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Chapter 4

Police, Technique, and Ellulian Critique: Evaluating Just Policing

Andy Alexis-Baker

SINCE THE ATTACKS ON the World Trade Center and the Pentagon on September 11, 2001, many pacifist-minded Christians have begun to explore differences between policing and warfare with the noble hope of limiting or even abolishing war as we know it. For example, Catholic theologian Gerald Schlabach has developed a theory he calls "just policing." Schlabach argues that the differences between policing and war are significant enough to merit a wholesale realignment of just war and pacifist thinking. Rather than justify war according to abstract criteria, just policing would draw upon international law to pursue suspected criminals, which should limit civilian casualties and the demonizing of individuals and groups.[1] If just war theorists would honestly explore these distinctions, they might recognize that policing is more appropriate to Christian duty than war. If pacifists would "support, participate, or at least not object to operations with recourse to limited but potentially lethal force," then a *rapprochement* might occur between just war theorists and pacifists through policing.[2]

In *God's Politics*, Jim Wallis claims that since 9/11 many Christians have re-read Jacques Ellul, "who explained his decision to support the resistance movement against Nazism by appealing to the 'necessity of violence'

1. Schlabach, *Just Policing, Not War*, 4.
2. Ibid., 3.

but wasn't willing to call such recourse 'Christian.'"[3] Similarly, Christian pacifists might respond to terrorism, Wallis claimed, by advocating that the international community create a global police force to deal with violations of international law and human rights.[4] Such a force, Wallis wrote, is "much more constrained, controlled, and circumscribed by the rule of law than is the violence of war, which knows few real boundaries."[5]

Wallis' suggestion that Ellul's works may help to formulate a response to terrorism, and that such a response ought to be "policing" raises the question of what an Ellulian analysis of policing might look like. Ellul was after all an anarchist and viewed the police as a manifestation of *technique*. In fact, his most famous text, *The Technological Society*, uses the police as an example of *technique* over thirty times. In what follows, I will use Ellul—rather than summarize his views—to critique just policing. Those who advocate for just policing have not adequately tested whether police are less violent because of the rule of law, nor have they generally considered the possibility that policing may in fact sustain or even worsen violence, not lessen it.

The Importance of History

At the outset of his book *The Technological Society*, Ellul decries the scholarly tendency to reduce *technique* to machines, stating that this "is an example of the habit of intellectuals of regarding forms of the present as identical with that of the past."[6] But the caveman's tool differs qualitatively from modern technology. This same bad habit applies to current reflections on police. Police have not always existed; they are a modern invention.

Greco-Roman cities did not employ officials to prevent or detect common criminal activity; citizens themselves performed these tasks.[7] Athenian law centered on private prosecution, which meant that the victim or the victim's family prosecuted the perpetrator in Athenian courts. For public crime like stealing city property, any citizen could prosecute and

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3. Wallis, *God's Politics*, 166.

4. Ibid., 164–67.

5. Ibid., 166.

6. Ellul, *Technological Society*, 3.

7 For more on law enforcement in ancient Athens and Rome see Cohen, *Law, Violence, and Community in Classical Athens* and Nippel, *Public Order in Ancient Rome*.

would do the necessary detective work and witness solicitation.[8] Athenians usually settled disputes through negotiation, mediation, and arbitration with minimal formal structures or authorities and stressed keeping peace over placing blame. To Athenians, democracy meant "consensus rather than coercion, participation rather than delegation. At the judicial level, the principle of voluntary prosecution . . . was fundamental."[9] Far from pandemonium, the Athenian system worked well. A state police would have been unthinkable.

Roman society worked in a similar way. If a person witnessed a crime, they cried out for those nearby to help capture the perpetrator and aid the victim. The Roman military never involved itself in such acts unless a riot or rebellion was about to ensue that would disrupt the flow of goods to Rome. Classicist Wilfried Nippel claims, "We do not even know to what degree (if at all) the Roman authorities undertook prosecution of murder."[10]

This informal "hue and cry" system prevailed through the Middle Ages as see in Chaucer's "Nun's Priest's Tale." As Chaucer described it, the hue and cry involved shouting to draw attention to a crime. Those nearby gathered to witness, to help, to investigate and even to right the wrong. They might form a *posse comitatis*, led by the shire reeve (later called "sheriff") who was an estate manager, to hunt for a fleeing felon. The entire process was a community activity, not the responsibility of a professional police. This description is confirmed in legal codes throughout Europe. For instance, the municipal code of Cuenca, Spain, published around 1190 CE, describes city employees such as judges, an inspector of market weights, a bailiff to guard incarcerated individuals, a town crier and guards for agriculture. But the code does not mention any officials to detect or prevent crime. At most, medieval cities had night watchmen, who were not police but firemen who might also warn of other dangers.

The American colonies used the hue and cry and night watch system, memorialized in Paul Revere's night-time warning, "The British are coming!" The English-speaking world developed professionalized preventative policing during the nineteenth century. In America, these police forces evolved along two paths. Southern police forces evolved from state-mandated slave patrols, which monitored every aspect of slave life to prevent revolts. These armed patrols morphed into southern police forces before

8. Hunter, *Policing Athens,* 125.

9. Ibid., 188.

10. Nippel, *Public Order in Ancient Rome*, 2.

and after the Civil War. Despite occasional white protests, the police carried firearms because, they claimed, the shadowy fear of slave revolts and the mythical physical prowess of a revolting slave necessitated well-armed police.[11] Most southern police departments, however, formed postbellum, simply taking over slave patrol disciplinary methods and applying them to the newly freed back populations through arrests on disorderly conduct, public intoxication, loitering, larceny and prostitution. Born in 1868, American historian and social activist W.E.B. DuBois later said,

> The police system of the South was originally designed to keep track of all Negroes, not simply of criminals; and when the Negroes were freed and the whole South was convinced of the impossibility of free Negro labor, the first and almost universal device was to use the courts as a means of reenslaving the blacks. It was not then a question of crime, but rather one of color, that settled a man's conviction on almost any charge. Thus Negroes came to look upon courts as instruments of injustice and oppression, and upon those convicted in them as martyrs and victims.[12]

In the North, police departments emerged in the nineteenth century to suppress the "dangerous class." In city after city police departments combated working class vices such as drinking and vagrancy, not violent crime. For instance, from 1873 to 1915 police superintendents in Buffalo, New York consistently requested increased funding to hire more police, citing as a reason not a rise in violent crime, but labor strikes.[13] Arrest records confirm this focus. The 1894 records from Buffalo—then a city of 300,000—show that police arrested 6,824 people for drunkenness, 4,014 for disorderly conduct, 4,764 for vagrancy, and 1,116 for being tramps.[14] Yet they arrested only 98 people for felonious violence (murder, robbery and rape).[15] The superintendents—invariably tied to big businesses—used "public order" arrests alongside more violent methods to break strikes and control unions.

Besides maintaining class order, northern police also helped consolidate political power. The police controlled elections by promoting turnout, monitoring voting stations, and harassing electoral opposition to the current administration since new regimes usually replaced existing police with

11. See Wagner, *Disturbing the Peace*.

12. Du Bois, *Souls of Black Folk,* 145.

13. Harring, *The Buffalo Police*, 43.

14. Ibid., 201.

15. Ibid., 192.

loyalists. This happened following elections in Los Angeles (1889), Kansas City (1895), Chicago (1897), and Baltimore (1897).[16]

Understanding this history of policing is important. Do the police represent a natural desire for security that is central to all societies, dismissals of which reveal a profound naiveté? Or is modern policing a form of Ellulian *technique* that represents, according to Ellul, a profound shift in western history? My contention is that instead of promoting the common good or protecting the weak, police have historically promoted particular interests, siding with their employers and with dominant racial and economic groups. Police *technique* is applicable to many areas, as Ellul claimed. The police did not result from inevitable historical forces but from calculated moves to maintain social stratification that continue into the present.

The Rule of Law Is an Illusion

Besides mistakenly making the police into an ancient and natural institution, the notion that the rule of law restrains police violence unlike the military remains untested. For Ellul, the rule of law is a pure illusion: "We must unmask the ideological falsehoods of many powers, and especially we must show that the famous theory of the rule of law which lulls the democracies is a lie from beginning to end."[17] Taking this statement seriously, rule of law as it functions in just policing should be challenged at two levels. First, when the US military charges a soldier with a felony, such as abusing prisoners or killing civilians, 90 percent are convicted and most are incarcerated.[18] By comparison, in 2009 only 33 percent of American police officers charged were convicted—even if they killed unarmed, innocent people—and only 64 percent of those convicted were incarcerated.[19] These statistics contradict the assumption that the law moderates police behavior more so than that of the military.

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16. See Fogelson, *Big-City Police*.

17. Ellul, *Anarchy and Christianity*, 16.

18. According to the 2009 "Annual Report of the Code Committee on Military Justice" 1,098 soldiers across all military branches were charged with the equivalent of a serious felony under military law. Of those, 972 were convicted.

19. The statistics on police misconduct are created by a Non-Governmental Organization called The National Police Misconduct Statistics and Reporting Project and are "low-end estimates" based on news reports across the United States.

More fundamentally, however, policing advocates have missed that police operate as a sovereign power that stands above the law through their discretionary powers whereby they determine when, where, and upon whom they will implement law. This discretionary power conflicts with western democratic theory, which gives pride of place to the rule of law. John Locke, for example, argued that "settled and standing rules" should circumscribe discretionary authority; due process should prioritize individual rights over coercive police powers; and the rule of law should protect citizens from arbitrary arrest and ensure their fair treatment while in custody, for "wherever law ends," Locke proclaimed, "tyranny begins."[20] Locke prohibited discretion as tyrannical except in emergencies where "the safety of the people . . . could not bear a steady fixed route."[21] At that point the executive could "act according to discretion for the public good, without the prescription of the law, and sometimes even against it."[22] Locke thus pushed discretion—a decision outside the law—to the edge of government, denying its necessity in quotidian governance.

Echoing Locke, Jeffrey Reiman argues that "police discretion begins where the rule of law ends: police discretion is precisely the subjection of law to a human decision beyond the law."[23] Because police operate in "low visibility" conditions, the only people likely to know that the police officer decided not to invoke the law are the police officer and the suspect. Thus discretionary decisions are unreviewable and risk becoming arbitrary and prejudiced, particularly in cases of racial profiling, police brutality and class bias. In using discretion, police act as sovereigns in a state of emergency and can disregard law. Thus the assumption that police operate under the rule of law ignores routine discretion that transforms the police from an institution that enforces law, into a sovereign institution that can act without lawful authority and even against the law.[24] The police are thus an autonomous form of *technique*.

20. Locke, *Two Treatises of Government,* 189, 90; Bk 2, §202.

21. Ibid., 169; Bk 2, §56.

22. Ibid., 172; Bk 2, §60. For a discussion of Locke's notion of prerogative see Pasquale, "Locke on King's Prerogative," 198–208.

23. Reiman, "Is Police Discretion Justified in a Free Society?" 74.

24. In the fictional HBO series, *The Wire*, which is a hard-hitting critique of not only current American policing, but other institutions as well, one of the seasoned police officers named McNulty tells his fellow officer: "Let me let you in on a little secret. The patrolling officer on his beat is the one true dictatorship in America. We can lock a guy up on the humble, lock him up for real, or drink ourselves to death under the expressway

In states of emergencies, sovereigns suspend law and use their monopoly on violence most often in police actions both externally and internally. Internally, the Holocaust was a police action within a state of emergency that Hitler had declared soon after his rise to power. During the Holocaust, the police did not violate German law; the entire operation was legal.[25] These states of emergencies are not confined to totalitarian states. The United States, for instance, has experienced nearly uninterrupted states of emergencies since the 1800's, using them to suppress labor disputes, deport "communists," and to execute people in the Civil War. Police actions are characteristic of sovereign power in times of national emergency, and this power has often been of the most brutal kind. These powers have been routine and are not exceptional at all, as Ellul argues,

> But so long as it faces crisis or encounters obstacles, the state does what it considers necessary, and following the Nuremberg procedure it enacts special laws to justify action which in itself is pure violence. These are the "emergency laws," applicable while the "emergency" lasts. Every one of the so-called civilized countries knows this game.[26]

Community, Policing, and Order

With discretionary powers, police primarily maintain order rather than enforce law. But, Ellul would remind us:

> This order has nothing spontaneous in it. It is rather a patient accretion of a thousand details. And each of us derives a feeling of security from every one of the improvements which make this order more efficient and the future safer. Order receives our complete approval; even when we are hostile to the police, we are by a strange contradiction, partisans of order.[27]

and our side partners will cover us. No one, I mean no one, tells us how to waste our shift!"

25. Other scholars have also noted that the Holocaust was legal and a police action. See Berenbaum, "The Impact of the Holocaust on Contemporary Ethics," 256. Quoting a Nazi official Hannah Arendt wrote, "only the police 'possessed the experiences and the technical facilities to execute an evacuation of Jews *en masse* and to guarantee the supervision of the evacuees.' The 'Jewish State' was to have a police governor under the jurisdiction of Himmler." See Arendt, *Eichmann in Jerusalem*, 76.

26. Ellul, *Violence*, 86.

27. Ellul, *The Technological Society*, 103.

The trick for police is to make people "partisans of order," and since the police represent order itself, we must see the police as indispensable. This is how community policing theory works.

Community policing theorists have long recognized the distinction between law and order and therefore promote broader discretionary police power, not less. According to Joshua Cohen and Joel Rogers, "'Community policing' combines greater police/community cooperation with increased police discretion."[28] For them, procedural rules and laws inordinately restrict the police to observing an individual's legal rights over the community's well-being. Thus ostensibly minor issues such as panhandling, loitering, and vagrancy remain unchecked but grow into larger problems as they signal lack of communal welfare to criminally-prone outsiders who subsequently invade the neighborhood. Community policing argues that police should have discretionary power to "clean up" these initial "disorders" even if their actions are not "easily reconciled with any conception of due process or fair treatment" and would probably "not withstand a legal challenge."[29]

The underlying premise of community policing bifurcates and simplifies community into "orderly" people (the community) and "disorderly" people (outsiders). It strips some people of rights and constructs a simplified community whose sole problems tend to be deviant outsiders and those inside who neglect quality of life issues like "broken windows." The very word "community" connotes positive images, and masks the contested and complex nature of real communities. Furthermore, community policing deploys the word *against* some people and advocates that police be permitted to use any means necessary to rid a "community" of these "disorders." By putting cops back on the beat and giving them a seemingly friendly face in the creation and maintaining of white bourgeois order, police do exactly as Ellul describes them in *The Technological Society*. They appear to protect "good citizens," relieving the citizenry of any fear and by patrolling openly lose their secretive aura, and therefore are not felt to be oppressive. Thus most citizens do not seek to oppose or escape police *technique* because the police have removed any desire to escape. That is the ideal of *technique*: to make itself invisible and internalized in its object.[30]

But to do this it has to exclude some people from the notion of community. Anybody who might cause "orderly" people to feel uncomfortable

28. Cohen, *Urgent Times,* xv.
29. Wilson, "Broken Windows," 35, 31.
30. Ellul, *The Technological Society*, 413.

must be stripped of liberal rights and chased out. They do not have to be violent, but in the words of prominent community policing theorists merely "disorderly people. Not violent people, nor, necessarily, criminals, but disreputable or obstreperous or unpredictable people: panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed."[31] These are "broken windows" who if left unchecked will cause a spiral of crime and urban decay; indeed, they are the first signs of decay and must be eradicated with "zero tolerance" policies. This scapegoating mechanism has caused police to become much more violent toward these mere objects of police power.[32]

The Criminal Abstraction of the Technological Society

This scapegoating mechanism also reveals another problem in policing. From his experience working with gangs, Ellul argued that preventing youth from sliding into a life of violence "could not consist in adapting young people to society."[33] For Ellul, these youth were part of those "who do not conform to the level of efficiency society demands [and] are pushed aside."[34] Thus instead of helping them become professional bureaucrats, Ellul took "a stand against the technological society" and helped them become rightly "maladjusted" themselves. He saw that society's labeling of them as criminals and delinquents was simply part and parcel of the technological society.

More deeply, I think, the technological society must redefine such people as criminals and delinquents rather than enemies because criminality creates a permanent class of misfits to justify the state and its police. In just war thought—which, as a Christian pacifist, I am also against—enemies rightly construed have a political agenda that obligates the other side to treat them with a certain degree of equality and fairness. At war's end, people go home. And war ends eventually through some kind of negotiation. But once that enemy is redefined as criminal, terrorist, or delinquent, they are depoliticized. Instead of legitimate political claims, such people act out of insanity and hatred. One only needs to remember how those who planned the attacks on 9/11 were described and how no thought of

31. Wilson, "Broken Windows," 30.
32. Alexis-Baker, "Community, Policing and Violence," 104–5.
33. Ellul, *In Season, Out of Season*, 120.
34. Ibid., 129.

negotiation was countenanced to see that this re-labeling serves to create a permanent conflict and justify the state, including its police *technique*. The *technique* becomes much further entrenched and the violence more intractable with this shift in identity.

International War in Police Garb

A global police force will only quicken the march of the technological society and is really only a technical solution to technological problems. Ellul himself saw modern policing as a *technique* designed "to put . . . useless consumers to work."[35] Techniques intertwine into a system so that a *technique* applies across disciplines. So policing naturally carries over into economics. When the emerging capitalist system called for more laborers, the police were created to put non-producers to work, outlawing loitering, gathering firewood and other necessities from the commons, all of which made it harder for non-producers to stay outside the emerging economic order. Thus *technique* expands. The police are no exception. It seems naïve to suggest that the police would not expand into economic *techniques*, for example, on the international order. What would a broken window look like on the international scene? Who are the "panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed" that are the human embodiments of broken windows when one's community is the whole world? If international broken windows must be addressed so that they do not invite a spiral of unrest and violence, who is to notice and fix these windows? In community policing theory it is an outside police force that aggressively drives out undesirable elements, often violating their rights in the name of community. It seems unfathomable that an international police force would not be used to expand global capital markets.

Looking Outside the System

As one example of a non-technical way of thinking about security we might look to the Paez tribe in Colombia, 100,000 people strong, who have completely disarmed their indigenous guard. This guard is not a professional force, but is made up of all volunteers and includes over 7,000 men, women and youth. They carry a three foot long baton decorated with various colors

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35. Ellul, *The Technological Society*, 111.

as a symbol of their authority, not as a weapon. When there is encroachment on their territory they communicate via radios and many of them gather together to confront the intrusion and try to persuade them to leave (a hue and cry). This does not mean that such a decentralized, democratic, and nonviolent practice is always effective in warding off outside aggression: currently the tribe is facing increased pressure from both the government and the Revolutionary Armed Forces of Colombia (FARC) rebels with encroachment from both sides. However at times they have been able to persuade the rebels to back off and to release hostages. They provide security at great personal risk to themselves and their communities. This is not really "policing," in the normal sense of this word, but a communal practice of care and concern for communal well-being through resolving conflicts nonviolently.

Conclusion

Just policing advocates distinguish between war and policing in such a way that policing must necessarily be less violent than war. They have historically maintained social stratification and expanded into new areas to justify their existence and operate not under the rule of law, but under the assumption that they should create order, a subjective concept that looks different to a radical anarchist than to a police officer. I have tried to demonstrate the flaws in this argument. In the end, Ellul's statement on these distinctions holds true:

> We hardly need to point out how simple-minded the distinction made by one of our philosophers is between "police" (internal), which would be legitimate as a means of constraint, and an "army," which would be on the order of force. In the realm of politics these two elements are identical.[36]

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36. Ellul, *The Political Illusion*, 74–75.

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