

about the current situation of gay people in America that we must count it as a mammoth victory when someone actually serves time in jail for killing us? Ending gay-bashing itself—the most common kind of bias attack, according to the Justice Department—is still another matter. □

■ OTHER RODNEY KINGS?

Let's Make It a Federal Case

PAUL CHEVIGNY

On March 3 last year, the Los Angeles police unmercifully beat a black man, Rodney King, who had been stopped for speeding, and shot him with darts from a nonlethal gun called a taser, which is supposed to be used to catch fleeing suspects. Fortuitously videotaped by a bystander, the beating was memorably broadcast on television all over this country and abroad. The resulting furor, including a condemnation of the beating by President Bush, focused unprecedented attention on violence by local police forces. Ten days after the attack, then-Attorney General Dick Thornburgh asked his staff to review past complaints about police brutality “to discern whether any pattern of misconduct is apparent.”

A year later, the federal government still has no clear idea of the answer to that question. Although a blue-ribbon commission in Los Angeles later found a pattern of such abuses in the L.A.P.D., the question has sunk out of sight as a national issue. Was such a police beating common or rare? Are such incidents declining in the nation? Is the L.A.P.D. particularly brutal compared with other local police forces? Are there some accepted measures that could be taken to reduce such police violence?

Questions like these are perennial; they nag at us every time an incident like the L.A. beating occurs, and then they are gone with the headlines. We never make much progress in finding the answers, and I finally understand why. The federal government, in all its functions—judicial, legislative, executive and administrative—has been organized, with occasional exceptions, to know little and do nothing systematic about local police abuses. I suppose I always knew this in the way that we Americans all know that police problems are supposed to be peculiarly “local.” But I did not grasp how complete is the learned—no, studied—incapacity of the federal government until I was asked by Human Rights Watch during the L.A.P.D. scandal to look at federal oversight of local police as a problem in international human rights. I had to step back from our system and look at it as one might examine relations between the national government and local police in another federal system, for example in Mexico or Argentina.

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International standards for law enforcement, developed at the United Nations over the past fifteen years, are straight forward. As embodied in the U.N.'s “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” they provide that police may use force “only when strictly necessary and to the extent required for the performance of their duty,” and that the use of nonlethal, as well as lethal, weapons “should be carefully controlled.” They call for a superior officer to be held responsible when he knows or should know about abuses by officers under his command, and they mandate effective reporting and review procedures for incidents of injury or death. Although the Constitution also sets some general limits on officials’ use of force, the federal government does not monitor local compliance even with constitutional, not to speak of international, standards; there are, for example, no federal “reporting and review” procedures for local police violence. The federal government is largely ignorant about compliance with police standards at the local level; it knows little about how local police use force, what they do to control the use of weapons or whether commanding officers are held responsible.

During the L.A.P.D. flap, the Justice Department’s Assistant for Civil Rights, John Dunne, sought to soothe a momentarily agitated Congress:

We are not the “front-line” troops in combatting instances of police abuse. That role properly lies with the internal affairs bureaus of law enforcement agencies and with state and local prosecutors. The federal enforcement program is more a “back-stop” to these other resources.

That is still a fair statement of the existing situation, but it only emphasizes how the federal government has never had the stomach to recognize and use its powers to stop local police brutality. Yet the use of excessive force can be a violation of constitutional rights—a denial of due process of law, for example—and the deliberate violation of constitutional rights by a local official is a federal crime. The Justice Department’s work on crime, however, has made very little difference in our knowledge about the incidence of police brutality. The department has received about the same number of criminal civil rights complaints, including some for police abuses, every year for the past decade. Prosecutions have been few because Justice has a longstanding policy of not pressing a federal case when the local district attorney is already acting under state law and because the federal prosecutor is obliged to prove, in each case, that the accused official acted with the “specific intent” to violate constitutional rights.

The jurisdiction on the civil side is even more stunted; there is no statute authorizing the government to bring a case, for example, to enjoin a pattern of police abuse. During the notorious regime of Mayor Frank Rizzo in Philadelphia, Jimmy Carter’s Justice Department sued the city to stop the “wide spread [police] practice of violating the rights of persons the encounter in the streets and elsewhere in the city.” The U.S. Court of Appeals for the Third Circuit dismissed the case claiming that to recognize an implied power in the government to bring such a suit would create a remedy of “incredibly

breadth and scope." The Philadelphia case was the Waterloo of federal intervention against local police; no wonder Dunne preferred to claim a modest role for the national government.

That limitation on civil lawsuits undoubtedly ought to be changed; Congress should give the Justice Department the power to intervene against systematic local abuses of constitutional rights, as the A.C.L.U. and the N.A.A.C.P. were urging during the scandal a year ago. But that change—which would be politically difficult to bring about—would probably do little to affect national consciousness about police problems. The narrowness of existing federal jurisdiction reflects how much local officials fear criticism, and how eager federal officials are to accommodate them, all in the name of some vague localism. If national powers to intervene were expanded, it is very unlikely that an Attorney General in a Reagan-Bush sort of administration would want to exercise such a power, and in any case it would not give us systematic information about local police.

If our aim is to increase public consciousness and gradually improve local practices, then direct federal-state confrontation may not be the most useful approach. There are, however, some federal tools available that would be easier to use and perhaps more successful. There are a number of programs in which the wall of localism has already been broken down, primarily because federal officials wanted it breached and local officials wanted federal help. Those programs could be reshaped at minimal cost and with little legislative change to give us nationwide information about police, and even to affect local practices.

The Office of Justice Programs within the Justice Department administers a group of agencies dedicated to "Justice System Improvement," including the Bureau of Justice Statistics, which collects data on aspects of the justice system, and the Bureau of Justice Assistance, which gives advice and grants for special programs to local law-enforcement agencies. In 1990 the Office of Justice Programs spent \$762 million.

The Bureau of Justice Statistics collects an extraordinary variety of data, mostly from local sources. It has published a report, for example, on the racial composition of prisoners throughout the United States (which has changed from 78 percent white sixty years ago to 44 percent black in 1986) and others on the social characteristics of criminals and victims. Its *Sourcebook of Criminal Justice Statistics* is a 700-plus-page compendium of figures on crime, police, courts and prisons; if you want to know how many wiretap orders were issued in 1989, the number is 763 and it is on page 472. Since the Los Angeles scandal, the *Sourcebook* has reprinted some data from a Gallup poll on public attitudes toward police brutality, but as far as I can tell, the Bureau of Justice Statistics publishes nothing else about police misconduct.

Nevertheless, the bureau clearly has the power to collect data that would throw light on the problems of police violence. The *Sourcebook* publishes the number of police officers killed in the line of duty (sixty-six in 1989), for example, but not the number of civilians shot by police. The federal government seems to collect no figures on the police use

of deadly force, although it would not be extraordinarily difficult to do and might be very useful. James Fyfe, once a policeman and now a noted criminologist, was able to show more than a decade ago, by an analysis of police shooting statistics in New York City, that restrictions on police use of weapons could reduce the number of citizens shot without reducing arrests or increasing crime or injuries to police. If figures on shootings by police were correlated with figures on crime, arrests and injuries, we could compare cities throughout the country; the results would be extremely illuminating.

The federal government has the power to collect information on the number and type of citizen complaints against the police; on officers disciplined by departments and the nature of their offenses; on the number of officers prosecuted for local crimes; and on systems of review, command-control and accountability within local departments. If the government used that power, it might give us an idea how widespread police violence is, in what cities it is prevalent and what can be done to decrease it. Because we have no systematic knowledge on the national level—either of the prevalence of police violence or what can be done about it—we simply don't recognize it as a persistent problem. The systematic ignorance of the federal government works very well to keep police violence off the national agenda.

If the government did have such information it could more actively promote reform by withholding federal assistance to local police forces. Although existing aid programs explicitly forbid "direction, supervision or control" by any federal official over local police, the National Institute of Justice is authorized to conduct research on and make suggestions for the improvement of the criminal justice system. The Bureau of Justice Assistance provides funds to local police for equipment



and to assist specific programs, such as drug enforcement. If the federal government possessed adequate information about police violence, it could establish guidelines on the use of non-lethal weapons, on adequate command responsibility and on fair review of complaints of police brutality. These could legitimately be disseminated to local departments, just as the Justice Department now gives advice and funds for law enforcement against drug trafficking and money laundering.

The next step would be to make federal assistance to local law-enforcement agencies conditional on their compliance with basic principles of due process and respect for human rights. It is common for federal grants to be made conditional on compliance with federal law, and in fact that device is already used, in a limited way, in the Justice Department programs. Federal law-enforcement assistance can be suspended if it is found that the local police have engaged in discrimination in employment. Regarding police brutality, I would make the following proposals:

1) When the Justice Department is satisfied that there is a widespread and continuous pattern of the use of excessive force or other violation of basic rights, federal funding to the local police authority should be terminated. There should be a hearing procedure to determine the facts, as there is under the present system when a department is accused of discrimination.

2) When resources supplied under a federal program have themselves been used in connection with acts of police brutality, an equivalent sum should be returned to the government. Think, for a moment, about that taser gun used on Rodney King. In many cases police have obtained sophisticated hardware through federal programs; when that hardware is used to abuse citizens, local departments should pay for it in full.

These proposals are the minimum Washington ought to ask in return for the millions of dollars it spends on law-enforcement assistance. The fact that they are not on the agenda is partly a result of ignorance, cultivated over generations, about local violations of citizens' rights. If the government collected such information, it might begin to seem natural for it to do something about those violations. And not incidentally, it might enable America to comply with international standards for law enforcement. □

■ LETTER FROM EUROPE

The Ghosts of Nationalism

DANIEL SINGER

The specter haunting Europe today, as it approaches the twenty-first century, is the ghost of nineteenth-century nationalism. It sends shivers down spines everywhere on the no longer formally split but still deeply divided Continent. In eastern Europe, the collapse of the Stalinist empire, followed by the fragmentation of the Soviet Union itself, has provided scope for the resurrection of local nationalisms. Since the alleged purpose of the whole operation is to reverse the course of recent history, this revival of nation-states is logical, even if it does not make much sense. In western Europe, where history has developed more in line with what was expected and the boundaries of the nation-state are being blurred, rejection of the alien, of the other, is spreading from Brussels to Vienna; the racist Jean-Marie Le Pen is no longer the odd man out. Is there some link between these two dangerous trends?

Recent developments in central and eastern Europe are probably easiest to understand. The Stalinist regime had been thrust upon these countries, even if it was imposed by the Red Army liberating them from the Nazis. The discarding of "communism" in 1989 was at the same time a rejection of Russian domination. Since then, the new regimes, while enjoying their newly found independence, have been fast discovering its economic limitations. But, as discontent is rising and the governments do not dare to rebel against the iron rule of the International Monetary Fund, they must seek scapegoats. Putting the blame on the "commies" can work for a while, and attacks against "aliens," within or without national frontiers, are a classical substitute for solutions.

On the face of it, the evolution of the former Soviet Union is more difficult to grasp, since nationalism was supposed to have been uprooted there by seventy years of socialism and equality of national groups. The plain answer is that there was no more equality than there was socialism. The Russification of the outlying republics was no more acceptable because it was practiced by a Georgian tyrant and the ruthless dictation from Moscow no more bearable because it was disguised in Marxist mumbo jumbo. Nationalism was never uprooted in the Soviet Union. In Russia itself it was at times extolled and at other times suppressed. In the other republics it was always driven underground. There it festered. When *perestroika* unleashed pent-up discontents and *glasnost* allowed their expression, nationalism came back with a vengeance.

By the time Mikhail Gorbachev perceived that the union could be saved only through some form of federation of independent states, it was too late. In fairness, it must be added that he was not helped by Russia's so-called democrats. In his

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