

**SUMMARY REPORT
INTERNATIONAL MEETING ON USE OF FORCE BY THE POLICE**

Mérida, Venezuela, March 5 - 7, 2001

Organizers:

**Luis Gerardo Gabaldón and Christopher Birkbeck
Universidad de Los Andes**

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Antecedents

In 1995, Gabaldón and Birkbeck began an ongoing research project at the Universidad de Los Andes focusing on the use of force by the police. This is a topic that arouses much academic and political concern in different countries, although there is often little data on its extent and causes, or on policies for controlling the use of force by the police, particularly in a comparative cross-national context. These are matters of fundamental importance in the development of policies dealing with crime and the reduction of violence, based on rational and predictable criteria and legal and constitutional guarantees. With regard to Venezuela, the introduction of a new legal framework for public safety and criminal justice, based on the 1999 Constitution, justified the organization of a meeting such as the one held in Mérida. This, together with the research experience and contacts of the meeting's organizers, the national and international interest in the use of force by the police, and the links between police behavior, crime and violence, provided the stimulus for the meeting in Mérida. The objective was to begin the development of an international cross-cultural project on selected aspects of use of force by the police.

2. Meeting Participants

The meeting was held at the Regional Foundation for Science and Technology, Mérida, between March 5 and 7, 2001. The following international participants attended:

Ramesh Deosaran
Director, Centre for Criminology and Criminal Justice
University of the West Indies, Saint Augustine
Trinidad and Tobago

Eduardo Paes Machado
Professor of Social Theory and Methods
Federal University of Bahía
Salvador
Brazil

Philip Stenning
Associate Professor of Criminology
Center of Criminology

University of Toronto
Canada

Felipe Villavicencio
Professor of Criminal Law and Criminology
University of San Marcos
Director of the Judicial Academy
Lima
Peru

P.A.J. Waddington
Professor of Political Science
University of Reading
United Kingdom

Professors José Caballero Quiñones, of the University of Asunción and Public Prosecutor's Office in Paraguay, and Richard Bennett, of the American University, Washington, United States, were forced to cancel their participation at the last minute due to family matters, although they have expressed their interest in continued involvement in this project.

Christopher Birkbeck, Professor of Criminology at the Universidad de Los Andes, and Luis Gerardo Gabaldón, Professor of Criminology at the Universidad de Los Andes and the Andrés Bello Catholic University, were responsible for coordinating and chairing the meeting. Other participants from the Universidad de Los Andes (ULA) and the Andrés Bello Catholic University (UCAB) were:

Sonia Boueiri Bassil
Assistant Professor of Criminology, ULA

Tibayde Hernández Aguilera
Criminologist
Direction of Public Safety
Governor's Office, Mérida

Reynaldo Hidalgo
Assistant Professor of Criminology, ULA

Yoana Monsalve
Instructor in Criminology, ULA

Carla Serrano
Instructor in Criminology, UCAB

Diego Zambrano
Aggregate Professor of Criminology, ULA

Professor Ana María Sanjuán, of the Center for the Development of Peace, Universidad Central de Venezuela, was unable to attend.

3. Initial Papers and Presentations

The meeting's first day was devoted to the following papers and presentations:

1. Christopher Birkbeck, *Defining Justified Uses of Force by the Police: Proposals for a Comparative Research Project*.
2. Luis Gerardo Gabaldón, *Prediction and Justification of the Use of Force by the Police*.

These first two papers aimed to provide a framework for discussion and were circulated prior to the meeting.

3. Luis Gerardo Gabaldón and Christopher Birkbeck, *The Caracas Police: An Organizational Profile, Rules for the Use of Force, and Officers' Perceptions of the Use of Force*.
4. Ramesh Deosaran, *Justified Use of Force by Police in Trinidad - Tobago: A Comparative Research Project*.
5. Philip Stenning, *Governance of Police Use of Force in Canada*.

Oral presentations were made by Eduardo Paes Machado on the police in Salvador, Brazil; Felipe Villavicencio on the Lima police; and P.A.J. Waddington on the British police. Each researcher offered to provide a written version of their presentation following the meeting.

Birkbeck's paper underlined the importance of studying justifications for the use of force by the police. While the use of force is part of the inventory of governmental behavior, only certain uses of force are acceptable. Given that complaints regarding excessive use of force provoke the formulation of accounts regarding the use of force, it is important to analyze the content of those accounts in order to identify the justifications they employ. Birkbeck suggested three types, or models, of justification that focus on civilian behavior, the type of force used, or the goals in using force. According to these models, force is respectively understood as retribution, physical control, or enforcement.

Gabaldón focused on the importance of encounters between police and civilians, and on normative, legal and extralegal justifications for the use of force, especially the latter as a more efficient and less costly approach to defining and defending the use of force. The problem of legitimation is one of discourse about why, against whom and under what circumstances force was used. Variables that may be present in such discourse include the visibility of the encounter, the social audience, the characteristics of the civilian, and expectations and reinforcements in the police organization. Gabaldón emphasized that police practices can become normalized, and also pointed to the need to study the generality or specificity of procedural norms, levels of internal and external control of the police, and the degree of conformity with, or trust in, procedural guidelines for the use of force.

Gabaldón and Birkbeck also presented information on the Caracas police. Four municipal police forces coexist with a metropolitan police force, and they frequently come into conflict over territorial jurisdiction and legal responsibilities. Guidelines for the use of force are more detailed for the metropolitan police and relatively general for the municipal police. Gabaldón and Birkbeck also described the potential conflicts between written guidelines and tactical rules for the use of force, partly created by a sense of loyalty and solidarity that characterizes the police.

Deosaran described the situation in Trinidad-Tobago, where there are approximately 6,000 police officers serving 1,300,000 inhabitants. There has been a recent increase

in public concern over rising crime rates and police accountability for the use of force. He gave an overview of the rules governing the use of force, which allow for arrest when other means for compelling obedience to the law have failed. Force is authorized when making arrests, but only the minimum amount that is reasonably required; and also in cases of self defense. He described the types of forceful intervention that are typically cited in complaints against the police, and suggested a model for analysis, in which civilian behavior can be considered the stimulus, police goals an intervening variable, and the use of force the response to the encounter.

Stenning described the composition of the Canadian police, comprising 55,000 officers in 400 forces ranging from the federal through the regional, down to the municipal level. Three quarters of the officers are found in the four largest police forces in the country. He reviewed the constitutional provisions regarding the use of force, which include the duty to preserve life, liberty, safety, and freedom of expression, while allowing for judicial compensation for the violation of these individual rights. At the federal level, the norms emphasize the reasonable use of force in police interventions; while at the provincial and municipal levels, the rules are increasingly detailed, but always congruent with those at higher levels. Stenning pointed out that the police use non-physical forms of coercion, such as verbal threats, harassment and humiliation. Use of deadly force is rare in Canadian police work, and the problem of force use arises in two forms: police brutality, when life or physical safety are threatened during encounters with civilians, and where individual officers tend to be blamed; and the use of excessive force in controlling protests and demonstrations, which tends to be seen as the strategic violation of civil rights propagated by the police organization. He concluded that rules for the use of force do not seem to be the fundamental concern, rather the issues of training, and of the development of technological alternatives to deadly weapons.

Paes Machado began with a reflection on the cultural significance and evaluation of the police function in different countries, pointing out that while in the United States officers killed in the line of duty are treated as fallen heroes, in Brazil their deaths are included on the crime page, and sometimes not even given much publicity within the police organization. In Brazil, there is a Federal police force, overseen by the Ministry of the Interior and primarily responsible for customs, contraband and drug trafficking. In each state, and overseen by the Secretary of State, one finds a Military Police, that is responsible for public order, and a Civilian Police that undertakes criminal investigation. In Bahia State, the Military Police has 29,000 officers, 9,000 of them in the capital of Salvador; the Civilian Police has 4,000 officers. The Military Police organization is characterized by strong internal tensions, together with high levels of stress in the lower ranks originating from the strict, ritualistic, hierarchical environment. In contrast, the Civilian Police have high levels of corruption, great informality and low salaries, that lead to a tendency to participate in the crime they are supposed to control. In 1997, police were responsible for 20% of all homicides registered in Salvador. Rules for the use of force are general and ambiguous, leaving an ample margin for "creativity" or innovation. External controls of the police are virtually nonexistent.

Villavicencio reported that the forerunner of the Peruvian police was the Civil Guard, founded in 1887. The country's police forces were unified as the Peruvian National Police in 1993. The National Police Law of 1999 incorporated novel police functions, such as the protection of women, airport security, and border control. Opinion survey results from 1997 indicate that citizens' principal concerns were with alcoholism, street robberies, drug use and street violence. The National Police Law incorporated the United Nations Code of Conduct for Law Enforcement Personnel, and its norms on the use of force. Access to information on police abuses is easier through the

Ombudsman than through the police itself. Extrajudicial executions are not a problem in Peru, and torture is minimal, but there are cases of arbitrary arrest and deaths arising from police negligence, together with physical mistreatment. The Administrative Code of Police Sanctions, enacted in 2000, has extended police powers to apply sanctions to civilians for minor offenses such as urinating in public.

Waddington reported that there are 130,000 police officers in the United Kingdom, belonging to 48 police departments, with an average ratio of one officer per 500 inhabitants. There are a similar number of civilian personnel. The police do not usually carry firearms, unless expressly authorized to do so. The use of force is defined as a matter of fact, rather than law: force is authorized, according to the Criminal Law Act of 1967, for a lawful purpose. The Police and Criminal Evidence Act allows the use of force when taking fingerprints or conducting searches. Each time an officer uses force, a form must be filled out and the case is reviewed to see if rules were complied with. When lethal force is used, a criminal investigation is undertaken, and the officer must show that the force was used in legitimate circumstances. An independent authority, appointed by the government, receives all complaints against the police and uses officers, from a different police department, to investigate each. Although police behavior has improved in recent years, it appears that the number of complaints against the police has also increased, which presumably reflects the growing activities of advocacy groups and increased concerns about police violations of the rights of minorities.

4. Discussion of Ideas Leading to a Comparative Research Project

The second and third days of the meeting were devoted to the discussion of research objectives and methodology. The presentations that were heard during the first day led to a number of preliminary conclusions:

- a) Police in different countries show different levels of use of force in their encounters with civilians, and there are also distinct levels of reaction to the use of force, varying in relation to the types of encounter in which force is used and the type of force used.
- b) Technology and predictability in the resolution of the encounter appear to be important variables. Countries with more resources can invest more in the creation of “social capital” for the police, both in terms of working conditions and the provision of equipment for intervention in critical situations.
- c) The norms governing behavior appear to be general and quite similar in different contexts, which indicates that they cannot explain different levels and types of use of force across jurisdictions. There are also extralegal variables, relating to encounters with civilians, and the justifications or legitimations for the use of force, that can help to explain police behavior. Thus, the discourses justifying the use of force are relevant to an understanding of the actual use of force.

In relation to the discourses justifying the use of force, Waddington suggested that there is a dichotomy: legal justifications tend to be framed within the context of accountability, while moral justifications tend to emphasize just deserts. There could be other discourses, that emphasize other themes, and that vary across jurisdictions. Police officers may develop internal and informal criteria for the use of force that do not necessarily correspond with formal guidelines. Waddington suggested that one can get at police discourse through the media, through the declarations of advocacy groups, and by interacting with police officers. If one designs a methodology based on questions, these should not be highly structured, so as to avoid inducing socially desirable responses. It would be interesting to set up some typical encounters as scenarios in which the use of force represents a moral dilemma; once again trying to avoid simple or extreme situations that would leave little room for variability in reactions

to them. He thought that focus groups would offer a good possibility for exploring justifications regarding the use of force.

In relation to the research agenda, Stenning commented on the importance of studying the circumstances surrounding the use of force, and the frequency with which force is used, although these topics present a considerable challenge for researchers. A more modest, but plausible, objective relates to the explanations and justifications given for the use of force. It is important to assess how far rules and guidelines for the use of force incorporate fundamental principles of human rights. It would also be interesting to design some hypothetical scenarios describing encounters between police and civilians that would allow one to explore – with police officers, citizens, judges, lawyers, and other criminal justice professionals – the principles that guide the use of force. This information would then allow, in a subsequent phase, a more direct exploration of the use of force. It is also important to study policies governing the availability of weapons, training and mechanisms for establishing accountability. Stenning warned of the difficulties of using very general or abstract scenarios, given that respondents tend to judge those situations more harshly than specific, detailed, cases. He thought that research combining a discussion of the general principles underlying the use of force by the police, together with a discussion of several cases, would be a good way to approach the topic. Focus groups should include human rights advocates and others who are critical of the system, because these people are especially likely to question typical justifications for the use of force. One should also distinguish between an officer's personal account justifying the use of force, and the account that the officer thinks is most likely to be morally acceptable. When using hypothetical encounters in focus groups, one can also add further situational detail as the discussion progresses and examine subjects' corresponding reactions.

Villavicencio pointed out that policing means different things in different cultures and this fact should be the starting point for the research. He commented that legal guidelines for the use of force are very general, and that one should study the use of force in different situations. He recommended the study of "paradigmatic" situations, that is, encounters that are common, repeated and relevant. Complaints about the use of force, and victims' accounts of what happened can be very important when reconstructing cases in which force was used. There is little systematic official investigation beyond a forensic report, and there is no exploration on the meaning of the use of force. It would be important to study the criteria held by police inspectors, judges and prosecutors on the sanctions that would be applicable to officers who have used excessive or unjustified force. This study could help improve police training and also be of use to public defenders, when they take on cases of alleged police abuse. Although the reconstruction of actual cases looks to be the most interesting, that could be a costly and difficult task. However, useful information could be obtained from the Ombudsman and directly from victims. In Peru, paradigmatic cases would be: the use of force while making an arrest, the use of force against persons in custody, and the control of public protests.

Paes Machado pointed out that there is an alternative framework to the formal rules governing police behavior, and that this framework can express functions that are latent or implicit in police behavior, and which are more interesting than the explicit rules. One must explore the moral and psychic dimensions of the use of force, which helps to distinguish between cultures: in Latin America the physical dimension of force is blended with its moral and psychic dimensions, whereas in other cultures those dimensions tend to be more separate. One must also incorporate change into any perspective on the police. One must understand the rationalization and normalization of force within the police culture. Paes suggested preparing basic guidelines and indicators that would allow the local development of this comparative project. We need to avoid giving a superficial account of the police use of force, that largely omits local

detail and thereby gives a very simplified view of the complexities involved in policing. He suggested studying specific cases involving the use of force, even when they had not led to formal inquiries. Apparently trivial cases can provide much interesting information. It is necessary to explore and classify a range of behaviors before proceeding to construct hypothetical scenarios of police intervention. He insisted on the pendulum-like character of the Latin American police, who are not always present when needed. He was doubtful about the utility of moral dilemmas to explore justifications for the use of force, because they would imply the need to choose between possibilities, whereas normalization presupposes the acceptance of certain behaviors without engaging in moral judgement.

Birkbeck commented that direct observation of the police at work might be difficult, and it might not be easy to locate reliable sources of information. He suggested dividing the research project into two phases. The first would entail a description of the norms, guidelines and rules for police conduct; while the second would explore the justifications given for the use of force, using a standard minimum methodology that would allow the comparison of results across jurisdictions.

Hidalgo commented that society, or some of its members, can routinely oppose the police, and that the institution can be seen as an unacceptable means for ensuring order. That implies the existence of varied criteria for justifying the use of force.

Zambrano suggested the importance of clearly defining excessive force, given that police officers have the legal power to use force. The important thing is to identify situations or episodes in which force may be used. Thus, it would seem best to concentrate attention on the levels of force being used, rather than on the authority to use force.

Monsalve pointed out the need to create a relation of trust with police personnel in order to reconstruct cases, especially through participant observation. She also suggested that in the construction of accounts of the use of force, police legal advisers are an important group to consult, because they provide legal assistance to officers involved in complaints about the use of force.

Ricciardiello proposed an intermediate strategy between the use of scenarios and accounts. The justification for the use of force is expressed through an account, that incorporates elements relating to what went on in the encounter. In contrast, the scenario might represent a formal and closed description of what takes place.

Gabaldón suggested that the research topic be defined as the justifications for the use of force, with the specific objective of exploring the criteria adopted for the use of force, including levels of force. Stenning added that the two main questions might be: a) Under what circumstances is the use of deadly force by the police justified, and why? b) Under what circumstances is the use of other types of force authorized?

Participants also began a discussion of scenarios or encounters between police and citizens that could be common to different countries, and that could therefore be used in a comparative study on justifications for the use of force. However, this discussion did not produce firm conclusions and was postponed to a later date.

5. Conclusions and Recommendations

The discussion during the meeting revealed the interest, complexity and difficulty of designing a comparative cross-national research project in such a short time. However, the exchanges also underlined the importance and relevance of regional and

cultural differences to an understanding of this topic. The meeting participants unanimously agreed to:

A) Undertake a first stage of the research project, that involves the collection and presentation of information on each country in a book that would be published within four or five months. The topics to be addressed for each country are:

- 1) The organization of the police, including a detailed description of the police departments to be included in the comparative project.
- 2) A description of the cultural context within which the police operate, and its implications for police community relations. This would also include discussion of the police's social capital.
- 3) The extent, content and principles of training for the use of force by the police, including the availability of any technical manuals.
- 4) Formal mechanisms of accountability for the use of force.
- 5) Citizens' concerns about the use of force by the police, including reactions to cases and proposals for reform.

Each chapter in this book could be in the author's working language, in order to facilitate preparation. The book will be published by the United Nations Development Project as the proceedings of the meeting.

B) Undertake a second stage of the project, in which plans would be finalized for fieldwork to be conducted in each country on justifications for the use of force. The aim is to design and agree on a standard methodology and minimum schedule of data collection, in order to facilitate cross-national comparison. Professor Philip Stenning has offered to seek support from the Canadian government for a meeting to be held in Toronto between August and October 2001 at which the research objectives and methodology would be finalized.

C) Hold a meeting to evaluate the results of the fieldwork, probably in Trinidad at some point during 2002.

The participants all agreed that the meeting in Mérida was very productive, characterized as it was by a rich and free flowing exchange across cultures. Similarly, they all felt that research on use of force by the police is both timely and pertinent, and can contribute to a better understanding of criminal justice and human rights issues.

Mérida, Caracas, March 22, 2001