

## **The right to unionise, the right to bargain and the right to democratic policing**

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This chapter explores the importance of police unions in the quest for democratic policing. We argue that if we are to expect police to behave ‘democratically’, it is important for police themselves to experience democratic engagement within the organisations in which they work. In the literature democratic policing is often discussed with reference to accountability structures and processes; civilianisation; policing outcomes and performance measurement; and community participation and partnerships. However, there is almost no mention of the labour and social rights of police employees.

We argue that if police are expected to defend democracy, they should not be denied basic democratic rights such as the right to collective bargaining and the right to freedom of association. Through being part of collective representative organisations, police may begin to appreciate the significance of freedom of association. Through engaging in collective bargaining processes, police may acknowledge the rights of social groupings to engage in collective action. Yet, despite the link between organisational police democracy (the democratic internal workings of these organisations) and societal democracy (where citizens are able to participate in decision making processes and where basic human rights are protected), the social

and labour rights of the police are often constrained by regional, national and international regulatory frameworks.

Like other trade unions, police unions can be narrowly self-interested, focussing their energies on workplace improvement and status enhancement. Unions also have the tendency, as Robert Michels cautioned almost a century ago, to become highly bureaucratized, resulting in rank-and-file union members ‘inevitably be[ing] controlled by a tiny minority ... [and] thwart[ing] democratic aspirations within trade union structures’ (Burgmann and Burgmann 1998: 63). These tendencies may seriously inhibit the democratic potential of the trade union movement, but should not be cause for pessimism. As Alvin Gouldner has observed (cited in Burgmann and Burgmann 1998:63), an ‘iron law of democracy’ operates as effectively as Michels’ ‘iron law of oligarchy’. As the authors note:

Trade unions are among the most democratic organisations in our society, certainly more democratic in general than corporations, parliamentary parties and governments (Burgmann and Burgmann 1998: 63)

Indeed, trade unions (including police unions) have, over time and across continents, demonstrated a real concern with democratic rights and with social justice agendas.

There are a number of instances where unions are ‘broadcasting agendas for social change’ and aligning themselves with social movements for racial justice, gender equality and urban change (Johnston 2000:139-140; Robinson 2000). In many cases

these unions are building on hitherto obscured but ‘strong histor[ies] of democratic and militant unionism and intelligent and progressive union leadership’ (Wooding et al 1997:126). A case in point is the Police and Prisons Civil Rights Union (POPCRU) in South Africa. Based on this case as well as data about police unions in Europe and in America, we contend that police unions potentially constitute a real vehicle for the promotion of democratic policing. For this potential to be reached, however, police unions need to identify with broader labour movement trends toward community unionism. This form of unionism promotes strong alliances with social justice groupings as a means for building union profiles and influence and for achieving positive public interest agendas (Tattersall 2004). This networking may also play a role in preventing police unions from oligarchical tendencies because leaders will have to look outwards in setting their agendas and in doing so call upon the active support of their members.

This paper takes a normative approach. It incorporates existing knowledge about police unions while constructing future paths that we believe police unions could and should take. Normative judgements tell us what ought to be the case (Mayhew 2000). These judgements are generally based on hypothetical directives, using empirical data, where possible, to ‘throw a flood of light on the discovery of norms and obligations’ (Walhout 1957: 48). The premise of the normative approach taken in this paper is: Democracy is built through active participation of citizens in decisions that affect their lives and through ‘opposition to entrenched patterns of unjustified inequality’ (Skllansy 2005b:1808). Police officers are most likely to cherish the rules and ideals of democracy if the organisation in which they work promotes internal

political participation at both the individual and collective level and if police representative organisations engage with social justice issues.

### **Global trends in trade unionism**

Trade unions can be thought of as, to borrow a term from Tom Nairn (1997), 'janus faced' organisations. They have both the potential to advance social justice agendas but also to be narrowly concerned with their own vested interests (Hyman 2000; Prasad and Snel 2004). In recent decades, trade unions have displayed their vested interest face more often than they have revealed their social justice features (Levi 2003; Hyman 2000). Bureaucratic conservatism has shaped much of the direction taken by the trade union movement in recent years. The challenge for the trade union movement in the 21<sup>st</sup> century is for unions to overcome this conservatism and to reinvigorate and 'redefine their role as a sword of justice' (Hyman 2000:1). Change is necessary for two reasons. First, engaging in more social justice issues provides unions with an opportunity for much needed revival. Second, through being involved in social justice issues, trade unions will increase their capacity to mobilise a broad range of civil society actors in pursuit of their public interest agendas. Some scholars suggest that the trade union movement offers a social democratic alternative to global neo-liberalism (Lambert 2000; Adler and Webster 2000). But to be able to achieve these objectives, trade unions must:

...be part of a major social movement in which organised labour plays a crucial role while acting as a reciprocal participant in a larger network of social activists. An increasing number of unions – although still too few – are

democratising internally, engaging in issues of economic and social justice for others as well as themselves... (Levi 2003:60).

How unions identify themselves, what agendas they decide to promote and who they forge alliances with are all contingent on a number of factors. These include the political opportunity structure at the local, national and global level; the characteristics of union members and supporters; the extent to which unions are viewed as valuable within networks of influence; the vision of union leaders; and, importantly for this paper, the frameworks of international regulatory organisations such as the International Labour Organisation (ILO).

Trade unions have been central to democratic transitions in the Pacific region, Asia and in Southern Africa. In these regions, trade unions were forced to respond to multiple challenges resulting from interlinked economic and political crises. Political instability compelled trade unions to 'focus their attention on broader issues related to democracy and human rights' (Prasad and Snel 2004:268; see also von Holdt 2002; Lambert 2000; Mushin 2005).

Trade unions are not only important proponents of social justice in regions of the world struggling to create democratic institutions and practices. Even in established democracies, trade unions retain a democratic impetus (for example see Burgmann and Burgmann 1998). Waterman suggests that:

While examples of autocratically run and bureaucratic trade unions, some well known, exist in many countries, it remains true, nonetheless, that the trade union movement as a whole is by far and away the most democratic institution in every society and certainly the only major democratic international movement worldwide (2004:5).

Waterman also acknowledges the oligarchical tendencies within trade unions. However, he maintains that the large membership base of trade unions (from subordinated groupings) and the geographic reach they have, provides them with the *potential* to deepen and broaden support for democratic principles. Trade unions are, moreover, often the only mass democratic organisations in a given society capable of organising large numbers of citizen groupings across the boundaries of nation states.

Trade union scholars are also beginning to consider ways that trade unions can break out of their bureaucratic conservatism to implement new programmes within a broad social justice framework through (re)engaging more strategically and ideologically with community-based groupings. Unionists and scholars refer to ‘community unionism’ (Wills 2001; Tattersall 2004) to denote a form of trade unionism where unions develop new models of organising through reaching out to groupings with interests beyond the workplace. Johnston, writing of trade unions in the United States, talks about trade unions as moving towards ‘social movement unionism’ where the unions are prepared to build new alliances and employ more confrontational tactics in promoting gender justice, immigrant rights and urban social change (Johnston 2000:140). These trade unions are trying new strategies, building new coalitions and

rethinking their agendas. They are also mobilising and representing, ‘working people beyond the boundaries of the bargaining unit, in dealings not limited to employers and on issues not limited to the scope of recognition’ (Johnston 2000:142).

Governments are also starting to take stock of the important role that trade unions can play in governance networks. For example, in South Africa, the National Economic Development and Labour Council (NEDLAC) was established by the democratic government in 1995, ushering in a new era of inclusive decision-making and consensus-seeking in the economic arena. NEDLAC represents four constituencies – organised labour, government, business and the community. Its aim is to prevent unilateral decision-making. The social partners in NEDLAC have key roles to play in developing effective policies to promote urgently needed economic growth, increased participation in economic decision-making, and social equity on a sustained basis (NEDLAC: <http://www.nedlac.org.za/about/index.html>).

In Britain, following the election of the New Labour government in 1997, ‘trade unions have become increasingly important agents in local and regional development and governance’ (Pike et al 2004:103). Trade unions are now viewed as important stakeholders, shaping legislation and creating opportunities for trade unions to engage directly in local and regional development issues, to expand their own agendas beyond the shop floor, to build alliances with other local and regional organisations, and to challenge traditional ways of organising.

### **The spirit of police unions**

Police unions, much like other unions, can be both conservative and forward-looking in their outlook. They have also, overtime, demonstrated real oligarchic tendencies as their agendas have become increasingly conservative and as leaders have become entrenched within individual police unions.<sup>ii</sup> Perhaps more than any other union, police unions attract much controversy and evoke strong reactions from academics, police managers and the public. Goldstein best summarises the divergent responses to police unions:

Some see the unions as the natural enemies of change; as committed to protecting the hard earned gains reflected in the status quo. Others see the unions as a new and potentially dynamic force for positive change, especially as they press for more democratic police organisations (1979:312).

Police managers and supervisors view police unions as disruptive entities within highly disciplined organisations (Halpern 1974). Policing scholars condemn them as obdurate organisations (Fogelson 1977; O'Malley 2005). Politicians regard them anxiously as powerful interest groupings able to (improperly) influence public perceptions and voting patterns (Kadleck 2003; Barker and Carter 1994; Finnane 2002). Even those who ideologically support the police union movement as an avenue for worker participation within the police organisation, 'object to the often conservative content of their policy proposals' (Reiner 1978: 151). Police unions, like other trade unions, have taken on the character of 'business unionism' (Voss and Sherman 2000) where union representatives spend most of their time promoting

members' welfare and routinely supporting them in disciplinary hearings or in legal matters (Fleming and Marks 2004; Swanton 1982).

Some however, recognise police unions as important social agencies with the capacity to positively influence policing trends (Sklansky 2005; O'Malley 2005; Fleming, Marks and Wood 2006). Police stakeholder groups in Canada have come to realise that, 'if police managers foster respectful and collaborative relations with police unions/associations, there will be less likelihood of labour conflict and less reason for the association/union to take extraordinary measures to present their issues' (Biro, Campbell, McKenna and Murray, 2000: 15). They recognise that police associations/unions may provide police managers with the only forum by which to communicate with police members and as a vehicle for gaining support for change processes. Police unions, in their view, can provide platforms for the formulation of policies oriented to greater professionalism and to improving partnerships with communities and other stakeholders. In addition, their involvement in decision making processes within police organisations has led to a weakening of 'management rights, powers and traditional autocratic authority' (Hewitt 1978: 218) thereby creating more participatory and democratic processes within police organisations (Fleming and Marks 2004).

The democratic challenge that police unions present within police organisations was recognised in the early 1970s by William Ker Muir. Muir (1977), through his study of Oakland police discovered that police are more likely to have a capacity for tolerance

and an affinity for deliberation and compromise if their workplaces embrace these values internally. For the most part, though, the democratic impetus of police unions is seldom recognised in the literature and yet there are a number of police unions that have taken the lead in promoting more just, equitable and effective policing.

Perhaps the best example of such a police union is the Police and Prisons Civil Rights Union in South Africa. POPCRU was formed in 1989 during a period of defiance on the part of the mass democratic movement against apartheid. POPCRU has consistently pushed management for more transparent and even-handed policing. POPCRU was launched when a group of black police officers in the Eastern Cape came together in defiance of brutal apartheid policing (Hopkins 2004). While POPCRU does practice business unionism, they have maintained a democratic policing agenda. At its 2004 General Conference a number of key resolutions were articulated that reflect POPCRU's concern with both the internal democratisation of the South African Police Service and with the furtherance of democratic policing within communities. In that forum, POPCRU resolved to allocate resources to speed up the transformation in the criminal justice system; to advance the equitable redistribution of police resources; to embark on a campaign to eradicate police corruption; to push for the targeting of women for leadership positions within the Police Service; to challenge the unilateral behaviour of police employers and managers and to campaign to narrow the wage gap between high ranking and rank-and-file police (POPCRU 2004).

In 1997, POPCRU affiliated to the progressive trade union federation in South Africa and has since engaged in campaigns aimed at 'defending the interests of communities against unpopular socio-economic policies' (Marks and Fleming 2004:5). POPCRU's commitment to democratic governance has been recognised by international human rights organisations. In August 2004 Shizue Tomoda, one of the ILO's technical specialists wrote a letter to POPCRU's President:

I am confident that under your leadership POPCRU will grow further and will be an important instrument in the promotion of truly democratic labour relations.<sup>iii</sup>

POPCRU is not the only police union pursuing democratic governance agendas. The European Confederation of Police (EUROCOP) is an association of police unions across Europe. It has 27 member organisations. Since January 2004, EUROCOP has been a participant in the Council of Europe. Through this participation, EUROCOP is able to directly approach government delegations to the Council of Europe. EUROCOP has a number of missions related to the development of European policing and is committed to, 'the promotion of fairness and equal opportunities in the police service, its own bodies and its member organisations' (EUROCOP 2004:3).

EUROCOP has supported police officers throughout Europe who wish to unionise. In February 2005, EUROCOP held a conference devoted to the policing of a unified Europe. The conference looked at the constructive role that police unions could play

in the planning of reform and transition processes within the police (EUROCCP, <http://www.europcp-polic.org/eents/eurocop/20050228-riga/20050228-riga.htm>).

EUROCCP, representing unionised police officers in Europe, has charted a democratic policing pathway. While EUROCCP was established in 2002, it draws on a long history of democratic police unionism. As Berkley reminds us, as early as the 1960s, ‘highly developed’ police unions in France, Sweden, Germany and the UK were demonstrating a progressive outlook. Berkley provides several examples of how police unionism facilitated the creation of the ‘democratic policeman’ (Berkley 1969:46-51)

In Australia too, police unions have shaped the reform agenda in very direct ways and initiated a number of important reviews of police organisations (Fleming and Marks 2004). These reviews have largely centred on resourcing and working conditions. However, some of the police unions have taken up broader reform agendas.

The New South Wales Police Association’s involvement in the Royal Wood Commission (established in 1994 to examine the existence or otherwise of entrenched police corruption in the New South Wales Police (Wood 1997)) and the subsequent reform agenda for example, has been much remarked on. They made extensive submissions supporting radical change, including integrity testing and greater external oversight (Fleming and Lewis 2002:92). The Northern Territory Police Association also played a central role in exposing that territory’s resource problem, particularly within remote Aboriginal areas. The Territory’s government publicly lauded their

contribution. The NTPA went further to advocate mechanisms for equalising the treatment of Aboriginal Community Policing Officers (Fleming, Marks and Wood 2006).

At the local level, there is evidence that police union members are reported to have closer links with community groupings than those police who are not unionised. Magenau and Hunt argue that police unionisation in the USA ‘has increased the political power of the rank and file, relative to other network partners’ (1996:1317). While they criticise police unions’ law enforcement agendas, their data confirms that union officers have better police-community relations than non-unionised police. This finding, they say, is consistent with other work on public sector unions that indicates that these unions identify with and promote public interest agendas. Rank-and-file behaviour is then more consistent with community preferences. This public interest agenda is also evident in the demands of police union members for governments to release the findings of public reports, even when these may reflect poorly on the police organisation (*Portland Press Herald* 10/10/05).

### **Police unions, collective bargaining and democratic policing**

In a recent handbook for assessing police performance in democratising countries, Bruce and Neild insist that police must be treated as ‘citizens’ if we are to expect them to behave democratically toward other citizens. They effectively draw the link between the internal democratisation of police organisations and the external democratisation of police conduct. According to them, ‘the fact that police are citizens, means they are entitled to the rights, privileges and benefits of citizenship’

(2005:41). They argue that central to recognising the police as citizens is their right to decent conditions of service, the right to form employee representative organisations and to engage in collective bargaining (2005:43).

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As early as 1947 an Australian historian and civil libertarian, Brian Fitzpatrick, made a similar point. Fitzpatrick asserted that if police had full political rights – including the right to unionise – ‘it would be harder for them to be used in the service of political repression’. Fitzpatrick defended the rights of police to unionise as ‘consistent with the advancement of democracy and good governance’ (see Finnane, 2002:131-2). For Fitzpatrick, democratic police reform and more participatory police management practices are synonymous. Berkley writing in the 1960s concurs with Fitzpatrick:

... the trade union tends to make the policeman think of himself (*sic*) as a trade unionist, and thereby to identify with what is usually a pro-democratic, and somewhat left of center sector of democratic society. This is important, since policemen often experience a pull to the right. ... Thus, the trade union can act as a countervailing force which keeps the police in the mainstream of democratic society (Berkley 1969:46-47).

In the past three decades attempts have been made to shift toward more corporate and participatory management styles coinciding with ‘the emerging consensus around a service-based, consumerist-approach to policing’ (Reiner 1992:267). Police managers have come to recognise the value of rank-and-file participation. They now view police

members as entrepreneurs rather than employees (O'Malley 2005). Through more participatory management practices, police managers and supervisors are now required to promote, rather than restrict, creativity and problem solving approaches (Birzer 1996). The technologies (problem solving, negotiation, consultation, partnership building) are also seen as crucial to community policing agendas that have been adopted by the police across the world. Participatory management is aimed at direct forms of participation by *individual* police.<sup>iv</sup>

While community-oriented policing may call for more participatory styles of management, there are also intra-organisational rationales for introducing such management practices, especially during periods of organisational change. Like any work-based organisation, it is crucial to bring all members of the police organisation on board in times of transition. Change must make sense to those on the front-line. If this does not occur, rank-and-file police officers are likely to feel threatened by change (Goldstein 1990; van Heerden 1982; Washo 1984; Sykes 1986; Cowper 2004; Marks 2005).

Participatory management practices are not the only innovation required in police organisations for police to be responsive, creative and collaborative. The right to more indirect forms of participation are just as important if police are to feel that they are able to effectively engage in co-determination processes. It is through collective representation that police officers (like other employees) are empowered to influence and shape decision-making processes within police organisations – something that is extremely difficult to achieve as individuals given the hierarchical nature of police

organisations. It is through participating via collective representative organisations (like trade unions) that individual members are afforded the opportunity to be informed and heard, to be involved in co-determination processes and to negotiate important decisions that affect them individually and collectively (Peccei and Guest 2002).

This involvement is crucial. Police are more likely to respond toward the public in democratic and fair ways if they themselves experience the benefits of democratic labour and social rights in their own organisational lives (Berkley 1969:46-47). Put slightly differently, for police cultural knowledge about rights to be transformed and then reinforced, police themselves must be able to directly experience the benefits of newly awarded citizen rights so that shifts in cultural knowledge can occur.

But rights awareness is not the only democratic benefit of police unionisation. There are a number of other positive roles that police unions can play in furtherance of democratic policing. Police unions can 'serve as a necessary internal check against bureaucratic usurpation' (Gammage and Sacks 1972:102). Through their engagement, police unions pose a challenge to the culture, decision-making processes, and traditionally austere atmosphere of public police agencies (Guyot 1979; Burpo 1971). Through collective bargaining activity, police unions serve to restrict the unilateral decision-making on the part of police management (Levi 1978).

But, the unions should not be viewed as a thorn in the side of police managers or employers. Through (direct and indirect) participatory labour processes, employees are more likely to feel they have a positive stake in the policies, outcomes and

strategies of the organisation (O'Brien 1994; Berkley 1969: 46). For these reasons O'Malley has suggested that 'police unionism should perhaps be moved to the forefront of our analysis of contemporary transformations in policing' (2005:8).

### **Regulating police labour rights – national and international legislative frameworks**

#### *Nation states*

The legislative frameworks of sovereign nations largely determine the right of the police to unionise and to bargain collectively. These national frameworks are themselves dependent on a number of national dynamics including broad labour law legislation (at all levels of government), party political standpoints, social movement environments and the configuration of police organisations. Police unions are most likely to be present in countries where:

- freedom of association and collective bargaining rights are recognised
- liberal or progressive political ideologies dominate
- social movement organisations operate freely and civic engagement is encouraged, and
- hierarchical bureaucratic traditions within police organisations are challenged.

Where collective bargaining and freedom of association is proscribed, governments (and police management) argue that access to such rights will negatively impact on the operational efficiency of the police. In these countries, government and police

managers maintain that awarding police the rights to collective bargaining and freedom of association will diminish discipline and emasculate the chain of command (see below).

Police are denied the right to unionise and to bargain collectively in most African countries, many South American countries and in many Eastern European countries. The countries in which police are denied basic labour rights are usually emerging democracies, countries characterised as ‘weak states’, or countries with authoritarian governmental approaches. In recent years, police who have been denied the right to unionise and to bargain collectively have made attempts to challenge national prescriptions. In so doing, they have turned to police unions in nearby countries for assistance. Police in Lesotho, Zambia and Botswana, for example, have called upon the South African police union, POPCRU, to assist them in convincing police authorities and managers about the benefits of police unionisation (see Hopkins 2004). The Papua New Guinea Police Association has called upon the Police Federation of Australia to assist with capacity building and entrenching the rights of the police in that country. There are other organised forums of police officers who have looked toward international labour regulatory bodies, such as the ILO for assistance.

### ***The International Labour Organisation***

The ILO is a key international body and a specialised agency of the United Nations responsible for promoting international efforts to improve working conditions, living standards and equitable treatment of workers. One of the primary goals of the ILO is

to formulate international labour standards in the form of Conventions. A Convention defines standards and provides a model for nations to follow. The ILO provides best practice benchmarks and aspirational norms.

It is a common belief that the ILO has no legal authority to enforce its recommendations on governments that are found to have violated basic ILO conventions. That belief is not entirely correct. There is an article in the ILO constitution that permits the organisation to take whatever action it deems necessary to bring about compliance with its core standards<sup>v</sup>. However, it is a strong ILO custom to use moral suasion and the threat of weaker nations earning the disfavour of strong nations such as the United States or the European Union to persuade a government to reconsider its actions that are contradictory to basic international standards (Adams, 2006:1).

The central role of the ILO then is to bring pressure to bear on countries that do not comply with internationally accepted core labour standards (Biffi and Isaac 2002). The ILO is therefore a key player in the 'webs of influence' (Braithwaite and Drahos 2000) in the sphere of labour-management relations and employee rights. In the absence of an international authority like the ILO prepared to enforce specific labour standards, countries are free to pursue their own particular legislation and practices that may fall outside of international conventions.

In its official documentation the ILO states that freedom of association and the right to collective bargaining are basic employment rights and are crucial to building

democracy in any given country (ILO 2004). However, those police groupings that have turned to the ILO for assistance in acquiring these rights have been disappointed. Police groupings from Argentina who have been mobilising for labour rights are a good example of this.

In late 2003, two organised groupings of police members in Buenos Aires (Argentina) approached the ILO Body on Freedom of Association to review a decision by the Argentina government denying police members the right to unionise<sup>vi</sup>. The case emerged following attempts by the low-ranking Buenos Aires' police officers to form and register a police union (Obeid and Weisenberg 2003). These police officers argued that a police union would 'not only improve police working conditions, but would also help curb the "police mafia" and "trigger happy" officers who are responsible for hundreds of deaths each year' (Latinamericapress.org, <http://www.communitiesbychoice.org/printme.cfm?ID=1226&print=1>). The Buenos Aires police hierarchy responded by opposing unionisation and expelling 'agitators' from the police. Similar responses occurred in other provinces of Argentina. Police authorities argued that police union activities 'seriously affected discipline and responsibility for assignment of duties' (ILO Governing Body on Freedom of Association 2003a: 4).

The Government of Argentina, in making its case for the prohibition of police unions made reference to the ILO's core labour conventions. It argued that its decision was in accordance with ILO Convention No. 87, which deals with freedom of association, and Convention No. 98, which deals with the right to collective bargaining. Argentina

is a member State of the ILO and has ratified both Convention No. 87 and Convention No. 98. The Argentina Government argued in its defence that these two Conventions stipulate that relevant labour rights are not immediately applicable to the security forces. Instead, they pointed out, the ILO stipulates that national legislative frameworks should determine these labour rights, allowing for restrictions in the interests of national security or public order.

The Argentina government's reference to the ILO conventions was accurate. Conventions 87, 98, 151 and 154 do not automatically apply to the police and the military<sup>vii</sup>. Unsurprisingly, then, when the case was referred to the ILO, the Committee on Freedom of Association concluded in favour of the Argentine Government (ILO Governing Body on Freedom of Association 2003a: 6).

The determination by the ILO, and the fact that it buttressed the limitations stipulated by the Argentinean Government, is significant for two reasons. In the first instance, the exclusionary clauses, as they currently stand, lump together the police and the military. In so doing, they reinforce characterisations of police organisations as militarised and as operating primarily with state interests in mind. This is problematic given that global trends in policing indicate that for police to operate in ways that are democratic and community oriented, clear distinctions need to be made between the functions and identity of the police and the military (Waddington, 1999; della Porta and Reiter, 1999).

Second, in deferring authority to national states in regard to police labour rights, the ILO is inadvertently safeguarding the agendas of governments characterised by autocratic rule, corrupt practices and low levels of civic engagement. The market economy and domestic political manoeuvres have not facilitated improved police employee rights, particularly in places like Africa and Latin America. Indeed, relying on the quality of domestic institutions and policies may seriously curtail what police may view as their ‘citizen’ rights, in turn, negatively impacting on the capacity of police members to contribute to the democratisation of policing.

While an international network of police unions is attempting to persuade the ILO to review their Conventions as they pertain to police, such changes are unlikely in the near future. The ILO is not an independent entity. It is the collective sum of all the member states, which includes: representatives from trade unions, employers and government. Inherent within this body are all the shortcomings and inefficiencies found in such bodies – many of which are opposed to police unionisation. As Shizue Tomoda of the ILO points out:

As long as a large number of member states feel that it is proper for police labour rights to be regulated by national laws, the ILO Secretariat can do little to change the status quo.<sup>viii</sup>

The ILO does revise its conventions from time to time. However, this only takes place when member states are ready for such revisions, which is not the case at present in regard to extending police labour rights. In the absence of such revisions, the ILO

develops Codes of Practice. Such Codes of Practice promote, for example, social dialogue within the public service, including the public emergency services. In January 2003, the ILO held a Joint Meeting on Public Emergency Services and the meeting (which included police labour and management representatives) adopted a document entitled, 'Guidelines on social dialogue for public emergency services in a changing environment' in which fundamental labour rights such as freedom of association and the right to bargain collectively are promoted. While not legally binding, these guidelines do indicate a real attempt on the part of the ILO to engender a labour rights framework within this occupational sector (ILO 2003b).

A change in the ILO conventions would arguably provide a more robust reference point for those who promote police labour rights. But, even if the ILO were to amend its Conventions, the regulatory capacity of the organisation is limited (Elliot 2000). The ILO can only resort to dialogue, moral suasion and technical assistance in enforcing labour standards and conventions. In addition, most ILO members have not ratified most standards, leading many commentators to suggest that 'the minimum standards were often set too high by the original members of the Western European club' (Braithwaite and Drahos 2000:234). Many countries in the world still fail to comply with the basic conventions on freedom of association and the right to collective bargaining. Yet, the ILO conventions are used to justify exclusions from certain rights – a target for 'blame diversion', as we saw in the Argentina case.

As an international organisation, the ILO has significant influence in regards to facilitating normative orders and practices for workplaces in both the private and

public sector. Developing countries and countries whose governments prefer 'union free' environments<sup>ix</sup> may lack the institutional arrangements (and willingness) to develop and apply core labour standards on their own (Biffel and Isaacs, 2002). The ILO remains an important reference point for national governments in devising regulatory systems for police labour rights.

### **Police unions, the labour movement and community unionism**

But even if regulatory frameworks facilitated police unionisation, there is no guarantee that police unions would not succumb to the iron law of oligarchy – pursuing narrow conservative agendas and rejecting forward-thinking participative leadership. Much depends on whether these unions are willing to pursue the new trends within the trade union movement. This, to some extent, depends on whether police unions in the first instance identify with the broader trade union movement.

In many ways, police unions are best identified as industry-based organisations or trade unions, viewing their key role as representing the workplace interests of their members. They engage in collective bargaining and are prepared to employ confrontational tactics when consultative processes fail (Finnane, 2002; Fleming and Lafferty 2001). But the question remains: Are police like other workers? The answer to this would be both yes and no. On the one hand, as Reiner puts it, 'their condition and experience may incline them toward unionism' (1978:151). Indeed, police organisations have a comparative advantage with regard to police union potential. While technology has and continues to supplement some fields of policing, policing remains a labour intensive industry. Where police unions do exist, they represent

almost 100% of the members of the police organisation – a real achievement given the decline of trade union membership internationally (Fleming and Peetz 2005; Finnane 2002; Farber 2005 and Marks 2000).

On the other hand, police identities are profoundly shaped and reproduced through public symbols and icons that represent the constabulary as ‘central to the production and reproduction of order and security’ (Loader 1997: 3) and the reproduction of dominant interests (Hall et al 1978). There is, therefore, a tension between the police identifying with the broader labour movement and their being required to function as ‘reproducers of order’ (Ericson 1982; Fleming and Marks 2004).

The extent to which police unions identify and align themselves with the trade union movement is contingent on historical trajectories of the trade union movement, police union leadership, police sub-cultures, labour law legislation, police labour regulations and the types of networks that police unions are part of. Interviews with police union officials in Australia revealed a deep ambivalence in identifying with the labour movement. This ambivalence was derived from a preoccupation with police ‘professionalism’ and a conviction on the part of police union leaders that their social base is extremely ‘conservative’. Their preoccupation with organisational maintenance has resulted in a reluctance to generate internal discord by aligning with more far-reaching agendas than those that directly pertain to police workplace conditions (Fleming and Marks 2004).

The Police Federation of Australia has a formalised affiliation with the national trade

union federation. But many police unions view the premise of this relationship as strategic rather than ideological. While an alliance with the labour movement is seen as strategically advantageous, this does not dramatically shape the self-identity of the police unions. Australian police unions clearly indicated that they were unlikely to take up a range of the issues on the agenda of the broader labour movement, like, for example, gay rights issues or anti-war campaigns (Fleming and Marks 2004).

The ambivalence of Australian police union leaders is also evident in Canada. According to David Griffin, Chief Executive Officer of the Canadian Professional Police Association<sup>x</sup>, in the provinces of Nova Scotia, New Brunswick and Saskatchewan the police associations see themselves as unions and are part of the larger public sector union body. In Ontario (where police associations are prohibited from affiliating with any trade union) however, municipal police associations view themselves largely as professional bodies and tend not to align themselves with the interests of organised labour.<sup>xi</sup>

Police unions in some countries do align themselves with the broader trade union movement. In South Africa, for example, POPCRU is an affiliate of the national trade union federation (Marks 2000; Marks 2005). One of the resolutions taken by POPCRU at its 2004 national congress was ‘to constantly struggle to assert a working class and pro-poor perspective within the alliance’ (POPCRU 2004:16). In Brazil, the police union has on occasion publicly demonstrated solidarity with the labour movement. In 1997 the union joined forces with Landless Workers’ Movement and

the Workers' Council in a campaign in protest of the government's neo-liberal policies (*Weekly News Update on the Americas*: 1997).

It is difficult to generalise about police union identities and strategic alliances. But what can be said with certainty is that police are as concerned about working conditions and wages as any other employees (Reiner, 1978:5). Even if not for ideological reasons, police unions are likely to look toward the labour movement as a source of support for their campaigns and as a source of inspiration for their tactics. Strategically, then, police unions would be well advised to take stock of new trends in the union movement. Reciprocal relations between the labour movement and police unions may require police unions to adopt a stronger union-community approach in the future.

The current global socio-economic climate may compel police unions to associate more closely with other public sector unions. Public sector unions the world over are on the defensive with neo-liberal governance and the entrenching of the regulatory state (Braithwaite and Drahos, 2000). The increasing pluralisation of policing through privatisation, civilianisation and responsabilisation will lead to significant changes in public police organisations and may compromise police union membership rates. As police unions battle to assert (and protect) the primacy of the public police in the policing industry, they may well cast an eye to other public sector unions for solutions to these new governance arrangements.

As policing becomes more pluralized, police unions may be forced to mobilise support for the public police. They will increasingly have to join other public sector unions who have to ‘articulate their particular claims as legitimate public interests’ (Johnston 2000:150). Should they choose this path, the new discourse that police unions are likely to share with other public sector unions in their fight against new governance arrangements would centre on citizen rights to publicly accountable and ‘professional’ service delivery. Police unions would then have to demonstrate that the services the public police provide are more accountable, more equitable, more democratic and more ‘professional’ than those of private police and civic police groupings.

The future challenge of police unions will be to find a balance between responding to traditional industrial concerns (which will always be a primary focus) and promoting democratic policing and social justice agendas. One way to do this would be to consider the route of community unionism. This will mean showing both faces of police unions – their vested interest face and their social justice face. David Griffin of the Canadian Professional Police Association puts this challenge:

In order for 21<sup>st</sup> century police associations or unions to be effective, they must engage in strategic activities which position the organisation as an influential and respected stakeholder on issues concerning the safe and effective delivery of police services to their communities (2001:17).

The rights of the police as citizens to freely associate and to collectively bargain are likely to increasingly be intertwined with the rights of the broader citizenry.

### **Conclusion**

In the ensuing years the face of public police agencies will change dramatically. Contract employment and an emphasis on performance measurement will probably replace tenured employment. Civilians will continue to be employed in police organisations in non-operational functions. Female and minority group representation is likely to increase within police organisations. Police are likely to be better educated and more aware of their individual rights and more concerned with issues of equal treatment and even affirmative action (Grabosky 2001; Griffin 2001). Consequently, they may become even more demanding of police employers with regards to working conditions, wages, benefits and rights. The right to join police associations/unions and to engage in collective bargaining is likely to be viewed increasingly as a basic right of police members. However, the challenge for police unions is to align their rights with the democratic rights of those they police and to promote a police professionalism that is characterised by equitable, just and effective service delivery.

The last few decades have witnessed major reform movements within police organisations aimed at a more democratic police 'profession' (Marenin 2004). However, both within academic and police discourse democratic policing inevitably means 'making the police answerable to democracy, not bringing the benefits of democracy to police officers themselves' (Sklansky 2005:1). Of course, this is not surprising given that where police have acted 'undemocratically', there are concerns

that police should be 'reigned-in' and made more accountable. We do not disagree with the need for police to be held accountable for their behaviour both within police organisations and within the communities they serve. However, as we have suggested above, awarding police the rights of freedom of association and collective bargaining could facilitate the (further) democratisation of policing. After all, in those jurisdictions where police have been allowed to organise and bargain collectively, civil disorder has not broken out. Through being able to freely form and join police labour organisations and engage in collective bargaining, police members are able to directly influence the governance of policing. Through collective bargaining processes, police are able to develop skills in problem solving and negotiation, both viewed as key to democratic policing. By being part of collective organisations, police members may begin to appreciate the importance of the right to freedom of association and freedom of expression generally, cornerstones of democratic societies.

Growing networks of police union representatives regionally and internationally will ensure that police unionisation will continue to thrive. The ILO, as a key international regulatory body, would do well to take heed of the organising capacity of this sector of workers as well as the potential democratic advantages that could flow from police labour rights. But change in Conventions pertaining to police labour rights will only occur if member state constituencies agree to this. In this regard, member states of the ILO who maintain that police labour rights should be curtailed should be encouraged to reconsider these views.

The limited capacity of the ILO to regulate police labour relations will mean that police employees and managers will need to turn to regional groupings and international networks of police representative organisations and advocates of police labour rights in developing fairer labour practices for police. In the short and medium term, the ILO could provide technical support to police who wish to form police unions and to engage in social dialogue with police managers and employers. This is already occurring to a limited extent in Southern and East Africa where the ILO is currently organising technical workshops for the police focusing on labour law reform and collective bargaining skills.<sup>xii</sup>

Police labour organisations are not inherently progressive organisations and they tend to focus on narrow vested interests. If they are to be taken seriously in police governance arrangements, they need to respond creatively to newly configuring social, political and economic environments. If they are to be seen as legitimate organisations worthy of support from civic groupings and from government agencies, they will have to think seriously about their own definitions of professionalism and how they can contribute to the democratisation of policing. Police unions will have to become, to borrow a term from Martin Godfrey, “swords of justice” rather than ‘protectors of vested interests’ (Godfrey 2003:29). In so doing they would need to consider aligning themselves with the broad labour movement, reaching out to community organisations and expanding their agendas to include ‘issues of democracy, human rights and social justice not only in the context of labour relations but also in the larger society’ (cited in Webster and Lambert 2003:4).

As Tattersall has pointed out:

... the process of reaching out is not only useful to maximise a union's capacity to achieve objective victories, but is also essential for unions to again be the central agents for improving the livelihood of working people, both inside and outside the workplace ... [such relationships] require a significant depth of commitment and participation by unions (2004: 19, 2).

Police unions *are* important stakeholders in the policing landscape but they are not the only ones that need to demonstrate participation and commitment in building community relationships. If police unions are to positively contribute to the democratisation of policing and to broader social justice programmes, they must not be pushed into the margins of scholarly works or left alone to fight for their existence in hostile national milieus. The challenge then is not only directed at police unions, but also at international regulatory organisations and scholars of the police to seriously engage with police unions so such organisations are able to contribute positively to debates on the future of policing and the realisation of democratic citizen frameworks.

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#### Endnotes

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<sup>i</sup> The authors would like to acknowledge the support of the Australian Research Council for parts of this paper (Grant nos: LP0346987 and LP0348682)

<sup>ii</sup> Less typically of oligarchic trade unions, police unions often resort to confrontational tactics in achieving their goals.

<sup>iii</sup> This letter was given to one of the authors by the General Secretary of POPCRU.

<sup>iv</sup> It is worth bearing in mind, as David Sklansky (2005) rightly points out, that participatory management may be implemented as a means of thwarting policing unionism, not promoting it.

<sup>v</sup> In fact that provision has only been used once, against Burma for engaging in forced labour (Authors' personal conversation with Roy Adams, December 2005).

<sup>vi</sup> For more detail on the Argentina story see (Marks and Fleming 2006)

<sup>vii</sup> Article 9 (1) says: 'The extent to which the guarantees provided for in this Covention (87) shall apply to the armed forces and the police shall be determined by national laws and regulations'. In short,

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the ILO does not say the provisions do not apply, rather that it is up to each state to decide the extent to which they do apply.

<sup>viii</sup> Email correspondence with Shizue Tomada, ILO Secretariat, 19 March 2004.

<sup>ix</sup>. Adams (2001) argues the 'union free' philosophy is well and alive in North America. This school of thought proclaims that unions have no place in well managed enterprises.

<sup>x</sup> Email correspondence dated 10 May 2005.

<sup>xi</sup>.Email correspondence with Dale Kinnear, Director of Labour Services, Canadian Professional Police Association, 19/05/2005.

<sup>xii</sup> Email correspondence with Jane Hodges, ILO labour law specialist, 28 January 2004