the interest of political expediency and the façade of unity and productivity but with a convenient lack of concern for the robustness and fairness of the constituent structures, processes and standards.¹⁴⁰⁰ The application of mutual recognition in the context of an EAW or a JIT, for example, effectively meant that a court must accept the standards of a foreign criminal justice system as the equivalent of its own, thereby potentially reducing minimal standards to those of a weaker criminal justice system. In many respects, the JHA Council used the Amsterdam-era measures to force through measures which served to trample upon the very values and procedures which national parliaments would normally have served to safeguard.

Van der Aa and Ouwerkerk’s research indicates that the Council’s policy technocrats not only introduced measures such as the EEW and the European Protection Order (EPO) which were far removed from practitioner needs but even the European

¹³⁹⁵ Framework Decision on combating terrorism 2002/475/JHA; Framework Decision on Human Trafficking 2002/ 629/JHA; Framework Decision on corruption in the private sector 2003/568/JHA; Framework Decision on the counterfeiting of the Euro 2000/383/JHA; Framework Decision on child pornography 2004/68/JHA; Framework Decision on the penalties for unauthorised entry 2002/946/JHA; Framework Decision on combatting racism and xenophobia 2002/629/JHA; Framework Decision on Drug Trafficking 2004/757/JHA; Framework Decision on fight against organised crime 2008/841/JHA amongst others

¹³⁹⁶ Andre Klip, *European Criminal Law* (2nd ed, Intersentia 2012) 212 - 220

¹³⁹⁷ Peers (n1372) 1 - 5

¹³⁹⁸ Council Framework Decision on the European arrest warrant and the surrender procedures between Member States 2002/584/JHA (2002) OJ L 190; See EU Conventions on Extradition 1995 and 1996

¹³⁹⁹ Cian Murphy ‘The European Evidence Warrant: mutual recognition and mutual (dis)trust’ in Christina Eckes and Theodore Konstadinides (eds), *Crime within the Area of Freedom, Security and Justice* (Cambridge University Press 2011) 247, 248

¹⁴⁰⁰ Peers (n1372) 906 - 941

Commission considered the measures to be redundant in practice.¹⁴⁰¹ Similarly, Stefanou and Xanthaki have since warned that the proposal to establish a European Criminal Records System (ECRIS) in the interest of rapid access might not be worthwhile in light of the fact that the system would require major transformations in the format, storage and translation of criminal records and raise key issues of data protection.¹⁴⁰² They suggest that the increasingly accessible letter of request procedure is a viable alternative and more attuned to the sensitive nature of criminal records.¹⁴⁰³ It is fundamentally clear that a number of the key measures introduced and proposals pursued by the JHA Council in the decade between the Amsterdam and Lisbon Treaties were poorly conceived and, most importantly, driven not by practitioner needs or the interests of accountability.¹⁴⁰⁴ Den Boer indicates that the self-serving interests of the JHA Council, reflected in their ill-suited measures, appears to have rendered police forces and practitioners increasingly wary of the ability of the EU regime to deliver workable policing measures in practice.¹⁴⁰⁵

The fact that the national parliaments did not sense danger prior to approving the Amsterdam Treaty was presumably coloured by the fact that the Justice Ministers had previously proven themselves to be relatively unproductive during their experiment with the informal ‘Trevi’ network between 1977 and 1993.¹⁴⁰⁶ The Trevi Group was established in 1977 as a forum for the EC Justice Ministers to discuss common legislative strategies following the refusal of Interpol in 1975 to open its channels to help combat the rise of Palestinian-based terrorism in the 1970s.¹⁴⁰⁷ The name ‘Trevi’ was derived from the Trevi fountain in Rome close to where the EC ministers held their first meeting.¹⁴⁰⁸ The forum subsequently met during each bi-annual EU summit of Heads of State and Government. Meetings were chaired by the Member State holding the EC presidency at the time. A steering committee known as the ‘Trevi troika’ acted as the forums secretariat and contained representatives drawn from the previous, sitting and future EC Presidencies.¹⁴⁰⁹ Seven non-EC states including Norway, Sweden, Switzerland, Austria, the USA, Canada and Morocco were also invited to attend the Trevi meetings.¹⁴¹⁰

The Trevi Group ultimately established four working groups to enhance various aspects of cross-border police cooperation, none of which were hugely successful.¹⁴¹¹ Trevi Working Group One, the *raison d’être* of the Trevi project, was tasked to establish a robust communications system between the participant counter-terrorism branches and to collate and analyse intelligence on the prominent terrorist networks throughout Europe.¹⁴¹² Each participant counter-terrorism bureau was expected to

¹⁴⁰¹ Susan van der Aa and Jannemieke Ouwerkerk, ‘The European Protection Order; No Time to Waste or a Waste of Time’ (2011) 19:4 EJCLCJ 270, 271

¹⁴⁰² Constantin Stefanou and Helen Xanthaki, *Towards a European Criminal Record* (Cambridge University Press 2008) 2 - 12

¹⁴⁰³ *ibid*

¹⁴⁰⁴ Valsamis Mitsilegas, *EU Criminal Law* (Oxford Hart 2009) 250, 251

¹⁴⁰⁵ Den Boer (n999) 43 - 60

¹⁴⁰⁶ Benyon et al (n64) 164

¹⁴⁰⁷ Heberton and Thomas (n65) 70 - 85

¹⁴⁰⁸ *ibid*

¹⁴⁰⁹ Benyon et al (n64) 152 - 164

¹⁴¹⁰ *ibid*

¹⁴¹¹ *ibid*

¹⁴¹² Anderson (n118) 6 - 13

designate a senior officer at the national level as an International Liaison Officers (ILO). The ILO was to serve as a point of contact and to establish a secure and rapid telecommunication system to enable the rapid exchange of sensitive information. However the working group was dominated by civil servants from the respective Ministries of Justice at the expense of police practitioners who reportedly rendered the network overly bureaucratic and disorganised.¹⁴¹³ It was reportedly because of widespread disaffection with the Trevi Working Group that the counter-terrorism bureaus of England, Ireland, the Netherlands, Belgium and Germany moved to establish the PWGOT following the assassination of the British Ambassador to The Hague in 1979. The entirely separate PWGOT had its own rapid communication system to rival that of Trevi's but, most importantly, it was the PWGOT system that was effectively co-opted by the police forces.¹⁴¹⁴

The Trevi ministers appeared to learn from the experience of Working Group One and began to focus their energies not on matters of operational cooperation but on research and technical enhancement.¹⁴¹⁵ Trevi Working Group Two was set up to develop policies on new police equipment, technologies, language training, forensic sciences, procedural training and other technical matters which could enhance police cooperation.¹⁴¹⁶ It reportedly participated in the establishment of contact points and temporary secondments between European police forces to assist with identifying football hooligans during major European tournaments.¹⁴¹⁷ Working Group Three was created in 1985 to develop policies that could help police forces to address the most serious drug-trafficking and organised crime networks in Europe. The group reportedly developed research notes on the harmonisation of criminal law and procedures, the development of new training programmes, the introduction of new techniques for confiscating criminal assets and the widespread exchange of police liaison officers with expertise in drug-trafficking. Trevi Working Group Four, established in 1985 and known as 'Trevi 1992', was tasked to conduct research into the possible policing measures needed to compensate for the possible removal of internal border controls throughout the EC area. It was within Trevi 1992 that the substance of the Paris Declaration 1989 and the Programme of Action 1990 were negotiated.¹⁴¹⁸ Other contemporaneous working groups established by the Trevi ministers included the Ad Hoc Working Group on International Organised Crime (AHWGIOC) which compiled reports on the structure, nature, threat and obstacles to combating the Mafia and other organised crime groups in Europe.¹⁴¹⁹

The Trevi Group essentially worked better as a research forum than as a network for operational cooperation but, as Benyon et al remark, Trevi ultimately tried to do too much too quickly and failed to do anything well.¹⁴²⁰ It was presumably in this light that the Maastricht Treaty designated the JHA Council as the primary research and policy drafting entity and the national legislatures as the primary adjudicators for any and all proposals, particularly those concerning operational matters. Loader and

¹⁴¹³ Benyon et al (n64) 187 - 190

¹⁴¹⁴ *ibid*

¹⁴¹⁵ *ibid* 152 - 158

¹⁴¹⁶ Cyrille Fijnaut, 'Police Cooperation within Western Europe' in Heidensohn and Farrell (n839) 109, 110

¹⁴¹⁷ Anderson (n240) 21

¹⁴¹⁸ Anderson (n118) 6 - 13

¹⁴¹⁹ Fijnaut (n713) 132, 133

¹⁴²⁰ Benyon et al (n64) 164

Walker outline that the vague and lofty nature of the Maastricht Treaty was favoured by the national parliaments at the outset for the very reason that they had agreed to very little substantively and would not be forced to partake in any formal measures until any and all of their outstanding concerns or demands had been satisfied.¹⁴²¹

It is clear that the subsequent self-exclusion of the national and European parliaments from the legislative process pursuant to the Amsterdam Treaty was a breath-taking oversight. Walker points out that the move was contrary to national constitutional standards and represented a major democratic deficit which constitutional democracies would never have allowed within their own national systems.¹⁴²² Essentially the idea of 'government' within the context of EU 'inter-governmentalism' was drastically transformed from encompassing the participation of majority parliamentary assemblies to the simple agreement of self-interested and partisan government ministers and their technocratic representatives. It enabled policing measures to be introduced 'above' national parliaments, which drew the EU project much closer to the qualities of supranationalism than inter-governmentalism and thus further away from its original design.

Moreover, the Member States appeared to fundamentally underappreciate the fact that the Justice Ministers had long exemplified a clear tendency to eschew parliamentary oversight and consultation in their previous guise as the Trevi Group.¹⁴²³ Although the Trevi Group had the intentional appearance of being EC-compatible, the Group was not a formal EC institution and its members actively used this key feature to avoid reporting to the European Parliament.¹⁴²⁴ Critically, the Ministers frequently used the rationale of national security to declare that they could not discuss any matters covered during the Trevi meetings either with the EU Parliament or with their own national parliaments as they pertained largely to ongoing counter-terrorism operations and investigations.¹⁴²⁵ The avoidance of transparency and accountability meant that the Trevi Group was widely considered to be highly secretive and opaque by design.¹⁴²⁶ Anderson et al observed in 1995 that the transfer of the Trevi Group into the fold of the EU project had the potential to make the deliberations of the Justice Ministers more transparent and render them more accountable for their actions but it was far from the case in practice.¹⁴²⁷

Pursuant to the Maastricht Treaty, consultation between the JHA Council and the EU Parliament amounted to little more than the forwarding of action plans and a 6-month report with every rotation of the EU Council Presidency.¹⁴²⁸ Peers remarks that the publication of documents by the JHA Council was 'wholly inadequate' since they tended to retain documents requested on the basis of 'public security'.¹⁴²⁹ He implies that, although the EU Commission helped to enhance the transparency of the policy process by establishing practitioner-dominated working groups and by publishing policy scoreboards and green papers for public consultation, the actual effect that the

¹⁴²¹ Loader and Walker (n78) 90, 91, 132

¹⁴²² Walker (n107) 252 - 254

¹⁴²³ *ibid* 240 - 251

¹⁴²⁴ Benyon et al (n64) 56 - 64

¹⁴²⁵ Hebenton and Thomas (n65) 50 - 55, 70 - 78

¹⁴²⁶ *ibid*

¹⁴²⁷ Anderson et al (n63) 56 - 73

¹⁴²⁸ *ibid* 257

¹⁴²⁹ Peers (n1372) 118 - 122

Commission had on policy outcomes was minimal.¹⁴³⁰ The reports and policy initiatives drawn up by the Commission's working parties all have to be submitted to the Council's Permanent Representative Committee (COREPER) of seconded ministerial officials who ultimately conduct the formal negotiations on behalf of their governments before any draft measures are finally submitted to the JHA Council for consideration and approval.¹⁴³¹ In the Amsterdam era, the absence of parliamentary co-decision at either the national or the EU level meant that there was almost nothing to stop the JHA Council and its ministerial representatives from side-lining the Commission's recommendations and pursuing its own ends of crime control over and above citizens' rights and freedoms.¹⁴³² Anderson et al suggest that the cavalier attitude of the JHA Council was coloured in part by the pressure incumbent upon the Council to produce definitive and authoritative solutions to address an open-ended illusory security deficit, coupled with the desire to avoid unnecessary political mediation.¹⁴³³

Moreover, the JHA Council had displayed remarkable rashness in numerous ways between 1993 and 1997 which should have been identified and remedied prior to the Amsterdam Treaty instead of being exacerbated by it. The pilot European Drugs Unit (EDU) which was established by the JHA Council as a precursor to Europol clearly exemplifies the Ministers' propensity for prioritising political appearance over and above practitioner needs. Firstly, the Ministers established the pilot project once the Maastricht Treaty had been adopted, instead of establishing it prior to the Treaty in order to identify statutory challenges in a similar fashion to Trevi Working Group One. Secondly, they did not fully appreciate the fundamental importance of data protection to police practitioners.¹⁴³⁴

The Joint Action which established the EDU in 1995 required the participant police forces to designate a National Drugs Intelligence Unit (NDIU) within their organisational structures which was expected to send information to the EDU database and respond to requests from the EDU management team.¹⁴³⁵ Several of the Member States did not have official national drug squads at the time so representatives were often sent from the police forces responsible for policing the respective capital cities.¹⁴³⁶ Much like the subsequent Europol project, each NDIU was required to second a small number of high ranking policing and customs officials as liaison officers to the EDU headquarters. They were expected to share information and coordinate investigations under the oversight and management of the EDU Director albeit under the direction and control of their domestic units and police chiefs.¹⁴³⁷

However it became readily apparent that the participant police forces were not prepared to routinely send criminal intelligence to the EDU without robust data

¹⁴³⁰ *ibid*

¹⁴³¹ Block (n1375) 80 – 91

¹⁴³² Ian Loader and Neil Walker, 'Locating the Public Interest in Transnational Policing' in Goldsmith and Sheptycki (n99) 122, 123, 139

¹⁴³³ Anderson et al (n63) 44, 45, 131 – 133, 216, 217

¹⁴³⁴ Occhipinti (n781) 39, 51 - 53

¹⁴³⁵ Joint Action concerning the Europol Drugs Unit 95/73/JHA s 2 – s 8

¹⁴³⁶ Den Boer and Doelle (n849) 14, 15, 32

¹⁴³⁷ Joint Action concerning the Europol Drugs Unit 95/73/JHA s 2 & s 5

safeguards to protect the secrecy and integrity of their files.¹⁴³⁸ Due to the prevailing data protection and security concerns, the EDU was prohibited from storing any information sent to it until such concerns could be alleviated.¹⁴³⁹ The Unit's early efforts at coordinating national investigations and producing threat assessments were therefore based largely around the information exchanged bilaterally through the liaison officers, highlighting the potential effectiveness of transnational liaison but effectively undermining the *raison d'être* of the Europol project, namely its common information system.¹⁴⁴⁰ Moreover, the JHA Council also controversially introduced additional Joint Actions to increase the mandate of the EDU to include not only serious drug crime but offences of human trafficking, vehicle trafficking and the smuggling of nuclear materials even before an IT database could be established for drug crime alone.¹⁴⁴¹ The moves indicated that the JHA Council was determined to realise a particular illusory vision of the European project without fully appreciating the needs and capabilities of the practitioners involved.

It is eminently obvious that the Justice Ministers and their representatives have a propensity for valuing the appearance of political productivity over and above substance, which is clearly not in line with the ethos of constitutional democracy. Zedner observes that such characteristics should not be considered unusual since it is the job of policy officials posted to the vague 'security' policy area to continuously and exponentially stimulate insecurities, amplify the nature and awareness of threats and continuously devise new security measures in order ensure continued demand for their services.¹⁴⁴² Arguing along similar lines, Walker observes that technocrats seconded to the EU policy forums have a vested interest in the maintenance and continuous expansion of European policy in the policing field whether or not it is necessary or even desirable for the simple reason that their job depends upon it.¹⁴⁴³ Similarly, Loader argues that without appropriate signalling or communicative mechanisms, government officials and technocrats will tend to resort to 'instrumental reasoning' which involves employing strategic persuasion and a rhetorical 'security' discourse to try to make policy subjects act in an artificially specific way in order to bring about the official's desired end or state of affairs.¹⁴⁴⁴

It is submitted that the ministerial tendency to eschew democratic accountability in the interest of self-preservation is not too dissimilar to the belated realisation in the early 2000s that police managers are unlikely to deal effectively with civilian complaints about officer misconduct in the absence of hierarchical oversight or external review mechanisms. Like the national parliaments which are incrementally enhancing the capacity of their independent civilian complaints bodies, the national parliaments and the EU Parliament clearly need to develop similar mechanisms of oversight to hold policy officials to account on the EU level. In other words, mechanisms of complaint and inquiry are clearly needed to hold police officers and

¹⁴³⁸ Jurgen Storbeck, 'Coordinating the Flow of European Intelligence, Europol's Accountability Mechanisms' in Den Boer (n1180) 119

¹⁴³⁹ Walker (n107) 238

¹⁴⁴⁰ Occhipinti (n781) 52 - 56

¹⁴⁴¹ Joint Action extending the mandate given to the Europol Drugs Unit 96/748/JHA

¹⁴⁴² Zedner (n571) 19 - 22

¹⁴⁴³ Walker (n107) 265

¹⁴⁴⁴ Loader (n336) 31 - 34

policy makers to account for the quality of their conduct on both the domestic and transnational levels.

The Member States have since recognised the remarkable absence of appropriate safeguards in the Amsterdam Treaty. Following the Laeken summit of heads of State and Government in 2001, the Member States decided to replace Framework Decision and Decision instruments with ones which facilitated systematic policy inputs from national parliaments and the co-decision of the EU Parliament.¹⁴⁴⁵ The failed European Constitution in 2002 provided for the replacement of the measures with more democratic Directives and Regulations but it was never enacted following rejections by referendum in the Netherlands and France.¹⁴⁴⁶ The provisions were subsequently incorporated almost verbatim into the extant Lisbon Treaty. Loader and Walker argue that the EU Parliament, because it is not state-centric, should ultimately help to generate common ‘cosmopolitan’ preferences across States particularly with regard to defending and promoting human rights and civil liberties and keep the tendency of executive government to introduce emotionally-charged partisan legislation and abusive practices in check.¹⁴⁴⁷ Fletcher suggests that introduction of co-decision appears to have served its function as it has led to a far more considered, albeit slower, policy process.¹⁴⁴⁸

Conclusion

On the basis of national experience and the chequered history of the EU project, it is submitted that the EU must do much more than simply instituting a regime of ‘co-decision’. It is widely appreciated that national and supranational parliaments are far from impartial decision makers. Reiner remarks that elected bodies are by their very nature highly political and partisan, often representing the interests of their political party or class over and above the interests of ‘foreigners’.¹⁴⁴⁹ Similarly, Loader and Walker eloquently convey that fleeting political fears, particularly those concerning national security and terrorism, have a tendency to turn legislators into ‘poor democrats’, driving them to introduce radical and poorly considered legislative measures which temporarily address public outrage but undermine the very liberty and security that legislatures are constituted to protect.¹⁴⁵⁰ The ‘crime anxiety’ around the impending accession of ten new members was clearly enough for the Member States to approve the radical transformation of the EU cross-border policing project pursuant to the Amsterdam Treaty.¹⁴⁵¹ Loader and Sparks suggest that the changing dynamics of post-modernity and the place of crime in popular culture and media will only serve to increase the sense of ‘global insecurity’ or ‘crime anxiety’ going forward.¹⁴⁵²

The EU Parliament cannot simply depend upon civilians and complainants to bring issues to the attention of individual members. Numerous academics have pointed out

¹⁴⁴⁵ Laeken Declaration on the Future of the European Union Annex II

¹⁴⁴⁶ Treaty establishing a Constitution for Europe (2004) OJ C 310

¹⁴⁴⁷ Loader and Walker (n78) 254 - 257

¹⁴⁴⁸ Maria Fletcher ‘EU Criminal Justice: Beyond Lisbon’ in Eckes and Konstadinides (n1399) 36 - 41

¹⁴⁴⁹ Reiner (n48) 176, 180, 181

¹⁴⁵⁰ Loader and Walker (n78) 7, 8, 117 – 132

¹⁴⁵¹ Bigo (n787) 171

¹⁴⁵² Loader and Sparks (n591) 83 - 86

that the development of a technocratic security agenda, removed from popular sentiment and insulated from democratic scrutiny, coupled with the development of weak national and supranational mechanisms of accountability was caused by a distinct lack of public interest in EU affairs in the first instance.¹⁴⁵³ Anderson et al outline that because political interests are generally confined largely to local and national issues, civilians and local politicians are not overly concerned with the direction of the EU project and, by extension, its mechanisms for policy-making and accountability.¹⁴⁵⁴ Loader observes that the general public is not overly concerned with matters of cross-border policing because much cross-border police cooperation concerns information and evidence that is exchanged in private areas of police stations and international organisations such as Europol which have almost no public visibility.¹⁴⁵⁵ Loader and Walker surmise that there is no symbolic sense of common identity, community, solidarity, mutual trust and peoplehood at the EU level to inspire the necessary degree of public interest.¹⁴⁵⁶

In line with the previous section on ‘legal accountability’ it is submitted that the idea of ‘police accountability’ should be given treaty-status so that cross-border policing measures are not negatively constructed around some abstract rhetorical threats to safety but, more particularly, around the need for transparency, accountability and human rights.¹⁴⁵⁷ Mechanisms for complaint and inquiry need to be established within and between the EU Parliament and national parliaments to ensure that the EU legislators are not promoting impractical measures for political benefit or leaving vast areas of cross-border policing untended out of simple inertia. As Beetham and Lord observe, police professionals and political technocrats cannot claim a privileged knowledge of what is good for society, only parliaments with appropriate communicative mechanisms and democratic inputs can make such a claim.¹⁴⁵⁸ Loader conveys that policing measures, whether local or transnational, must ultimately be based on ‘communicative action’ which uses public discourse and concerns as the basis for policy measures.¹⁴⁵⁹

Effective national and supranational parliamentary committees and inspectorates must be realised. They must be tasked with focusing on whether and to what extent EU measures are providing appropriate added value. Like the select committees on the ground in the Member States, such constructs must be equipped with sufficient resources and powers of inquiry to conduct such analyses. National parliaments, in particular, have the primary capacity and responsibility to establish signalling and communicative mechanisms of complaint and inquiry, particularly with respect to the Minister for Justice. To the same extent that a police sergeant creates a ‘sense of permission’ for his subordinates, it is the national parliament and executive government that guide the activities of their representative Minister for Justice by instituting or failing to institute mechanisms of oversight and procedural guidance.

¹⁴⁵³ Loader and Walker (n78) 115, 116, 243 - 245

¹⁴⁵⁴ Anderson et al (n63) 267 – 275

¹⁴⁵⁵ Loader (n1100) 67, 68

¹⁴⁵⁶ Loader and Walker (n78) 115, 116

¹⁴⁵⁷ See Zedner (n571) 45 - 53

¹⁴⁵⁸ David Beetham and Christopher Lord, *Legitimacy and the European Union* (Longman New York 1998) 16 - 20

¹⁴⁵⁹ Loader (n336) 31 - 33

Although the Lisbon Treaty has re-instituted some democratic policy processes and effectively enhanced the EU's cross-border policing competency and capacity, it is submitted that the JHA Council's radical affront to democratic governance between the Amsterdam and Lisbon Treaties raises numerous issues which have not yet been comprehensively addressed. Despite the Member States' relatively cautious approach to the Maastricht Treaty, the Amsterdam Treaty effectively established a radical 'supranational' regime overnight which was without precedent and, most importantly, produced an ever increasing number of measures that were largely undemocratic, unworkable and unattractive to police officers on the ground. Beetham and Lord suggest that the enactment of the Amsterdam Treaty ultimately undermined the EU's claims to 'legitimacy'.¹⁴⁶⁰ They argue that legitimacy is based upon three vital components. Firstly, political authority must be acquired and established according to legal rules. Secondly, those rules must be justifiable according to socially accepted beliefs about the rightful constitutional source of authority and the proper ends of government. Thirdly, the position of authority must be confirmed through affirmation or recognition by other legitimate authorities, not least the judiciary and possibly other nation-states.¹⁴⁶¹ The EU project appeared to have fallen foul of the second limb of legitimacy in particular by allowing the JHA Council to eschew basic constitutional standards of democratic law-making.¹⁴⁶²

In terms of engendering a spirit of trust and cooperation between the Member States' police forces and the EU policy makers, although the Amsterdam Treaty professed to respect the different legal systems and traditions of the Member States and to ensure that decisions were taken 'as openly as possible and as closely as possible to the citizen', the JHA Council proceeded to do precisely the opposite.¹⁴⁶³ As a result, the policy intentions of the EU policy-makers continue to be viewed with suspicion and a significant degree of Euro-scepticism even in the post-Lisbon era.¹⁴⁶⁴ More particularly, the extant suite of EU cross-border policing measures, which were not created under the modern Lisbon architecture but largely under the undemocratic Amsterdam policy framework, are characterised by a distinct lack of 'added value' over and above alternative informal measures. In this light, the degree of 'real achievement' on the EU level remains in serious doubt.¹⁴⁶⁵ The national and supranational parliaments need to establish and maintain robust mechanisms for complaint and inquiry as a matter of urgency in order to engender transparency and police accountability across the wider discipline of cross-border policing in Europe.

¹⁴⁶⁰ Beetham and Lord (n1458) 3 - 9

¹⁴⁶¹ *ibid*

¹⁴⁶² *ibid* 23 - 28

¹⁴⁶³ See Treaty of Amsterdam amending the Treaty of the European Union [1997] art 1.4

¹⁴⁶⁴ See Block (n1375) 185 - 192

¹⁴⁶⁵ See Fijnaut (n886) 280, 281

Conclusion

The thesis initially set out to critically analyse how and to what extent national legal and administrative norms on police accountability and transparency are informing the concept, design and operation of EU cross-border policing instruments. It was readily apparent that the new terrain of increasing interaction between national and supranational legal systems within the European Union presented new challenges for conventional approaches to police accountability and transparency. The EU Member States are responsible for policing within their respective jurisdictions and the EU institutions are increasingly responsible for enhancing the conduct of police cooperation between the Member States. Within the transnational realm of cross-border policing, the EU had the potential and capacity to instigate a novel brand of police accountability from the top-down from the outset. Alternatively the EU institutions might have chosen to extend the conventional approaches to police accountability to the realm of cross-border policing. Either way, it was assumed that the emergence of an EU competency in matters of cross-border police cooperation implied that the EU Member States had reached a common understanding about the nature and form of cross-border policing and police accountability more generally. The relentless development of Union-wide procedural instruments and frameworks for police cooperation suggested that a paradigm shift had occurred towards more enlightened, cosmopolitan thinking about issues of sovereignty, police authority and police accountability.

However no major academic studies had previously been carried out to determine the precise effect of the emerging EU regime, partly because the EU competency is relatively new, complex and continuously evolving. More particularly, the concept of police accountability appeared to be poorly conceived since there were no readily identifiable or widely embraced typologies of police accountability. As a result, the development of an effective framework through which the national and supranational policing systems could be analysed and evaluated from a transparency and accountability perspective was required. The theoretical typology, which draws from a range of academic and technocratic observations, contains three key dimensions, namely codes, co-option and complaint. The thesis argued first and foremost that the importance of procedural 'codes' was not adequately reflected in traditional conceptualisations of police accountability. The relatively recent development of highly programmatic and formulaic statutory codes of procedure between the 1980s and 2000s has become so central to the 'rule of law' that it is not only discernible across jurisdictions but now forms an integral part of modern ECtHR jurisprudence. Most importantly, the thesis conveys that it is largely within this area that the EU regime can be considered to be marginally pro-active. The EU has developed a number of initiatives that are formulaic and programmatic, particularly the Europol, Schengen and JIT initiatives. Like the national codes of procedure, the EU measures are highly detailed and formulaic in order to engender greater procedural clarity and legal precision.

However the most important aspect of the three-pronged typology of police accountability is that policy makers and academics should not focus their interest on one dimension of police accountability without concern for the other two. Although the EU has introduced measures across almost all of the normative types of police cooperation, the chapter on 'co-option of EU law and policy' shows that the marquee

EU measures only capture a small volume of cross-border police cooperation. The EU 'codes' have actually left a vast expanse of cross-border policing untended. Moreover, the EU's marquee measures are largely being eschewed in practice because of a trenchant lack of communicative action and practitioner consultation.

Most importantly, the chapter on 'complaint and inquiry as EU law and policy' outlines that the EU did not introduce its procedural codes out of some enlightened desire for greater transparency and accountability. The measures were largely the product of national parliamentary involvement in the negotiation and ratification of rudimentary EU measures which were designed to address the political imperative of the illusory 'security deficit'. National parliaments that had become accustomed to developing legally precise and procedurally clear policing statutes on the domestic level were naturally going to act consistently when considering policing statutes in the more obscure realm of cross-border policing. However, the EU measures subsequently became less attuned to national values and approaches to police accountability once national parliaments were side-lined from the policy process on foot of the Amsterdam Treaty 1997. In various cases, the measures introduced post-Amsterdam have served to erode the democratic quality of police accountability on the EU level as well as lowering judicial standards and practitioner trust on the national level. More particularly, the EU measures have not afforded significant treatment to the issues of disciplinary accountability and managerial oversight which shape the conduct of formal and informal cross-border policing in Europe.

Using the typology to both elucidate problems and suggest methods of internalisation, the thesis argued that the EU should follow the lead of the Member States by seeking to regulate all possible forms of cross-border police cooperation through more expansive procedural 'codes' while still facilitating police discretion and 'co-option' in a similar fashion to the national codes of procedure. Furthermore, it argued that it is not sufficient for the EU to simply introduce a policy of 'co-decision' to remedy its democratic deficits but that it must oversee the establishment and enhancement of parliamentary committees, inspectorates and other oversight bodies in line with modern approaches within the Member States. Public pressure and a litany of police scandals led to the development of independent investigative police complaints agencies and inspectorates within the Member States in order to address systematic managerial deficiencies within police forces only as recently as the 2000s. The EU has made no clear attempt to rectify similar deficiencies which evidently pervade the realm of cross-border policing.

The conduct of informal cross-border police cooperation and the operation of the EU's policing working groups are clearly replete with managerial deficiencies that need to be routinely addressed in line with conventional constitutional, legal and administrative values. Moreover, robust oversight bodies are particularly important due to a palpable absence of public interest in the EU cross-border policing project coupled with the propensity of ministerial officials to prioritise their public image and job security over and above the needs of practitioners on the ground in the Member States. The concept of 'police accountability' should arguably be incorporated as an EU policy objective so that the EU institutions are routinely obliged to consider the adequacy of the EU's procedural codes and the relevant signalling mechanisms of complaint and inquiry. The thesis shows that such an endeavour is more than possible through the application of a relatively straightforward heuristic typology.

The typology of codes, co-option and complaint appears to dispel ambiguity or a lack of understanding around police accountability which might afflict legislators, policy makers, practitioners and academics. By considering the elements of codes and co-option as discernible issues, the thesis clearly separated out two major sources of the trenchant ambiguity around the traditional dimensions of disciplinary, legal and democratic accountability. Instead of considering the constituent issues across the three dimensions, the thesis positioned the mechanisms of complaint and inquiry as specific forums through which the quality of the codes and the extent of co-option could be evaluated for specific purposes.

The comparative approach enabled the study to identify legal and procedural anomalies and challenges at both the national and supranational level since the traditional elements of police accountability were originally formulated within the confines of national legal, political, historical and cultural constraints, reflecting the national orientation of policing. The use of a consistent typology to conduct the comparative and critical analyses served to elucidate international best practices that could and should be adopted by both national and supranational legislators. The development and application of the typology indicates that the Member States are pursuing a broadly uniform approach to police accountability at the national level but that the national governments are slow to acknowledge and rectify sub-standard mechanisms. Most importantly, the traditional conceptualisations of police accountability were clearly far too narrow, focusing predominantly on mechanisms of complaint and inquiry instead of considering the nature of procedural standards and processes that shape the delivery of police accountability in practice. National legislators could clearly benefit from proactively employing the heuristic typology of codes, co-option and complaint to identify weaknesses in the architecture of police accountability both within and between States.

In the interest of developing an unabridged theory of police accountability the thesis implicitly adopted Foucault's position that it should not matter greatly which level of government drafts and introduces policies, laws and common principles as long as they contribute to the constituent populations' pursuit of peace, safety, wealth and fulfilment.¹⁴⁶⁶ The attachment of human communities to prevailing ideas of 'sovereignty' have routinely been dispelled as populations shifted their attachment from religious pastoral care in the time of classical antiquity to the sovereignty of walled city-states, to nation-states and increasingly towards the transnational system of States.¹⁴⁶⁷ The EU project shows that States are attempting to co-exist with each other according to a balanced plurality and common principles without one State dominating another, which clearly requires a more dynamic understanding of sovereignty.

States remain responsible for domestic law and order and the transnational EU system of States has become increasingly responsible for the distinct realm of cross-border policing. However the EU institutions have become considerably remote and clearly need to foster better communicative linkages with national parliaments and practitioners to ensure that EU measures are co-opted in practice. It is submitted that

¹⁴⁶⁶ Foucault (n284) 237 - 260

¹⁴⁶⁷ *ibid* 11 - 21, 121 - 185, 270 - 274

the EU effectively needs to internalise the constitutional, legal and administrative values of the Member States so that its measures are in turn internalised by the Member States' police forces. It is submitted that legislators should not be overly concerned about 'sovereignty' but on reconciling approaches to police accountability so that policing both within and between States is transparent and accountable. The focus should be on the quality of the police codes, the nature of co-option and the mechanisms for complaint and inquiry on the ground rather than the specific site or sites of the relevant legislature. Police accountability, because it demands disciplinary accountability, legal accountability and democratic accountability, should serve to ensure that the conduct of policing does not become authoritarian or oppressive within States at the behest of either national or international interests. Adherence to a comprehensive framework of police accountability can effectively guarantee that policing remains disciplined, community-orientated and, by extension, democratic and legitimate, whether such policing activities are conducted at the behest of local civilians or foreign police forces.

The thesis represents a valuable addition to modern epistemology because it seeks to capture the range of factors, phenomena and distinctive characteristics of the scientific object of police accountability. It not only identifies a common ethos of police accountability through a comparative analysis of various jurisdictions but considers the role of the emerging EU project in the design and delivery of police accountability. The thesis showed that the EU ultimately needs to conduct a major rethink of its approach to cross-border police cooperation in order to bring it into line with conventional legal and administrative approaches to police accountability.

As part of the reconciliation, the Member States and the broader EU institutions should devise new processes which identify best practice across the Member States, develop mechanisms to hold the national criminal intelligence agencies to account for their conduct both nationally and across borders, engender more ethical management styles and establish robust signalling mechanisms for complaint and inquiry which signal problems as they arise, whether they concern local, national or cross-border police practice. It is submitted that legislators must consider the issue of police accountability in a transnational light since the carrying out of comparative analyses can identify crucial weaknesses and indicate effective remedies.

The thesis represents the first major attempt to conceptualise the modern condition of police accountability within Europe. It develops a typology through which to view the quality of police accountability within, between and above the Member States. More particularly, it outlines in relatively precise terms the nature of the reforms that should be undertaken within England, Ireland and Denmark and within the supranational EU project to enhance the relevant structures and processes for police accountability. Bayley remarked in 1996 that there continues to be a longstanding search for a comprehensive theory of the institutional development of policing so that the quality of the public policing system can be evaluated, reforms implemented and, most importantly, that a more knowledgeable and critical audience is not continually asking the police to change in impractical ways.¹⁴⁶⁸ Manning pointed out in 2010 that the absence of a theory of policing means that efforts of reform will continually be contorted and distorted by self-serving governments, politicians and influential

¹⁴⁶⁸ David Bayley 'Foreword' to Marenin (n88) xiii – xv

lobbyists.¹⁴⁶⁹ This thesis marks a significant step towards the development of such a theory by reconciling the full range of factors that make up the subject of police accountability as a national and supranational construct.

¹⁴⁶⁹ Manning (n13) 132, 133

Bibliography

- Alder-Nissen R and Gammeltoft-Hansen T, 'Straightjacket or Sovereignty Shield? The Danish Opt-Out on Justice and Home Affairs and Prospects after the Treaty of Lisbon' in Hvidt N and Mouritzen H (eds), *Danish Foreign Policy Yearbook* (Danish Institute for International Studies, Copenhagen 2010)
- Alderson J, *Policing Freedom* (MacDonald and Evans 1979)
- Allen G, *The Garda Siochana: Policing Independent Ireland 1922-82* (Gill and MacMillan 1999)
- Anderson M and Apap J (eds), *Police and Justice Cooperation and the new European Borders* (Kluwer Law 2002)
- Anderson M and Den Boer M (eds), *Policing across National Boundaries* (Pinter Press 1994)
- Anderson M et al, *Policing the European Union* (OUP 1995)
- Anderson M, 'Law enforcement cooperation in the EU and fundamental rights protection' in Martin M (ed), *Crime, Rights and the EU* (Justice, London 2008)
- Anderson M, 'Police Cooperation with European Europe in an EC Framework' in Brodeur JP (ed), *Comparisons in Policing: An International Perspective* (Ashgate 1995) 175 – 189
- Anderson M, 'The agenda for police cooperation' in Anderson M and Den Boer M (eds), *Policing across National Boundaries* (Pinter Press 1994) 3 – 21
- Anderson M, 'The British Perspective on the Internationalisation of Police Cooperation in Western Europe' in Fijnaut C (ed), *The Internationalization of Police Cooperation in Western-Europe* (Kluwer Law 1993) 19 – 39
- Anderson M, 'Trust and Police Cooperation' in Anderson M and Apap J, *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 35 – 46
- Anderson M, *Frontiers* (Policy Press, Cambridge 1996)
- Anderson M, *Policing the World: Interpol and the Politics of International Police Cooperation* (OUP 1989)
- Andreas P and Nadelmann E, *Policing the Globe* (OUP 2006)
- Anghie A, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2005)
- Ashworth A and Redmayne M, *The Criminal Process* (3rd edition, OUP 2005)
- Auditor General/ Rigsrevisionen, *Report to the Public Accounts Committee on the Danish Police Reform* (August 2009)
- Ayling J, Grabosky P and Shearing C, *Lengthening the Arm of the Law* (Cambridge University Press 2009)
- Balcaen A, 'Law Enforcement Information exchange in the Operational Phase of a JIT' in Rijken C and Vermeulen G (eds), *Joint Investigation Teams in the European Union: From Theory to Practice* (TMC Asser Press 2006) 85 - 117
- Baldwin R, 'Why Accountability?' (1987) 27:1 *British Journal of Criminology* 97 – 117
- Balvig F, 'When Law and Order Returned to Denmark' (2005) 5:2 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 167-187
- Banton M, 'The Police as Peace Officers' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 132 – 136
- Banton M, *Police – Community Relations* (Willan 1973)

- Banton M, *The Policeman in the Community* (Tavistock Publications, London 1964)
- Bayley D (ed), *Police and Society* (Sage 1977)
- Bayley D and Bittner E, 'Learning the skills of Policing' (1984) 47 *Journal of Law and Contemporary Problems* 35 – 59
- Bayley D and Mendelsohn H, *Minorities and the Police* (Free Press, New York 1969)
- Bayley D and Shearing C, 'The future of Policing' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 715 – 731
- Bayley D, 'Getting Serious about Police Brutality' in Stenning P (ed), *Accountability for Criminal Justice* (University of Toronto Press 1995) 93 – 109
- Bayley D, 'Knowledge of the Police' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 18 – 34
- Bayley D, 'Police Reform: Who done it?' (2008) 18:1 *Policing and Society* 7-17
- Bayley D, 'Policing: The World Stage' in Mawby R (ed), *Policing Across the World* (UCL Press 1999) 3 – 11
- Bayley D, 'The limits of police reform' in Bayley D (ed), *Police and Society* (Sage 1977) 219 – 235
- Bayley D, 'What the Police Do' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 141 - 148
- Bayley D, *Changing the Guard* (OUP 2006)
- Bayley D, *Patterns of Policing: A Comparative International Analysis* (Rutgers University Press 1985)
- Bayley D, *Police for the Future* (OUP 1994)
- Beetham D and Lord C, *Legitimacy and the European Union* (Longman, New York 1998)
- Begg J and Davis H, *Police Misconduct, Complaints and Public Regulation* (OUP 2009)
- Benyon J et al, 'Understanding Police Cooperation in Europe: Setting a framework for analysis' in Anderson M and Den Boer M (eds), *Policing across National Boundaries* (Pinter Press 1994) 46 – 65
- Benyon J et al, *Police Cooperation in Europe: An Investigation* (Centre for the Study of Public Order, University of Leicester 1993)
- Benyon J, 'Policing in the Limelight' in Benyon J and Bourn C (eds), *The Police: Powers, Procedures and Proprieties* (Pergamon Press 1986) 3 - 37
- Benyon J, 'Policing the Community' in Benyon J and Bourn C (eds), *The Police: Powers, Procedures and Proprieties* (Pergamon Press, 1986) 45 – 51
- Bigo D, 'EU Police Cooperation: National Sovereignty Framed by European Security?' in Guild E and Geyer F (eds), *Security versus Justice: Police and Judicial Cooperation in the European Union* (Ashgate 2008) 91 - 107
- Bigo D, 'Liaison officers in Europe' in Sheptycki JWE (ed), *Issues in Transnational Policing* (Routledge 2000) 67 – 95
- Bigo D, 'The European Internal Security Field' in Anderson M and Den Boer M (eds), *Policing across National Boundaries* (Pinter Press 1994) 161 – 172
- Bittner E, 'Florence Nightingale in Pursuit of Willie Sutton: a theory of the police' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 150 – 170
- Bittner E, 'Legality and Workmanship' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 1 – 16
- Bittner E, *The Functions of the Police in Modern Society* (Centre for Studies of Crime and Delinquency, National Institute of Mental Health, Maryland 1970)

- Block L, 'Combatting Organised Crime in Europe' (2008) 2:1 Policing 74 – 81
- Block L, 'EU Joint Investigation Teams: Political ambitions and police practices' in Hufnagel S, Harfield C and Bronitt S (eds), *Cross-border law enforcement* (Routledge 2012) 87 – 103
- Block L, *From Politics to Policing* (Eleven International, The Hague 2011)
- Bordua D (ed), *The Police: Six Sociological Essays* (John Wiley Publishers, New York 1967)
- Borgers M, 'Functions and aims of harmonisation after the Lisbon Treaty' in Fijnaut C and Ouwerkerk J (eds), *The Future of Police and Judicial Cooperation in the European Union* (Martinus Nijhoff, 2010) 347 - 354
- Bowling B and Foster J, 'Policing and the Police' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd ed, OUP 2002) 980 – 1022
- Bowling B and Sheptycki J, *Global Policing* (Sage, 2012)
- Bowling B et al 'Policing minority ethnic communities' in Newburn T (ed), *Handbook of Policing* (2nd Edition, Willan 2011) 611 - 634
- Bowling B, 'Transnational Policing: The Globalization Thesis, a Typology and a Research Agenda' (2009) 3:2 Policing 149 – 160
- Brady C, *Guardians of the Peace* (Gill and Macmillan 1974)
- Brady H, 'Europol and the European Criminal Intelligence Model' (2008) 2:1 Policing 103 – 109
- Bratton W, 'Crime is down in New York City: blame the police' in Newburn T (ed) *Policing: Key Readings* (Routledge 2005) 472 – 482
- Breathnach S, *The Irish Police* (Anvil Press 1974)
- Bresler F, *Interpol* (Sinclair Stevenson London 1992)
- Brewer JD et al, *The Police, Public Order and the State* (2nd Edition, Palgrave Macmillan 1996)
- British-Irish Parliamentary Assembly, Report on Cross-Border Cooperation between Police Forces (Doc No. 149, 2009)
- Brodeur JP (ed), *Comparisons in Policing: An International Perspective* (Ashgate 1995)
- Brodeur JP (ed), *How to recognise good policing* (Sage 1998)
- Brodeur JP, 'Accountability: The Search for a Theoretical Framework' in Mendes EP et al (eds), *Democratic Policing and Accountability* (Ashgate 1999) 125 – 162
- Brodeur JP, 'Tailor-made Policing' in Brodeur JP (ed), *How to recognise good policing* (Sage 1998) 30 – 51
- Brodeur JP, 'Transnational Policing and human rights' in Sheptycki JWE (ed), *Issues in Transnational Policing* (Routledge 2000) 43 - 61
- Brodeur JP, Gill P and Tollborg D, *Democracy, Law and Security* (Ashgate 2003)
- Brodeur JP, *The Policing Web* (OUP 2010)
- Brogden M and Nijar P, *Community Policing: National and International models and approaches* (Willan 2005)
- Brogden M, 'The emergence of the police – the colonial dimension' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 69 – 78
- Brogden M, *The Police: Autonomy and Consent* (Academic Press London 1982)

- Bruggeman W and Den Boer M, 'Policing and International Security in the Post Lisbon Era' in Wolff S et al (eds), *Freedom, Security and Justice After Lisbon and Stockholm* (TMC Asser Press 2011) 135 - 153
- Bruggeman W, 'A vision of future police cooperation with a special focus on Europol' in De Zwaan JW and Goudappel F (eds), *Freedom, Security and justice in the European Union* (TMC Asser Press 2006) 203 – 220
- Bruggeman W, 'Policing and Accountability in a Dynamic European Context' (2002) 12:4 *Policing and Society* 259 – 273
- Bruggeman W, 'Undercover Policing in the EU: Proposals for a new System' in Den Boer M (ed), *Undercover Policing and Accountability from an International Perspective* (European Institute of Public Administration Maastricht 1997) 183 - 198
- Bullock K and Johnson P, 'The Impact of the Human Rights Act 1998 on Policing in England and Wales' (2012) 52 *British Journal of Criminology* 630 – 650
- Bunyan T, *The History and Practice of the Political Police in Britain* (Quartet London 1977)
- Callinan M, 'Police Cooperation and Security in the EU' in Regan E (ed), *European Criminal Justice Post-Lisbon: An Irish Perspective* (The Irish Institute of International and European Affairs 2012) 46 – 60
- Chan J, 'Changing Police Culture' (1996) 36:1 *British Journal of Criminology*
- Chan J, 'Globalisation, Reflexivity and the practice of criminology' in Sheptycki J and Wardack A (eds), *Transnational and Comparative Criminology* (Glasshouse Press 2005) 337 – 352
- Chan J, *Fair Cop* (University of Toronto Press 2003)
- Conroy N, 'Police Cooperation and Europol' in Regan E (ed), *The New Third Pillar: Cooperation Against Crime in the European Union* (Institute of European Affairs 2000) 118 – 134
- Conway V and Walsh DPJ, 'Current developments in police governance and accountability in Ireland' (2011) 55 *Crime Law and Social Change* 241 – 257
- Conway V, *Policing Twentieth Century Ireland* (Routledge 2014)
- Conway V, *The Blue Wall of Silence: The Morris Tribunal and Police Accountability in Ireland* (Irish Academic Press 2010)
- Cornils K and Greve V, 'Denmark on the Road to Organised Crime' in Fijnaut C and Paoli L (eds), *Organised Crime in Europe: Concepts, Patterns and Control Policing in the European Union and Beyond* (Springer 2004) 853 – 875
- Council of Europe, *The European Code of Police Ethics* (Rec [2001] 10)
- Council of the European Union, *Evaluation report on Denmark on Mutual Legal Assistance and Urgent Requests for the Tracing and Restraint of Property* (1999) Crimorg 128 – 10860/99
- Council of the European Union, *Evaluation report on the fourth round of mutual evaluations – The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States – Report on Denmark and final evaluation report* (2011) Crimorg 125 – 13702/11
- Council of the European Union, *Second Round of Mutual Evaluations – Law Enforcement and its Role in the Fight Against Drug Trafficking – Report on the second five evaluation visits* (2002) Crimorg 79 – 12359/3/02
- Crawford A, 'Policing and Security as 'club goods'' in Wood J and Dupont B (eds), *Democracy, Society and the Governance of Security* (Cambridge University Press 2006) 111 – 138

- Crawford A, 'Reassurance Policing' in Henry A and Smith D (eds), *Transformations of Policing* (Ashgate 2007) 143 – 165
- Critchley TA, *A History of Police in England and Wales* (Constable Press London 1978)
- Dahl B et al (eds), *Danish Law in a European Perspective* (Gadjura Copenhagen 1996)
- De Moor A and Vermeulen G, 'A Europol Council Decision' (2010) *New Journal of European Criminal Law* 178 – 198
- De Moor A and Vermeulen G, 'The new principal task for Europol to support Member States in connection with major international events: The blurring of boundaries between law enforcement and public order?' in Antoinette Verhage et al (eds), *Policing in Europe* (Maklu 2010)
- De Ruyver B, Vermeulen G and Vander Beken T, 'Schengen and Undercover Policing Methods: Should National Laws Follow Suit?' in Den Boer M (ed), *Undercover Policing and Accountability from an International Perspective* (European Institute of Public Administration Maastricht 1997) 143 - 149
- De Witte L, 'The Belgian Perspective on the Internationalisation of Police Cooperation in Western Europe' in Fijnaut C (ed), *The Internationalization of Police Cooperation in Western-Europe* (Kluwer Law 1993) 85 - 99
- De Zwaan JW and Goudappel F (eds), *Freedom, Security and justice in the European Union* (TMC Asser Press 2006)
- Deflem M, *Policing World Society* (OUP 2002)
- Deflem M, *The Policing of Terrorism* (Routledge 2010)
- Delmas-Marty M (ed), *What kind of Criminal Policy for Europe* (Kluwer Law 1996)
- Den Boer M (ed), *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* (European Institute of Public Administration Maastricht 2002)
- Den Boer M (ed), *Undercover Policing and Accountability from an International Perspective* (European Institute of Public Administration Maastricht 1997)
- Den Boer M and Doelle P, 'Converge or Not to Converge That is the Question: A Comparative Analysis of European Trends in Criminal Justice Organisation' in Den Boer M (ed), *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* (European Institute of Public Administration Maastricht 2002) 1 – 70
- Den Boer M and Goudappel F, 'Counterterrorism in the European Union: legal issues in the post-Lisbon era' in Wolff S et al (eds), *Freedom, Security and Justice After Lisbon and Stockholm* (TMC Asser Press 2011) 173 – 194
- Den Boer M and Spapens T (eds), *Investigating Organised Crime in European Border Regions: Law Enforcement and Judicial Cooperation with Regard to Organised Crime: A Comparison between European Border Regions* (Tilburg University 2002)
- Den Boer M, 'Intelligence Exchange and the Control of Organised Crime' in Anderson M and Apap J (eds), *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 151 – 161
- Den Boer M, 'Internationalization: a challenge to police organisations in Europe' in Mawby R (ed), *Policing Across the World* (UCL Press 1999) 59 - 72
- Den Boer M, 'New Dimensions in EU Police Cooperation' in De Zwaan JW and Goudappel F (eds), *Freedom, Security and justice in the European Union* (TMC Asser Press 2006) 221 – 232

- Den Boer M, 'To what extent can there be flexibility in the application of Schengen in the Member States' in Anderson M and Apap J (eds), *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 139 – 147
- Den Boer M, 'Towards a Governance Model of Police Cooperation in Europe' in Lemieux F (ed), *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010) 42 – 61
- Den Boer M, 'Towards an Accountability Regime for an Emerging European Policing Governance' (2002) 12:4 *Policing and Society* 275 – 289
- Descartes R, *A Discourse on the Method* (OUP 2006)
- Director of Public Prosecutions Denmark, *Police Complaints Board Cases in Denmark* (Rigsadvocaten 2002)
- Director of Public Prosecutions Denmark, *Quality assurance and supervision of criminal case processing in police districts* (Rigsadvokaten 2004) Instruction No 4/2004
- Dixon D, 'Beyond zero tolerance' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 483 – 503
- Dixon D, 'Police Investigative Procedures: Changing legal and political contexts of policing practices' in Walker C and Starmer K (eds), *Miscarriages of Justice: A Review of Justice in Error* (Blackstone Press 1999) 65 – 82
- Dixon D, 'The legal regulation of policing' in Newburn T (ed) *Policing: Key Readings* (Routledge 2005) 636 – 661
- Dorn N and South N, 'Drugs, Crime and Law Enforcement, some issues for Europe' in Heidensohn F and Farrell M (eds), *Crime in Europe* (Routledge 1991) 72 - 83
- Downes D and Morgan R, 'The politics of law and order at the turn of the millennium' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd ed, OUP 2002) 286 – 318
- Doyle J (ed), *Policing the Narrow Ground: Lessons from the Transformation of Policing in Northern Ireland* (Royal Irish Academy 2010)
- Dubber M, *The Police Power* (Columbia University Press 2005)
- Dunn S, Murray D and Walsh D, *Cross-Border Police Cooperation in Ireland* (Centre for Peace and Development Studies, University of Limerick 2002)
- Eckes C and Konstadinides T (eds), *Crime within the Area of Freedom, Security and Justice* (Cambridge University Press 2011)
- Elholm T and Fodge T, 'Denmark' in Moore A and Chiavario M (eds), *Police and judicial Cooperation in the European Union* (Cambridge University Press 2004) 55 – 75
- Ellison G and Pino N, *Globalization, Police Reform and Development* (Palgrave Macmillan 2012)
- Ellison G and Smyth J, 'Bad Applies or Rotten Barrels? Policing in Northern Ireland' in Marenin O (ed), *Policing Change, Changing Police: International Perspectives* (Garland Publishing New York 1996) 171 - 196
- Ellison G and Smyth J, *The Crowned Harp: Policing Northern Ireland* (Pluto Press 2000)
- Ellison G, 'Police-community relationships in Northern Ireland in the Post-Patten Era' in Doyle J (ed), *Policing the Narrow Ground: Lessons from the Transformation of Policing in Northern Ireland* (Royal Irish Academy 2010) 242 – 272

- Ellison G, 'The commodification of community policing in a global marketplace' in Goldsmith A and Sheptycki J (eds), *Crafting Transnational Policing* (Oxford Hart 2007) 203 – 234
- Emsley C, 'Preventative Policing: The path to the present' in Brodeur JP (ed), *Comparisons in Policing: An International Perspective* (Ashgate 1995) 135 – 143
- Emsley C, 'The birth and development of the Police' in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 72 - 87
- Emsley C, 'The history of crime and crime control institutions' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd edition, OUP 2002) 203 – 227
- Emsley C, *The English Police: A Political and Social History* (2nd edition, Longman London 1996)
- Ericson RV and Haggerty K, *Policing the Risk Society* (Clarendon Press Oxford 1997)
- Eterno J and Das D (eds), *Police Practices in Global Perspective* (Rowman and Littlefield 2010)
- Europol, *Review: General Report on Europol Activities* (Luxembourg Publications Office of the European Union 2010)
- Felsen O, 'European police cooperation: the example of the German-French Centre for Police and Customs Cooperation Kehl' in Hufnagel S, Harfield C and Bronitt S (eds), *Cross-border law enforcement* (Routledge 2012) 73 – 86
- Fielding N and Innes M, 'Reassurance Policing, Community Policing and Measuring Police Performance' (2006) 16:2 *Policing and Society* 127 – 145
- Fielding N, *Community Policing* (Clarendon Press Oxford 1995)
- Fielding N, *The Police and Social Conflict* (Athlone Press London 1991)
- Fijnaut and Verbrugen F, 'The Eagle has not yet landed: The Federalisation of Criminal Investigation' in Den Boer M (ed), *Undercover Policing and Accountability from an International Perspective* (European Institute of Public Administration Maastricht 1997) 129 – 142
- Fijnaut C (ed), *The Internationalization of Police Cooperation in Western-Europe* (Kluwer Law 1993)
- Fijnaut C and Marx G (eds), *Undercover Police Surveillance in Comparative Perspective* (Kluwer Law 1995)
- Fijnaut C and Ouwerkerk J (eds), *The Future of Police and Judicial Cooperation in the European Union* (Martinus Nijhoff 2010)
- Fijnaut C and Paoli L (eds), *Organised Crime in Europe: Concepts, Patterns and Control Policing in the European Union and Beyond* (Springer 2004)
- Fijnaut C and Spapens T, 'The Meuse-Rhine Euroregion: a laboratory for police and judicial cooperation in Europe' in Lemieux F (ed) *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010) 101 – 124
- Fijnaut C et al, *Legal instruments in the Fight Against International Terrorism* (Martinus Nijhoff 2004)
- Fijnaut C, 'International Policing in Europe: Its present situation and future' in Brodeur JP (ed), *Comparisons in Policing: An International Perspective* (Ashgate 1995) 115 – 132
- Fijnaut C, 'Police Cooperation Along the Belgian-Dutch border' in Fijnaut C (ed), *The Internationalization of Police Cooperation in Western-Europe* (Kluwer Law 1993) 113 – 134

- Fijnaut C, 'Police Cooperation and the Area of Freedom, Security and Justice' in Walker N (ed), *Europe's Area of Freedom, Security and Justice* (OUP 2004) 241 - 282
- Fijnaut C, 'Police Cooperation within Western Europe' in Heidensohn F and Farrell M (eds), *Crime in Europe* (Routledge 1991) 103 - 120
- Fijnaut C, 'The European Parliament and Organised Crime' (2013) 21 *European Journal of Crime Criminal Law and Criminal Justice* 1 – 7
- Fijnaut C, 'The globalisation of police and judicial cooperation' in Hufnagel S, Harfield C and Bronitt S (eds), *Cross-border law enforcement* (Routledge 2012) 1 – 14
- Fijnaut C, 'The Hague Programme and Police Cooperation between the Member States of the EU' in De Zwaan JW and Goudappel F (eds), *Freedom, Security and justice in the European Union* (TMC Asser Press 2006) 233 – 248
- Fijnaut C, 'The past, present and future of police cooperation within the European Union' in Verhage et al (eds), *Policing in Europe* (Maklu 2010) 19 - 35
- Fijnaut C, 'The problem of corruption of police officials' in Anderson M and Apap J (eds), *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 219 – 225
- Findlay M, *The Globalisation of Crime* (Cambridge University Press 1999)
- Fletcher M, 'EU Criminal Justice: Beyond Lisbon' in Eckes C and Konstadinides T (eds), *Crime within the Area of Freedom, Security and Justice* (Cambridge University Press 2011) 10 - 42
- Fosdick R, *European Police System* (George Allen and Unwin London 1915)
- Foucault M, *Security, Territory and Population* (Palgrave Macmillan 2009)
- Foucault M, *The Government of Self and Others* (Palgrave Macmillan 2010)
- Gammelgard P, 'International Police Cooperation from a Norwegian Perspective' in Koenig DJ and Das DK (eds), *International Police Cooperation* (Lexington Books Oxford 2001) 229 – 244
- Garland D, 'Of Crimes and Criminals' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd edition, OUP 2002) 7 – 46
- Garland D, *The Culture of Control* (OUP 2001)
- Gerspacher N and Lemieux, F, 'A market-orientated explanation of the expansion of the role of Europol' in Lemieux F (ed), *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010) 62 – 77
- Goldsmith A (ed), *Complaints Against the Police* (Clarendon Press Oxford 1991)
- Goldsmith A and Lewis C (eds), *Civilian Oversight of Policing* (Oxford Hart 2000)
- Goldsmith A and Sheptycki J (eds), *Crafting Transnational Policing* (Oxford Hart 2007)
- Goldsmith A, 'Better Policing, More Human Rights: Lessons from Civilian Oversight' in Mendes EP et al (eds), *Democratic Policing and Accountability* (Ashgate 1999) 33 - 64
- Goldsmith A, 'External Review and Self-Regulation' in Goldsmith A (ed), *Complaints Against the Police* (Clarendon Press Oxford 1991) 14 - 61
- Goldsmith A, 'Necessary but not sufficient: the role of public complaints procedures in police accountability' in Stenning PC (ed), *Accountability for Criminal Justice* (University of Toronto Press 1995) 110 – 134
- Goldstein H, 'Improving Policing: a problem-orientated approach' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 392 – 409

- Goldstein H, *Problem-Orientated Policing* (McGraw Hill New York 1990)
- Gregory F, 'Unprecedented partnerships in Crime Control' in Anderson M and Den Boer (eds), *Policing across National Boundaries* (Pinter Press London 1994) 85 – 103
- Guild E and Bigo D, 'The Legal Mechanisms – Collectively Specifying the Individual' in Anderson M and Apap J (eds), *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 121 – 138
- Guild E and Geyer F (eds), *Security versus Justice: Police and Judicial Cooperation in the European Union* (Ashgate 2008)
- Guild E, 'Danger – Borders Under Construction: Assessing the first five years of border policy in an area of freedom, security and justice' in De Zwaan JW and Goudappel F (eds), *Freedom, Security and justice in the European Union* (TMC Asser Press 2006) 45 - 72
- Guille L, 'Police and Judicial Cooperation in Europe' in Lemieux F (ed), *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010) 25 – 40
- Habermas J, 'The European Nation State: Its Achievements and its limitations, on the Past and Future of Sovereignty and Citizenship' in Walker N (ed), *Relocating Sovereignty* (Ashgate 2006) 225 – 237
- Hale C et al, 'Uniform styles? Aspects of police centralisation in England and Wales' (2004) 14:4 *Policing and Society* 291 – 312
- Harfield C, 'Transnational Criminal Investigation and Modes of Governance' (2011) 5:1 *Policing* 3 – 14
- Hayes M, 'Building Cross-Community Support for Policing' in Doyle J (ed), *Policing the Narrow Ground: Lessons from the Transformation of Policing in Northern Ireland* (Royal Irish Academy 2010) 59 – 67
- Heberton B and Thomas T, *Policing Europe: Cooperation, Conflict and Control* (St Martin's Press 1995)
- Heidensohn F and Farrell M (eds) *Crime in Europe* (Routledge, 1991)
- Hellemons A, 'Cooperation among traffic police departments in the European Union' in Fijnaut C and Ouwerkerk J (eds), *The Future of Police and Judicial Cooperation in the European Union* (Martinus Nijhoff 2010) 103 - 108
- Henry A and Smith D (eds), *Transformations of Policing* (Ashgate 2007)
- Herlihy J, *The Dublin Metropolitan Police: A Short History and Genealogical Guide* (Four Courts Press Dublin 2001)
- Herlihy J, *The Royal Irish Constabulary: A Short History and Genealogical Guide* (Four Courts Press Dublin 1997)
- Her Majesty's Inspectorate of Constabulary (HMIC), *State of Policing: The Annual Assessment of Policing in England and Wales 2012/13* (2014)
- Holbraad C, *Danish Neutrality: A Study in the Foreign Policy of a Small State* (Clarendon Press Oxford 1991)
- Holmberg L, 'Discretionary Leniency and Typological Guilt: Results from a Danish Study of Police Discretion' (2000) 1 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 179-194
- Holmberg L, 'Policing and the Feeling of Safety: the Rise (and Fall?) of Community Policing in the Nordic Countries' (2004) 5 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 205 to 219
- Holmberg L, 'Policing Stereotypes: A qualitative study of police work in Denmark' (Galda and Wilch Verlag Publishers Berlin 2003)

- Hufnagel S, Harfield C and Bronitt S (eds), *Cross-border law enforcement* (Routledge 2012)
- Husabo EJ and Strandbakken A (eds), *Harmonization of Criminal Law in Europe* (Intersentia 2005)
- Hvidt, N and Mouritzen H (eds), *Danish Foreign Policy Yearbook* (Danish Institute for International Studies Copenhagen 2010)
- Ignatieff M, 'Police and people: the birth of Peel's blue locusts' in Newburn T (ed) *Policing: Key Readings* (Routledge 2005) 25 – 29
- Ingleton R, *Mission Incomprehensible: the linguistic barrier to effective police co-operation in Europe* (Multilingual Matters Avon 1994)
- Jackson J et al, 'Why do people comply with the law' (2012) 52 *British Journal of Criminology* 1051 – 1071
- James A, *Examining Intelligence-led Policing* (Palgrave Macmillan 2013)
- Jensen M et al, *The Principal Danish Criminal Acts* (3rd edition, DJOF Publishing Copenhagen 2006)
- Jepsen J and Vestergaard J, 'The Police and Large Scale Social Disturbances' in Vestergaard J (ed), *Criminal Justice in Denmark* (DIS 1984) 159 - 166
- Johnson E, 'Case Report Operational Mallard from the Cross Channel Euroregion' in Den Boer M and Spapens T (eds), *Investigating Organised Crime in European Border Regions: Law Enforcement and Judicial Cooperation with Regard to Organised Crime: A Comparison between European Border Regions* (Tilburg University 2002)
- Johnston L and Shearing C, *Governing Security* (Routledge 2003)
- Johnston L and Stenning P, 'Challenges of governance and accountability for transnational private policing' in Lemieux F (ed), *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010) 281 – 296
- Johnston L, 'Late Modernity, Governance and Policing' in Brodeur JP (ed), *How to recognise good policing* (Sage 1998) 193 – 214
- Johnston L, 'Transnational Security Governance' in Wood J and Dupont B (eds), *Democracy, Society and the Governance of Security* (Cambridge University Press 2006) 33 - 51
- Jones T and Newburn T (eds), *Plural Policing* (Routledge 2006)
- Jones T, 'The accountability of policing' in Newburn T (ed), *Handbook of Policing* (Willan, 2011) 693 - 720
- Jones T, Newburn T and Smith D, *Democracy and Policing* (Policy Studies Institute London 1994)
- Karanja SK, *Transparency and Proportionality in the Schengen Information System and Border Control Cooperation* (Martinus Nijhoff 2008)
- Keating E, 'International Police Cooperation: Ireland' in Koenig DJ and Das DK (eds), *International Police Cooperation* (Lexington Books Oxford 2001) 181 - 192
- Kelling G, 'On the Accomplishments of the Police' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 152 – 168
- Kelstrup Morten (ed), *European Integration and Denmark's Participation* (Copenhagen Political Studies Press 1992)
- King M and Waddington D, 'Coping with disorder? A critical analysis of the Burnley Riot' (2004) 14 *Policing and Society* 118 – 137
- Kleinig J, *The Ethics of Policing* (Cambridge University Press 1996)

- Kleiven M, 'Nordic police cooperation' in Hufnagel S, Harfield C and Bronitt S (eds), *Cross-border law enforcement* (Routledge 2012) 63 – 70
- Klip A, *European Criminal Law* (2nd edition Intersentia 2012)
- Klockars C, *The Idea of the Police* (Sage 1985)
- Koenig D and Das D (eds), *International Police Cooperation* (Lexington Books Oxford 2001)
- Kruize P and Langhoff E, 'Case report on the Euroregion Sonderjylland – Schleswig Holstein' in Den Boer, M and Spapens, T (eds), *Investigating Organised Crime in European Border Regions: Law Enforcement and Judicial Cooperation with Regard to Organised Crime: A Comparison between European Border Regions* (Tilburg University, 2002)
- Kruize P, 'Denmark' in Den Boer M (ed), *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* (European Institute of Public Administration Maastricht 2002) 159 – 177
- Langsted L et al, *Criminal Law in Denmark* (3rd edition, Kluwer Law International 2011)
- Leishman F et al (eds), *Core Issues in Policing* (Longman London 1996)
- Leishman F, Cope S and Starie P, 'Towards a New Policy Order' in Leishman F, Loveday B and Savage S (eds), *Core Issues in Policing* (Longman London 1996) 9 - 25
- Lemieux F (ed), *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010)
- Levi M, 'Covert Policing and the Investigation of Organised Fraud: The English Experience in International Context' in Fijnaut C and Marx G (eds), *Undercover Police Surveillance in Comparative Perspective* (Kluwer Law 1995) 195 – 211
- Levi M, 'The Making of the United Kingdom's Organised Crime Control Policies' in Fijnaut C and Paoli L (eds), *Organised Crime in Europe: Concepts, Patterns and Control Policing in the European Union and Beyond* (Springer 2004) 823 – 848
- Levi M, 'The organisation of serious crime' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd edition, OUP 2002) 878 – 909
- Loader I and Mulcahy A, *Policing and the Condition of England* (OUP 2003)
- Loader I and Sparks R, 'Contemporary landscapes of crime, order and control: Governance, risk and globalization' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd edition, OUP 2002) 83 – 106
- Loader I and Walker N, 'Locating the Public Interest in Transnational Policing' in Goldsmith A and Sheptycki J (eds), *Crafting Transnational Policing* (Oxford Hart 2007) 111 – 140
- Loader I and Walker N, 'Necessary Virtues: the legitimate place of the state in the production of security' in Wood J and Dupont B (eds), *Democracy, Society and the Governance of Security* (Cambridge University Press 2006) 165 – 195
- Loader I and Walker N, *Civilizing Security* (Cambridge University Press 2007)
- Loader I, 'Governing European Policing' (2002) 12:4 *Policing and Society* 291 – 305

- Loader I, 'Policing, securitization and democratization in Europe' in Newburn T and Sparks R (eds), *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control* (Willan 2004) 49 - 71
- Loader I, *Youth, Policing and Democracy* (Macmillan 1996)
- Loveday B, 'Crime at the Core' in Leishman F, Loveday B and Savage S (eds) *Core Issues in Policing* (Longman London 1996) 73 – 100
- Loveday B, 'Government and Accountability of the Police' in Mawby RI (ed), *Policing Across the World* (UCL Press 1999) 132 - 149
- Loveday B, 'The local accountability of Police in England and Wales' in Reiner R and Spencer S (eds), *Accountable Policing* (Institute for Public Policy Research 1993) 55 – 78
- Lustgarten L, 'National Security and Political Policing' in Brodeur JP, Gill P and Tollborg D (eds), *Democracy, Law and Security* (Ashgate, 2003) 319 - 333
- Lustgarten L, 'The Police and the Substantive Criminal Law' (1987) 27:1 *British Journal of Criminology* 23 – 30
- Lustgarten L, *The Governance of Police* (London Sweet and Maxwell 1986)
- Lyck L, *Denmark and EC Membership Evaluated* (Pinter Press London 1992)
- Maguire M and John T, 'Intelligence Led Policing, Managerialism and Community Engagement' (2006) 16:1 *Policing and Society* 67 – 85
- Maguire M, 'Complaints against the Police' in Goldsmith A (ed), *Complaints Against the Police* (Clarendon Press Oxford 1991) 177 – 208
- Maguire M, 'Crime statistics: the data explosion and its implications' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd edition, OUP 2002) 322 – 370
- Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd edition, OUP 2002)
- Manning PK, 'Organizational Control and Semiotics' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 169 – 192
- Manning PK, 'Policing new social spaces' in Sheptycki JWE (ed), *Issues in Transnational Policing* (Routledge 2000) 177 - 197
- Manning PK, 'The police: mandates, strategies and appearances' in Newburn T (ed) *Policing: Key Readings* (Routledge 2005) 191 – 213
- Manning PK, 'Trust and Accountability in Ireland: The case of An Garda Siochana' (2012) 22: 3 *Policing and Society* 344 – 361
- Manning PK, *Democratic Policing in a Changing World* (Paradigm Publishers London 2010)
- Manning PK, *Police Work* (MIT Press 1977)
- Manning PK, *Symbolic Communication* (MIT Press 1988)
- Marenin O (ed), *Policing Change, Changing Police: International Perspectives* (Garland Publishing New York 1996)
- Marenin O, 'Implementing Police Reforms: the role of the transnational policy community' in Goldsmith A and Sheptycki J (eds), *Crafting Transnational Policing* (Oxford Hart 2007) 177 – 195
- Marshall G, 'Police Accountability Revisited' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 624 – 636
- Marshall G, *Police and Government: The Status and Accountability of the English Constable* (Methuen London 1965)
- Martin M (ed), *Crime, Rights and the EU* (Justice London 2008)

- Marx G, 'When the Guards Guard Themselves: Undercover Tactics Turned Inward' in Fijnaut C and Marx G (eds), *Undercover Police Surveillance in Comparative Perspective* (Kluwer Law 1995) 213 - 232
- Mawby R (ed), *Policing Across the World* (UCL Press 1999)
- Mawby R and Wright A, 'The police organisation' in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 224 - 228
- Mawby R, 'Models of Policing' in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 17 – 39
- Mawby R, *Policing Images: Policing, communication and legitimacy* (Willan 2002)
- Mawby R, *Policing the City* (Saxon House 1979)
- McEvoy K, 'What did the lawyers do during the 'war'? Neutrality, Conflict and the Culture of Quietism' (2011) 74:3 *Modern Law Review* 350 – 384
- McGarry J and O'Leary B, *Explaining Northern Ireland: Broken Images* (Blackwell Oxford 1995)
- McGarry J and O'Leary B, *Policing Northern Ireland: Proposals for a New Start* (Blackstaff Press Belfast 1999)
- Mendes EP et al (eds), *Democratic Policing and Accountability* (Ashgate 1999)
- Miller WR, *Cops and Bobbies* (University of Chicago Press 1977)
- Mitsilegas V, 'Legitimacy, accountability and fundamental rights in an area of freedom, security and justice' in Martin M (ed), *Crime, Rights and the EU* (Justice London 2008)
- Mitsilegas V, 'The Competence Question: The European Community and Criminal Law' in Guild E and Geyer F (eds), *Security versus Justice: Police and Judicial Cooperation in the European Union* (Ashgate 2008) 153 – 169
- Mitsilegas V, *EU Criminal Law* (Oxford Hart 2009)
- Mitsilegas V, Monar J and Rees W, *The European Union and Internal Security* (Palgrave Macmillan 2003)
- Monar J, 'The Evolving Role of the Union Institutions in the Framework of the Third Pillar' in Monar J and Morgan R (eds), *The Third Pillar of the European Union: Cooperation in the fields of Justice and Home Affairs* (European Interuniversity Press Brussels 1994) 69 - 83
- Monar J, 'The Integration of Police and Judicial Cooperation in Criminal Matters into EU External Relations' in Fijnaut C and Ouwerkerk J (eds), *The Future of Police and Judicial Cooperation in the European Union* (Martinus Nijhoff 2010) 49 – 72
- Monar J, 'The problems of balance in EU Justice and Home Affairs and the Impact of 11 September' in Anderson M and Apap J (eds), *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 165 – 182
- Moore A and Chiavario M (eds), *Police and judicial Cooperation in the European Union* (Cambridge University Press 2004)
- Morgan R and Newburn T, *The Future of Policing* (Clarendon Oxford 1997)
- Morgan R, 'Police Accountability: Developing the Local Infrastructure' (1987) 27:1 *British Journal of Criminology* 87 – 96
- Muir WK, 'Police and Social democracy' (2008) 18:1 *Policing and Society* 18-22
- Muir WK, 'The paradox of dispossession: skid row at night' in Newburn T (ed) *Policing: Key Readings* (Routledge 2005) 173 – 188
- Muir WK, *Police: Streetcorner Politicians* (University of Chicago Press 1977)

- Mulcahy A, ‘The impact of the Northern Troubles on Criminal Justice in the Irish Republic’ in O’Mahony P (ed), *Criminal Justice in Ireland* (Institute of Public Administration Dublin 2002) 275 - 293
- Mulcahy A, ‘The police service of Northern Ireland’ in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 204 - 220
- Murphy C, ‘The European Evidence Warrant: mutual recognition and mutual (dis)trust’ in in Eckes C and Konstadinides T (eds), *Crime within the Area of Freedom, Security and Justice* (Cambridge University Press 2011) 224 – 248
- Nadelmann E, ‘The DEA in Europe’ in Fijnaut C and Marx G (eds), *Undercover Police Surveillance in Comparative Perspective* (Kluwer Law 1995) 269 – 289
- Nadelmann E, ‘US Police Activities in Europe’ in Fijnaut C (ed), *The Internationalization of Police Cooperation in Western-Europe* (Kluwer Law 1993) 135 – 154
- Nadelmann E, *Cops Across Borders* (Pennsylvania State University Press 1993)
- National Commissioner of the Danish Police, *The Police in Denmark, in the Faroe Islands and in Greenland* (Rigspolitechefen 1987)
- National Commissioner of the Danish Police, *The Police in Denmark in the Faroe Islands and in Greenland* (Rigspolitechefen 2001) 22, 23
- National Commissioner of the Danish Police, *The Police in Denmark, in the Faroe Islands and in Greenland* (Rigspolitechefen 2007)
- Newburn T (ed), *Policing: Key Readings* (Routledge 2005)
- Newburn T and Neyroud P (eds), *Dictionary of Policing* (Routledge 2008)
- Newburn T and Sparks R (eds), *Criminal Justice and Political Cultures: National and International Dimensions of Crime Control* (Willan 2004)
- Newburn T, ‘Policing since 1945’ in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 90 - 111
- Newburn, T (ed), *Handbook of Policing* (2nd edition, Willan 2011)
- Neyroud P and Beckley A, *Policing ethics and human rights* (Willan 2001)
- Neyroud P and Vassilas P, ‘The Politics of Partnership: Challenges to Institution Building in European Policing’ in Verhage et al (eds), *Policing in Europe* (Maklu 2010) 75 – 86
- Neyroud P, ‘Managing the Police through a time of change’ in Henry A and Smith D (eds), *Transformations of Policing* (Ashgate 2007) 213 – 222
- Neyroud P, ‘Policing and Ethics’ in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 666 - 688
- Norton P, *Parliament in British Politics* (2nd edition, Palgrave Macmillan 2013)
- O’Loan N, ‘The Police Ombudsman for Northern Ireland’ in Doyle J (ed), *Policing the Narrow Ground: Lessons from the Transformation of Policing in Northern Ireland* (Royal Irish Academy 2010) 113 – 125
- O’Mahony P (ed), *Criminal Justice in Ireland* (Institute of Public Administration Dublin 2002)
- O’Neill M, ‘EU Cross-border policing provisions, the view from one of the Schengen opt-out States’ (2010) 18:1 *European Journal of Crime, Criminal Law and Criminal Justice* 73 – 89
- Obokata T, *North South Irish responses to Transnational Organised Crime* (AHRC Research Project 2014)

- Occhipinti JD, 'Parallel paths and productive partnerships: the EU and US on counter-terrorism' in Lemieux F (ed), *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010) 167 – 184
- Occhipinti JD, *The Politics of EU Police Cooperation* (Lynne Rienner Publishers London 2003)
- Olsen F, *The use of police firearms in Denmark* (National Police Commissioner, Multidisciplinary Analysis Group Copenhagen 2008)
- Packer H, 'Two Models of the Criminal Process' (1964) 113:1 *University of Pennsylvania Law Review* 1 – 68
- Palmer SH, *Police and Protest in England and Ireland 1780 – 1850* (Cambridge University Press 1988)
- Palombella G and Walker N (eds), *Relocating the Rule of Law* (Oxford Hart 2009)
- Patten C, 'Personal Reflections on Chairing the Policing Commission' in Doyle J (ed), *Policing the Narrow Ground: Lessons from the Transformation of Policing in Northern Ireland* (Royal Irish Academy 2010) 13 – 25
- Patterson H, *Ireland's Violent Frontier* (Palgrave Macmillan 2013)
- Peers S, 'The Schengen Information System and EC immigration and asylum law' in De Zwaan, JW and Goudappel F (eds), *Freedom, Security and justice in the European Union* (TMC Asser Press 2006) 172 – 192
- Peers S, *EU Justice and Home Affairs Law* (3rd edition, OUP 2011)
- PET, *Report 2008 – 2010* (Politiets Efterretningstjeneste, 2011)
- Porter B, *The Origins of the Vigilant State* (Weidenfeld and Nicolson London 1987)
- Precht T, *Home grown terrorism and Islamist radicalisation in Europe* (Danish Ministry of Justice 2007)
- Pullat R, *Organized Crime Related Drug Trafficking in the Baltic Sea Region* (Estonian Police Board Tallin 2009)
- Punch M (ed), *Control in the Police Organisation* (MIT Press 1983)
- Punch M, *Police Corruption: Deviance, accountability and reform in Policing* (Routledge 2009)
- Raab C, 'Police Cooperation: the prospects for privacy' in Anderson M and Den Boer M (eds), *Policing across National Boundaries* (Pinter London 1994) 121 – 134
- Ravn L, *National Falcone Study Report for Denmark* (Danish Ministry of Justice 2001) 2001/FAL/168
- Rawlings P, 'Policing before the Police' in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 46 – 68
- Regan E (ed), *European Criminal Justice Post-Lisbon: An Irish Perspective* (Irish Institute of International and European Affairs 2012)
- Regan E (ed), *The New Third Pillar: Cooperation Against Crime in the European Union* (Institute of European Affairs 2000)
- Regan E and O'Mahony P, 'The Third Pillar of the European Union' in O'Mahony P (ed), *Criminal Justice in Ireland* (Institute of Public Administration Dublin 2002) 297 – 323
- Reiner R and Spencer S (eds), *Accountable Policing* (Institute for Public Policy Research 1993)
- Reiner R, 'Counting the Coppers: Antinomies of Accountability in Policing' in Stenning PC (ed), *Accountability for Criminal Justice* (University of Toronto Press 1995) 74 – 92

- Reiner R, 'Multiple Realities, Divided Worlds' in Goldsmith A (ed), *Complaints Against the Police* (Clarendon Press Oxford 1991) 212 – 229
- Reiner R, 'Myth vs Modernity: Reality and Unreality in the English Model of Policing' in Brodeur JP (ed), *Comparisons in Policing: An International Perspective* (Ashgate 1995) 16 - 41
- Reiner R, 'Police Accountability: Principles, Patterns and Practices' in Reiner R and Spencer S (eds), *Accountable Policing* (Institute for Public Policy Research 1993) 1 - 21
- Reiner R, 'Policing a Postmodern Society' in Newburn T (ed) *Policing: Key Readings* (Routledge 2005) 675 – 693
- Reiner R, 'Process or Product? Problems of Assessing Individual Police Performance' in Brodeur JP (ed), *How to recognise good policing* (Sage 1998) 55 – 72
- Reiner R, 'The Politicization of the Police in Britain' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 126 – 146
- Reiner R, *Chief Constables* (OUP 1992)
- Reiner R, *Politics of the Police* (4th ed, OUP 2010)
- Reiner R, *Politics of the Police* (Whitsheaf Books 1985)
- Reiss AJ and Bordua DJ, 'Environment and Organization: A Perspective on the Police' in Bordua DJ (ed), *The Police: Six Sociological Essays* (John Wiley Publishers New York 1967) 25 - 55
- Reiss AJ, 'Reflections on policing systems and police cooperation in Europe' in Brodeur JP (ed), *Comparisons in Policing: An International Perspective* (Ashgate 1995) 228 – 232
- Reiss AJ, 'The Policing of Organizational Life' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 78 – 97
- Reiss AJ, *The Police and the Public* (Yale University Press 1971)
- Reith C, *A New Study of Police History* (Oliver and Boyd London 1956)
- Report of the Independent Commission on Policing, *A New Beginning: Policing in Northern Ireland* (Patten Commission 1999)
- Reuss Ianni E and Ianni FA, 'Street Cops and Management Cops: The Two Cultures of Policing' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 251 – 273
- Rijken C and Vermeulen G (eds), *Joint Investigation Teams in the European Union: From Theory to Practice* (TMC Asser Press 2006)
- Rijken C, *Trafficking in Persons: Prosecution from a European Perspective* (TMC Asser Press 2003)
- Robertson K, 'Practical Police Cooperation in Europe: the intelligence dimension' in Anderson M and Den Boer M (eds), *Policing across National Boundaries* (Pinter London 1994) 106 – 117
- Roebuck J and Barker T 'A typology of police corruption' (1974) 21 *Social Problems* 423 – 437
- Ryan B, *Statebuilding and Police Reform: the freedom of Security* (Routledge 2011)
- Sanders A and Young R, 'From Suspect to Trial' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd edition, OUP 2002) 1034 – 1068
- Sanders A and Young R, 'Police Powers' in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 281 – 307

- Sanders A, 'Controlling the discretion of the individual officer' in Reiner R and Spencer S (eds), *Accountable Policing* (Institute for Public Policy Research 1993) 81 – 108
- Savage S, 'Calling the police to account through the Independent Investigation of Complaints' (2013) 53 *British Journal of Criminology* 94 – 112
- Savage S, 'Police Complaints and the Civilian Control Model of Oversight' (2013) 53 *British Journal of Criminology* 886 – 904
- Savage S, *Police Reform* (OUP 2007)
- Savage, S and Charman S, 'Managing Change' in Leishman F, Loveday B and Savage S (eds), *Core Issues in Policing* (Longman London 1996) 39 – 53
- Scarman L, *Report of an Inquiry by the Right Honourable Lord Scarman OBE Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty* (November 1981)
- Seneviratne M, 'Policing the Police in the United Kingdom' (2004) 14:4 *Policing and Society* 329-347
- Shearing C, 'Reinventing Policing: Policing as Governance' in Marenin O (ed), *Policing Change, Changing Police: International Perspectives* (Garland Publishing New York 1996) 285 – 302
- Shearing C, 'The Curious case of the Patten Report' in Doyle J (ed), *Policing the Narrow Ground: Lessons from the Transformation of Policing in Northern Ireland* (Royal Irish Academy 2010) 27 - 46
- Sheptycki J (ed), *Issues in Transnational Policing* (Routledge, 2000)
- Sheptycki J and Wardack A (eds), *Transnational and Comparative Criminology* (Glasshouse Press 2005)
- Sheptycki J, 'Accountability Across the Policing Field: Towards a General Cartography of Accountability for Post-Modern Policing' (2002) 12:4 *Policing and Society* 323 – 338
- Sheptycki J, 'Police Ethnography in the House of Serious and Organised Crime' in Henry A and Smith D (eds), *Transformations of Policing* (Ashgate 2007) 51 - 72
- Sheptycki J, 'Relativism, Transnationalism and Comparative Criminology' in Sheptycki J and Wardack A (eds), *Transnational and Comparative Criminology* (Glasshouse Press 2005) 69 - 85
- Sheptycki J, 'The constabulary Ethic and the Transnational Condition' in Goldsmith A and Sheptycki J (eds), *Crafting Transnational Policing* (Oxford Hart 2007) 31 - 62
- Sheptycki J, 'The drug war' in Sheptycki JWE (ed), *Issues in Transnational Policing* (Routledge 2000) 201 - 223
- Sheptycki J, 'UK' in Den Boer M (ed), *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* (European Institute of Public Administration Maastricht 2002)
- Sheptycki J, *In Search of Transnational Policing* (Ashgate 2002)
- Sheptycki, J, 'The constabulary ethic reconsidered' in Lemieux F (ed) *International Police Cooperation: Emerging issues, theory and practice* (Routledge 2010) 298 – 319
- Sheptycki J 'The raft of the Medusa: further contributions towards a constabulary ethic' in Verhage et al (eds), *Policing in Europe* (Maklu 2010) 39 – 50

- Sherman LW, 'Police corruption control: Environmental Context Versus Organisational Policy' in Bayley D (ed), *Police and Society* (Sage 1977) 107 - 124
- Sherman LW, 'Reducing Police Gun Use' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 98 – 125
- Skogan W, 'Community Participation and Community Policing' in Brodeur JP (ed), *How to recognise good policing* (Sage 1998) 88 – 106
- Skogan W, 'Why reforms fail' (2008) 18:1 *Policing and Society* 23 – 34
- Skolnick JH and Woodworth JR, 'Bureaucracy, Information and Social Control' in Bordua DJ (ed), *The Police: Six Sociological Essays* (John Wiley Publishers New York 1967) 99 – 136
- Skolnick JH, 'Corruption and the Blue Code of Silence' (2002) 3:1 *Police Practice and Research: An International Journal* 7-19
- Skolnick JH, 'Enduring issues of police culture and demographics' (2008) 18:1 *Policing and Society* 35 – 45
- Skolnick JH, *Justice Without Trial: Law Enforcement in Democratic Society* (John Wiley and Sons New York 1966)
- Skolnick, JH 'A sketch of the policeman's working personality' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 264 – 277
- Smith D and Gray J, *Police and People in London* (Avebury 1985)
- Smithwick Report, *Report of the Tribunal of Inquiry into allegations that members of An Garda Síochána or other Employees of the State colluded in the fatal shooting of RUC officers* (Government Publication 2013)
- South N, 'Drugs, Alcohol and Crime' in Maguire M, Morgan R and Reiner R (eds), *The Oxford Handbook of Criminology* (3rd edition, OUP 2002) 914 – 938
- Spapens T 'Policing a European Border Region: The Case of the Meuse-Rhine Euroregion' in Guild E and Geyer F (eds), *Security versus Justice: Police and Judicial Cooperation in the European Union* (Ashgate 2008) 225 – 240
- Spapens T, 'An Integrated Approach to Organised Crime' (2010) 18:2 *European Journal of Crime Criminal Law and Criminal Justice* 185 – 215
- Spapens T, 'Case report on the Euroregion Meuse-Rhein' in Den Boer M and Spapens T (eds), *Investigating Organised Crime in European Border Regions: Law Enforcement and Judicial Cooperation with Regard to Organised Crime: A Comparison between European Border Regions* (Tilburg University 2002)
- Spapens T, 'Cross-border public order policing in the Dutch border areas' in Verhage et al (eds), *Policing in Europe* (Maklu 2010) 163 – 177
- Spapens T, 'Joint Investigation Teams in the European Union: Article 13 JITs and the Alternatives' (2011) 19:3 *European Journal of Crime Criminal Law and Criminal Justice* 239 – 260
- Spapens T, 'Police Cooperation in the Dutch Border Areas' in Fijnaut C and Ouwerkerk J (eds), *The Future of Police and Judicial Cooperation in the European Union* (Martinus Nijhoff 2010) 73 – 101
- State Prosecutor for Serious Economic Crime, *The Money Laundering Secretariat Annual Report 2009* (SEC Denmark 2010)
- Steenbeek J, 'The Kingdom of Denmark' in Prakke L and Kortmann C (eds), *Constitutional Law of 15 EU Member States* (Kluwer 2004) 135 – 179
- Stefanou C and Xanthaki H, *Towards a European Criminal Record* (Cambridge University Press 2008)

- Stenning P (ed), *Accountability for Criminal Justice* (University of Toronto Press 1995)
- Stenning P, 'Evaluating Police Complaints Legislation: A suggested framework' in Goldsmith A and Lewis C (eds), *Civilian Oversight of Policing* (Oxford Hart 2000) 147 - 162
- Stiglitz J, *Globalization and its Discontents* (Allen Lane, 2002)
- Storbeck J, 'Coordinating the Flow of European Intelligence, Europol's Accountability Mechanisms' in Den Boer M (ed), *Undercover Policing and Accountability from an International Perspective* (European Institute of Public Administration Maastricht 1997) 117 – 128
- Strand F, *Efterforskningens Anatomi – Kriminalpolitiet 1863 – 2007* (University of Copenhagen PhD 2009)
- Styles J, 'The Emergence of the Police' in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 80 – 87
- Takala H, 'Nordic Cooperation in Criminal Policy and Crime Prevention (2005) 5:2 Journal of Scandinavian Studies in Criminology and Crime Prevention 131 to 147
- Topping JT, 'Community Policing in Northern Ireland' (2008) 18:4 Policing and Society 377 – 396
- Tupman B and Tupman A, *Policing in Europe: Uniform in Diversity* (Intellect 1999)
- Tupman B, 'Transnationalisation and Corruption' in Sheptycki J and Wardack A (eds), *Transnational and Comparative Criminology* (Glasshouse Press 2005) 247 – 264
- United Nations, *Handbook on Police Accountability, Oversight and Integrity* (Criminal Justice Handbook Series 2011)
- Van Der Aa S and Ouwerkerk J, 'The European Protection Order: No Time to Waste or a Waste of Time' (2011) 19:4 European Journal of Crime Criminal Law and Criminal Justice 267 – 287
- Van Duyne P and Vander Beken T, 'The Incantations of the EU organised crime policy making' (2009) 51 Crime Law and Social Change 261 – 281
- Van Leeuwen M (ed), *Confronting Terrorism* (Kluwer Law 2003)
- Van Maanen J, 'The Boss' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 275 – 312
- Van Outrive L and Fijnaut C, 'Police and the Organisation of Prevention' in Punch M (ed), *Control in the Police Organisation* (MIT Press 1983) 47 – 59
- Van Reenen P, 'Policing Europe after 1992' (1989) 3.2 European Affairs Journal 45 - 53
- Van Traa M, 'The findings of the Parliamentary Inquiry Viewed from an International Perspective' in Den Boer M (ed), *Undercover Policing and Accountability from an International Perspective* (European Institute of Public Administration Maastricht 1997) 15 – 25
- Verhage et al (eds), *Policing in Europe* (Maklu 2010)
- Vermeulen G, 'How far can we go in applying the principle of mutual recognition?' in Fijnaut C and Ouwerkerk J (eds), *The Future of Police and Judicial Cooperation in the European Union* (Martinus Nijhoff 2010) 241 – 256
- Vermeulen G, De Bondt W and Van Damme Y, *EU cross-border gathering and use of evidence in criminal matters: towards mutual recognition of investigative measures and free movement of evidence* (Maklu 2010)
- Vestergaard J (ed), *Criminal Justice in Denmark* (DIS 1984)

- Vitorino A, 'New European borders and security cooperation: promoting trust in an enlarged Union' in Anderson M and Apap J (eds), *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 11 – 17
- Waddington PAJ, 'Slippery Slopes and Civil Libertarian Pessimism' (2005) 15:3 *Policing and Society* 353 – 375
- Waddington PAJ, 'The case against paramilitary policing considered' (1993) 33.3 *British Journal of Criminology*
- Waddington PAJ, *Policing Citizens* (Routledge 1999)
- Wakefield A and Fleming J (eds), *The Sage Dictionary of Policing* (Sage 2009)
- Walker C and Starmer K (eds), *Miscarriages of Justice: A Review of Justice in Error* (Blackstone Press 1999)
- Walker C, 'Miscarriages of Justice in Principle and Practice' in Walker C and Starmer K (eds), *Miscarriages of Justice: A Review of Justice in Error* (Blackstone Press 1999) 31 – 62
- Walker C, 'Policy Options and Priorities' in Van Leeuwen (ed), *Confronting Terrorism* (Kluwer Law 2003) 11 - 35
- Walker N (ed), *Europe's Area of Freedom, Security and Justice* (OUP 2004)
- Walker N (ed), *Relocating Sovereignty* (Ashgate 2006)
- Walker N, 'Deficient Weaponry, Reluctant Marksmen and Obscure Targets: Flaws in the Accountability of Undercover Policing in the EU' in Den Boer M (ed), *Undercover Policing and Accountability from an International Perspective* (European Institute of Public Administration Maastricht 1997) 205 - 216
- Walker N, 'European integration and European policing: a complex relationship' in Anderson M and Den Boer M (eds), *Policing across National Boundaries* (Pinter London 1994) 22 – 45
- Walker N, 'In Search of the Area of Freedom, Security and Justice: A Constitutional Odyssey' in Walker N (ed), *Europe's Area of Freedom, Security and Justice* (OUP 2004) 3 - 37
- Walker N, 'Late sovereignty in the European Union' in Walker N (ed), *Relocating Sovereignty* (Ashgate 2006) 521 – 550
- Walker N, 'Policing and the Supranational' (2002) 12:4 *Policing and Society* 307 – 321
- Walker N, 'Policing the European Union: the Politics of Transition' in Marenin O (ed), *Policing Change, Changing Police: International Perspectives* (Garland Publishing New York 1996) 251 – 279
- Walker N, 'The International Dimension' in Reiner R and Spencer S (eds), *Accountable Policing* (Institute for Public Policy Research 1993) 113 – 158
- Walker N, 'The Pattern of Transnational Policing' in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 119 - 143
- Walker N, 'The problem of Trust in an enlarged Area of Freedom, Security and Justice in Anderson M and Apap J (eds), *Police and justice cooperation and the new European Borders* (Kluwer Law 2002) 19-33
- Walker N, 'The Rule of Law and the EU: Necessity's Mixed Virtue' in Palombella G and Walker N (eds), *Relocating the Rule of Law* (Oxford Hart 2009) 119 - 138
- Walker N, *Policing in a Changing Constitutional Order* (Sweet and Maxwell 2000)
- Walker S, *A Critical History of Police Reform* (Lexington Books 1977)
- Walker S, *The New World of Police Accountability* (Sage 2005)

- Walsh DPJ and Conway V, 'Police Governance and accountability' (2011) 55 *Crime Law and Social Change* 61 – 86
- Walsh DPJ, 'How the Third Pillar Works' in Regan E (ed), *The New Third Pillar: Cooperation Against Crime in the European Union* (Institute of European Affairs 2000) 23 - 58
- Walsh DPJ, 'Ireland' in Den Boer M (ed), *Organised Crime: A Catalyst in the Europeanisation of National Police and Prosecution Agencies?* (European Institute of Public Administration Maastricht 2002) 309 - 357
- Walsh DPJ, 'Ireland' in Moore A and Chiavario M (eds), *Police and judicial Cooperation in the European Union* (Cambridge University Press 2004) 143 - 163
- Walsh DPJ, 'Irish experiences and perspectives' in Van Leeuwen (ed), *Confronting Terrorism* (Kluwer Law 2003) 37 – 55
- Walsh DPJ, 'Miscarriages of Justice in the Republic of Ireland' in Walker C and Starmer K (eds), *Miscarriages of Justice: A Review of Justice in Error* (Blackstone Press 1999) 304 – 322
- Walsh DPJ, 'Police Cooperation across the Irish Border: Familiarity Breeding contempt for Transparency and Accountability' (2011) 38:2 *Journal of Law and Society* 301 – 330
- Walsh DPJ, 'The Garda Siochana: a legal and constitutional perspective' in O'Mahony P (ed), *Criminal Justice in Ireland* (Institute of Public Administration Dublin 2002) 447 – 470
- Walsh DPJ, *Human Rights and Policing in Ireland* (Clarus Press 2009)
- Walsh DPJ, *The Irish Police: A legal and constitutional perspective* (Roundhall Sweet and Maxwell 1998)
- Westmarland L, 'Police cultures' in Newburn T (ed), *Handbook of Policing* (2nd edition, Willan 2011) 253 – 277
- Westmarland L, 'Police Ethics and Integrity: Breaking the Blue Code of Silence' (2005) 15:2 *Policing and Society* 145 – 165
- Whitaker B, *The Police in Society* (Eyre Methuen London 1979)
- Wilson JQ and Kelling GL, 'Broken Windows: the police and neighbourhood safety' (1982) in Newburn T (ed), *Policing: Key Readings* (Routledge 2005) 460 – 471
- Wilson JQ, 'Police Morale, Reform and Citizen Respect' in Bordua DJ (ed), *The Police: Six Sociological Essays* (John Wiley Publishers New York 1967) 137 – 162
- Wilson JQ, *Thinking about Crime* (Basic Books New York 1975)
- Wilson JQ, *Varieties of Police Behaviour* (Harvard University Press 1968)
- Wolff S, Goudappel F and De Zwaan J (eds), *Freedom, Security and Justice After Lisbon and Stockholm* (TMC Asser Press 2011)
- Wood J and Dupont B (eds), *Democracy, Society and the Governance of Security* (Cambridge University Press 2006)
- Zander M, 'The Act in the Station' in Benyon J and Bourn C (eds), *The Police: Powers, Procedures and Proprieties* (Pergamon Press 1986) 123 – 135
- Zander M, *The Police and Criminal Evidence Act 1984* (4th edition, Sweet and Maxwell 2003)
- Zedner L, *Security* (Routledge 2009)