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Non-Prosecution of Police Personnel in the French Third Republic 1872-1914: Police Accountability and 'Democratic Policing'

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1. Prosecution of Police Personnel: Accountability and 'Democratic Policing'

The focus of this essay is on the extremely limited role that nineteenth-century French courts played in prosecuting police personnel for breaches of the Penal Code. The observations emerge from a broader comparative study of citizens' complaints against the police in Paris, Berlin and London from the 1880s to 1914, which highlights the very dissimilar role that courts played in holding police personnel to account in the French Third Republic, in Prussia under the Second German Empire, and in Victorian/ Edwardian Britain.[1] This essay presents some of the key findings, together with some reflections on what the near absence of meaningful police accountability to the law and to the public reveals about of the French Third Republic. The continuous refusal to give citizens access to justice when victimised by the police sits awkwardly with the liberal and democratic pretensions of the regime. The near absence of criminal prosecutions against French police personnel thereby challenges some fundamental assumptions in police scholarship about the impact of democratisation on police accountability. This leads me to some considerations of how to interpret overall changes in policing in European and North American countries that went through processes of democratisation during the 19th and 20th centuries.

With the rapid expansion of detailed historical studies on policing in individual European countries as well as in the US, Canada, Australia and New Zealand, interpretations of overarching changes from the 18th to the 21st centuries are in need of revision, as current interpretational frameworks date from before the turn of the millennium and do not fit recent historical insights. Both in historical and social science scholarship on policing, two assumptions underlie many interpretations. One is that policing in each country was – and still is – primarily shaped by the nature of the regimes they served, and consequently that the quality of policing and police accountability improved as political institutions democratised because this made police forces accountable to the citizens, indirectly and sometimes directly. Accordingly, the idea of Western countries developing 'democratic policing' has profoundly shaped current scholarly concepts of 'good policing' – as opposed to 'authoritarian' or 'totalitarian' forms of policing. Underlying these distinctions lie the presumption that regimes with solid democratic credentials tend to be not only less violent and more citizen-oriented than regimes with low democratic credentials, but above all, that police is subjected to more robust accountability mechanisms compared to regimes with low or no democratic credentials.[2] This

[1] The key findings presented here were published as Anja Johansen 'Beyond the Reach of Law? Criminal Prosecution of Parisian Police Personnel, 1872-1914', Journal of Modern History, Sept. 2020, vol 92, pp. 1-36.

[2] David Bayley, Patterns of Policing, New Brunswick NJ, 1985; Peter Manning, Democratic Policing in a Changing World', Boulder CO, 2010; Ben Bowling/ Robert Reiner/ James Sheptycki, The Politics of the Police, Oxford, 2019, pp. 34-36.

connection is further strengthened by the notion that 'British policing' – notably the London Metropolitan Police since 1829 – constitutes "the archetype of liberal democratic policing"[3] and thereby the embodiment of 'modernity' in law enforcement.

These interpretations were present in widespread popular notions already by the mid-19th century in both Britain, France and Prussia about what 'good policing' ought to be: The London Metropolitan police force successfully promoted its image as superior to other European force, both in terms of the professional quality of their constables, and in terms of effectiveness, discipline and training. In addition, Robert Peel famously based the legitimacy of the London Metropolitan police on a set of ethical principles: It was to be a public service [rather than the militarised enforcers of the will of government], using only proportionate amounts of force [carrying no weapons other than a truncheon]. Most importantly for our purposes, the London Metropolitan police force was committed to act strictly within the boundaries of the law [ie. not acting arbitrarily], with constables being personally liable to civil suits or criminal prosecution for serious transgressions. This made London Bobbies directly accountable to individual members of the public, as well as to their superior and to the government. By the turn of the 20th century popular expectations were rising in many parts of Europe and North America not only that police managers and government authorities should hold erring police constables to account, but also be transparent and responsive to public concerns about police malpractice.

If, as Bowling, Reiner and Sheptycki recently declared, "[t]he legal powers of the police are arguably their defining feature",[4] then accountability to the law and to the public – the ways and extent to which a regime allows its policing powers to be challenged – must be regarded as the defining feature of 'democratic policing'. Unfortunately, the concept of 'democratic policing' is often used inconsistently, without clear definition, and does not lend itself to comparison of policing between democratic countries. Moreover, the linking of 'policing' to 'democracy' is problematic because this ignores that the correlation between these two is often weak and indirect. This essay uses the non-prosecution of police personnel in the French Third Republic 1872-1914, and the comparison with practices in contemporary Britain and Prussia, to illustrate the problematic relationship between democratic regime and police accountability to the law and to the public.

2. The Findings: Non-Prosecution of French Police Personnel, 1872-1914

Between the 19th to the 21st centuries, the access for citizens to bring criminal charge or civil suit against police personnel was gradually facilitated in several Western countries. Yet, everywhere those aggrieved individuals who actually sought to pursue cases at court frequently complained about multiple obstacles in the process, with only a tiny fraction of allegations of serious police misconduct ever reaching the courtroom.[5] In fact, patterns of systematic

[3] Bowling et al., Politics, p. 26.
[4] Bowling et al., Politics, p. 229.
[5] Sam Walker, The New World of Police Accountability, Thousand Oakes (CA), 2005; Graham Smith, 'Rethinking Police Complaints', British Journal of Criminology, 2004, vol.44, no.1, pp. 15-33. Anja Johansen, 'The Rise and Rise of Independent Police Complaints Bodies' in Jennifer Brown (ed.) The Future of Policing,

sheltering of policemen from facing criminal trial have also been observed by research on many Western democracies in the 21st century. The similarities are clear. In the 21st as in the 19th century the prosecution of police personnel is often obstructed due to factors embedded in the culture and power dynamics within police organisations themselves. [6] At the lower rungs of the police hierarchy, there is a strong tendency for police colleagues to cover over each other as part of a subculture where police testifying against a colleague or reporting serious acts of criminal conduct will face serious repercussions. At the managerial level, senior police chiefs have strong interests in denying or minimising evidence of error, callousness or malpractice that reflect badly on the organisation. Trials should be avoided because a policeman in the dock may reveal embarrassing details of standard practices and systemic malpractice that police managers tacitly accept because such approaches increase effective policing. Clamping down on malpractice, on the other hand, risk undermining the loyalty of the rank and file officers to their superiors. Police managers therefore prefer disciplinary procedures, which not only keep details of malpractice away from public attention, but also functions as a useful managerial tool to obtain information about individual performance and about the actual functioning of the organisation. Furthermore, research on criminal investigation against police personnel in both France, the UK and the US point to the perennial problem that public prosecutors, in the 19th as well as in the 21st centuries, tend to be reluctant to challenge and antagonise the police forces whose collaboration they depend on for the investigation of other crimes.[7] While similar overarching patterns have been observed in other European and North American countries across the past two centuries, in some countries the systemic obstruction to the prosecution of police have been particularly comprehensive. It is also worth noting that while non-prosecution of police personnel had been the norm in many European countries during the first half of the nineteenth century, by the First World War the comprehensive sheltering of police personnel from prosecution in the French Third Republic was out of line with other contemporary European countries, not just Britain, but most interesting also Prussia.

Exactly how few prosecutions were brought against police personnel before the French courts between 1872 and 1914 is difficult to establish, as the issue is almost completely absent from the ministerial and police records. In the historiography on French policing the question of criminal prosecution of police personnel is only marginally addressed. Jean-Marc Berlière gives a detailed account of the legal framework for prosecuting police, however his extensive scholarship provides almost no information about how the system actually worked.[8] Yet, a few

Oxford, 2014, Hartmut Aden, 'Independent Police Oversight: Learning from international comparison' in Catharina Vogt /Joachim Kersten (eds.) Strengthening Democratic Processes, Frankfurt, 2016, pp. 15-33.

[6] Christopher Harris, 'The Residual Career Patterns of Police Misconduct', Journal of Criminal Justice, 2012, vol. 40, pp. 323-332; Hoon Lee et al., 'How Police Organisational Structure Correlates with Frontline Officers' Attitudes towards Corruption', Police Practice and Research, 2013, vol.14, no. 5, pp. 386-401; Samuel Walker, Early intervention systems for law enforcement agencies: A planning and management guide, Washington, DC, 2003; Carl Klockars /Sanja Ivkovich, /Maria Haberfield, Enhancing police integrity, Washington, DC, 2005.

[7] Samuel Walker /Carol Archbold, The New World of Police Accountability, Los Angeles, 2014, p. 50; Graham Smith, 'Police Complaints and Criminal Prosecution', Modern Law Review, 2001, vol.64, no.3, pp. 372-392; id. 'Why don't more people complain against the police?' European Journal of Criminology, 2009, vol.6, no.3; Didier Fassin, Enforcing Order: An Ethnography of Urban Policing, Cambridge, 2013, p. 123.

[8] Jean-Marc Berlière, 'L'Institution policière en France sous la Troisième République, 1875-1914', (unpublished Thèse d'État, University of Bourgogne, 1991). His lack of attention to the actual functioning of prosecution of police personnel is particularly noticeable in his analysis of the notorious vice squad. Jean-Marc Berlière, La police des moeurs sous la Troisième République, Paris, 1992 [second edition Paris, 2016].

scattered sources from the criminal justice system and from rights activists all point to the conclusion that attempts to criminally prosecute or sue for civil damages happened extremely rarely, with almost no cases being allowed into the courtroom.[9] Between 1872 and 1914 there seems to be only one single case investigated by the Paris prosecutor against a former policeman for acts linked to his profession. The case was eventually abandoned.[10] Over the same period only one case of criminal prosecution is known, the so-called Forissier Affaire of 1903, in which two plain-clothes officers from the vice squad were prosecuted and convicted for violence and illegal arrest.[11] Similarly, no civil suits were conducted until 1904 when a woman from Lyon, Antoinette Favre, was exceptionally allowed by the Lyon Appeals Court to bring civil suit against two policemen for damages relating to a wrongful arrest.[12] In both cases the support by the influential *Ligue des droits de l'homme* was probably crucial to their partial success. Prosecution rates against French police personnel remained extremely low throughout the Third Republic and much of the 20th century: In the 1970s it stood at one or two cases per year nationwide, before it increased to around twenty per year in the 1990s.[13]

Comparisons between countries cannot be exact because information about the number of trials is patchy and often does not cover quite the same type of data. However, some overarching features appear clearly for London and for the whole of Prussia. In London, the magistrates' courts had handled civil suits and criminal allegations against police personnel throughout the 18th century and continued after the establishment of the Metropolitan Police Force in 1829. Yet, while direct police accountability to the public was a key aspect of the legitimising rhetoric for policing, the role of the courts seems to have diminished during the second half of the nineteenth century.[14] Between 1848 and the 1880s the magistrates' courts handled around 35 civil and criminal cases annually against police personnel, the majority of which were dismissed or resulted in a fine.[15] Yet in the following decades the number of cases brought against police personnel seems to have declined markedly. By 1906, there were only four cases where police constables had been summoned to a magistrates' court for allegations of assault, three of which were dismissed and one resulted in a fine.[16] Throughout the period only a tiny fraction of the most serious cases were referred to the Old Bailey (London's central criminal court). The exact number is difficult to establish as defendants are not systematically identified as police constables, but this study has identified 32 prosecutions at the Old Bailey between 1870 and 1913.[17]

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[9] Louis Fiaux, La police des meours dévant la Commission extra-Parlamentaire du regime des moeurs, Paris, 1907; Mathias Morhardt, L'Oeuvre de la Ligue des droits de l'homme, Paris, 1911.
[10] The investigation of Claude Revardeau, 1893-1894. Archives Départementales de Paris [ADP] D3U6 /46.
[11] ADP, D2U6 /137.
[12] For details on all these cases see Johansen 'Beyond the Reach'.
[13] Fabien Jobard, Bavures policières? La force publique et ses usages, Paris, 2002, p. 257; Didier Fassin, Enforcing Order, pp.113-125.
[14] Graham Smith, On the Wrong Side of the Law: Complaints Against Metropolitan Police, 1829-1964, Cham (CH), 2020, pp. 48-55.
[15] Return of cases in which Metropolitan Police Constables were Charged before Police Magistrates 1887-88 https://parlipapers.proquest.com/parlipapers/result/pqpdocumentview?accountid=10606&groupid=105552&pgId=0e42c7ad-df31-4900-8d0a-69cd531dae00&rsId=173A9B7A8CE
[16] Report of the Royal Commission upon the Duties of the Metropolitan Police, London, 1908, vol.III, pp. 116-117 (Parliamentary Papers, Cd 4261).
[17] The Proceedings of the Old Bailey, 1674-1913, www.oldbaileyonline.org

For Prussia, we have comprehensive figures covering the years 1899 to 1905 for trials against all types of police employees at the higher criminal courts (*Landgerichte* and the three Berlin *Kammergerichte*).[18] The figures are staggering. Over this six-year period there were no less than 556 criminal prosecutions against police personnel leading to 400 convictions. The actual figure for trials with a policeman as defendant is likely much higher because the available data only cover violations of the §§ 339-343 of the *Straffgesetzbuch* concerning misuse of power through threats or violence (§339); *vorsätzliche Körperverletzung* (§340); illegal arrest (§341); violation of private property (*Hausfriedensbruch* §342); and illegal use of force or *Erpressung* in the course of a criminal investigation (§343). Accordingly, prosecutions for other offenses such as perjury or corruption are not included. Nor are the many hundreds of civil suits against policemen for libel (*Beleidigung, Verleumdung*).[19] The data also allow us to isolate the cases from Berlin where no less than 58 cases were prosecuted at the *Kammergerichte* 1899-1905, compared to the London Old Bailey where nine police constables were prosecuted in six cases between 1898 and 1906. This was despite the Metropolitan police force being considerably larger with 17,000 men (1910) than the Berlin *Schutzmannschaft* which employed just under 9,000 men (1910) for the Greater Berlin area.[20]

Although the courts in London and in Prussia only prosecuted a tiny fraction of the alleged criminal conduct by police personnel, the courts did play a role as the ultimate authority for police accountability, whereas in France the courts were almost entirely removed from holding police personnel to account, whether from civil suits or from criminal prosecution. The significance of these findings needs to be fully appreciated for any interpretation of the attempts to develop 'modern' policing in France, particularly in the light of the development of a democratic culture based on republican values. While Berlière describes as successful the attempts by Police Prefect Lépine to improve the respect of policing within the population,[21] these efforts were repeatedly undermined by the blatant unaccountability to the law and systematic disregard for citizens' concerns, as Berlière certainly also recognises.[22] Despite continuous fierce criticism of systematic police malpractice from across the political spectrum, including from loyal republicans, public opinion seems to have had very limited impact on senior police managers.[23] Policing in the Third Republic continued to operate largely on its own terms with no accountability to the courts and with very limited oversight from democratically elected representatives in government and the National Assembly.

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[18] Geheimes Staatsarchiv Preußischer Kulturbesitz [GStA PK], Berlin, I. HA Rep. 84a, No 8264/5 [microfiche 6740] Verbrechen und Vergehen im Amte, 1872-1934, docs. 116-124. For a detailed analysis see Anja Johansen 'Policemen in the Dock: Criminal Prosecution of Police Personnel in Wilhelmine Prussia', *Crime, History & Society/ Crime, histoire & sociétés*, 2019, vol.23, no.2, pp. 51-75.

[19] GStA PK, I. HA Rep.77, CB S, 497/III & IV; GStA PK, I. HA, Rep.77, CB S, 519. On libel cases involving the police see Alex Hall, Scandal, Sensation and Social Democracy. The SPD Press and Wilhelmine Germany 1890-1914, Cambridge, 1977, p. 98; Ann Goldberg, Honour, Politics and the Law in Imperial Germany, 1871-1914, Cambridge, 2010, pp. 81-82.

[20] Haia Shpayer-Makov, The Ascent of the Detective: Police Sleuths in Victorian and Edwardian England, Oxford, 2011, p. 60.; Ralph Jessen, Polizei im Industrirevier. Modernisierung und Hersschaftspraxis im westfälischen Ruhrgebeit 1848-1914, Göttingen, 1991, p. 359.

[21] Jean-Marc Berlière, Le préfet Lépine: vers la naissance de la police moderne, Paris, 1993.

[22] Jean-Marc Berlière, 'Images de la police: deux siècles de fantasmes ?', Jahrbuch für Verwaltungsgeschichte, 1994, No.6, pp. 125-148; See also Quentin Deluermoz, *Policiers dans la ville : La construction d'un ordre public à Paris, 1854-1914*, Paris, 2012, pp. 259-264.

[23] Only once in March 1879 did a Parisian Police Prefect resign due to revelations of institutionalised malpractice.

3. Types of Accountability for Police Personnel and Police as an Organisation.

Criminal prosecution of police personnel – in the past and in the present – is significant as the most serious form of sanction within a multi-layered complex of police accountability mechanisms. As an organisation, senior police managers are accountable to political powerholders, whether at the local or national level. This is irrespective of the nature of the regime. Within the force, individual policemen are subjected to hierarchical structures and to disciplinary control. In many countries they are also individually subjected to criminal law, although police often enjoy some exemptions and leniencies due to the nature of their functions.

During the French Third Republic, these various types of police accountability were only affected very marginally and indirectly by the democratisation of the political institutions and the development of a democratic culture. In terms of managerial accountability, the heads of the Paris and Lyon police forces and the national gendarmerie forces became answerable to democratically elected government ministers, who were again politically accountable to democratically elected representatives in the National Assembly. Yet, while the Paris police prefect was accountable to the interior minister for strategies and procedures, as well as professional standards and possible malpractice and mismanagement, some police prefects acquired high levels of independence due to the ever-changing interior ministers, forty-nine between 1871 and July 1914.[24] At municipal level, democratically elected mayors were accountable to their electorate for the conduct of local police forces, but their decisions could be overridden by the government-appointed prefects, who were only answerable to the interior minister. Similarly, the gendarmerie, which policed rural areas, was answerable only to the war minister, who was also a democratically elected civilian politician.

Within the French system another level of managerial accountability was introduced by Napoleon in the form of administrative courts. Here individual citizens can challenge decisions made by public authorities, including the police.[25] However, the administrative courts only deal with questions concerning the legality of administrative decisions and strategies, not their implementation. Throughout the Third Republic illegal implementation by individual policemen of otherwise legal police measure could not be tried by the administrative courts. Moreover, only from the turn of the 20th century, following two landmark rulings by the Conseil d'État,[26] did legal scholars begin to consider whether the French state and those who acted on its behalf had civil liability for errors and accidental damages.[27]

Beyond the accountability at the organisational level, individual policemen – across Europe and North America from the 18th to the 21st centuries – are accountable within the force, in the first instance to their superiors who can sanction minor acts of disobedience and more

[24] Malcolm Anderson, In Thrall to Police Change: Police and Gendarmerie in France, Oxford, 2011, chapter 9.
[25] The Constitution of year 22 frimaire, year VIII (24 Dec.1799), article 52; Decree of 11 June/ 22 July 1806. On the development of practices in administrative jurisprudence see René Chapus, Responsabilité Publique et Responsabilité Privée. Les influences Réciproques des jurisprudences Administrative et judiciaire, Paris, 1954, pp. 366-369.
[26] Cas Joly, decision by the Conseil d'État, 3 February 1899; Cas Tomaso-Greco, decision by the Conseil d'État, 10 February 1905..
[27] For opposing positions by legal scholars see Henry Berthélemy, Traité élémentaire de droit administratif, Paris, 1900 and Léon Duguit, Le Droit Social–Le Droit Individuel et la Transformation de l'État, Paris, 1908, pp.85-92.

serious violations of the disciplinary code. The purpose of disciplinary procedures is to ensure the well-functioning of the organisation through the compliance and loyalty of the police personnel. Yet, the disciplinary code is only concerned with acts that are harmful to the organisation, but not with citizens' grievances about behaviour that offend their rights, dignity, and physical integrity. Disciplinary procedures are therefore not suited to handle citizens' complaints. Moreover, during the French Third Republic, when disciplinary action was taken it was an entirely internal affair, in which victims of police misconduct had no involvement. Nor did the victim have any rights to know whether and how the policeman who was the object of the complaint was subjected to disciplinary measures, and with what outcome. Furthermore, the disciplinary process did not give victims any right to obtain damages, although in a few extreme cases victims did receive some compensation at the discretion of the responsible police manager.

The Napoleonic Penal Code in 1810 also made law-enforcement agents criminally liable for transgressions relating to their professional functions. Some articles apply to public servants in general (corruption, perjury, misuse of power), while other articles relate specifically to law enforcement agents (illegal arrest, searches of private property in violation of rules and regulations, excessive violence). However, alongside these articles there were other juridical mechanisms which removed criminal or civil responsibility from French public servants when acting on behalf of a public authority. These were legacies from the old regime and the Jacobin rule, reinforced by Napoleon. In particular the article 75 of the Constitution of 1799 ruled that civil and criminal courts could not judge on cases pertaining to the administration, except with the special permission from the Conseil d'État. Although this clause was abolished in 1871, French judges continued to declare themselves 'incompetent' to rule in cases against police personnel. [28] The Third Republic made no attempt to change these procedures, which effectively placed public servants, including the police, outside the reach of criminal responsibility. This was fundamentally different from Britain, where the policeman was originally described as an ordinary citizen in uniform, subject to the same laws as any other citizen, although increasing police powers undermined this principles during the second half of the 19th century.[29] As for civil liability, this was not recognised in France until the early 20th century, and the actual prospects of suing policemen or the French state for compensation for material damages or wrongful arrest remained extremely remote with only a very limited number of exceptional cases being allowed. In Britain, by contrast, there was never any doubt that victims could sue policemen for damages, even though it was increasingly the police organisations and ultimately the taxpayers who footed the bill for poor police performance.

It is also important to mention that victim agency within the French criminal justice system was lower than in the English and Prussian criminal justice systems, where some access to private prosecutions made it possible for aggrieved citizens to take action even if the case was rejected by those who prosecuted on behalf of the public (in London the police, in Prussia the *Staatsanwaltschaft*). In the French system, private prosecution was not an option at all. Here the prosecutorial authorities controlled access to the criminal justice system, and no case

[28] Jean-Pierre Machelon, La République contre les libertés ? Les restrictions aux libertés publiques de 1879 à 1914, Paris, 1976.
[29] Smith, Wrong Side of the Law.

went to court without their sanction; thus the public prosecutor (*Procureur de la République*) determined whether a case should be investigated and at what level.[30] Moreover, it was the *Parquet* that officially authorised death certificates for people dying in police custody, and these were routinely classified as suicides. My analysis of the few known cases from Paris shows that the judiciary were deeply implicated in keeping criminal accusations well away from ever getting to trial. In two cases, which were allowed to reach the stage of investigation due to public pressure, the investigating magistrates seemed to actively derail the inquiry through examining obviously innocent people as prime suspects and delaying post-mortem examination to the point where no conclusion could be reached about the cause of death.[31] While obstruction from the criminal justice system was not unique to the Third Republic, the French judiciary were more vulnerable to political interference and pressure from the police than the judiciary in Britain and Prussia. Any judge who tried to break with long-standing practice of not prosecuting public servants – including the police – would run into major opposition from all sides of the political and bureaucratic system. In the light of repeated mass-sackings within the judiciary (*épurations*) since the French Revolution, [32] it is hardly surprising that judges and magistrates were reluctant to upset people who might break their career.

While managerial, disciplinary and criminal accountability for police personnel have long historical roots, the idea of 'accountability to the public' emerged as part of the legitimising rhetoric around the London Metropolitan Police Force in the 1820s. It committed the London Bobbies to operate within the boundaries of the law and to be accountable to the law for breaches of their legal mandate. As a novelty, Robert Peel also made his Bobbies directly accountable to individual citizens through the complaint procedures. The legitimising rhetoric around police accountability for the London Metropolitan Police was crucial in changing popular expectations to the power relationship between the police and the policed, not just in Britain but across Europe. Yet, the extent to which popular expectations changed the official rhetoric around policing or led to police becoming more accountable to the public varied considerably between different countries. The French Third Republic did not develop any rhetoric about police being answerable to the public. Instead, 'the public' in French police discourse continued to be conceived of as a passive entity in need of protection from unruly elements according to the definition of legislation introduced in the 1790s, while it remained the preserve of the police and their political superiors to determine which groups or individuals needed protection and who constituted a threat to the public order.[33]

Even in handling conflicts at the less serious end of the spectrum, the French Third Republic failed to establish formal police compliant procedures similar to those emerging in England and Prussia. Complaint procedures were established for the London Metropolitan Police in the early 1830s, not as a legal procedure, but as informal communication where the

[30] René Lévy, 'Police and the judiciary in France since the nineteenth century: The Decline of the Examining Magistrate', British Journal of Criminology, Spring 1993, vol. 33, no. 2, pp.167-186.

[31] For an analysis of the investigations into the Nuger case 1893 and the Zirn case 1912, see Johansen, 'Beyond the Reach'.

[32] Jean-Pierre Royer et al., Histoire de la justice en France du XVIII siècle à nos jours (4th ed.), Paris, 2010, pp.665-671 & 697-703.

[33] The relationship between police and public is described in the law on municipal powers of 14 Dec. 1789, Article 50; Law of 16/24 August 1790, section XI, article 3; and articles 16 and 17 of the Code des délits et des peines of 3 brumaire, Year IV (25 Oct. 1795).

chief commissioner committed to investigate reports from any member of the public that the local bobby did not do his job properly or violated regulations. This included disciplinary offenses, such as being drunk on duty, as well as behavioural offenses, such as not treating citizens with due respect. Although complaint procedures in Britain remained entirely police led throughout the 19th and most of the 20th centuries, with very limited prospects for complainants to get a fair and impartial hearing of their grievances, the system at least gave them a formal status and committed police managers to investigate allegations. Only the Police Complaints Boards of 1984 introduced some non-police participation in the oversight, while later schemes claimed 'independence' in the handling of complaints, even if claims of pro-police bias continued.

In Prussia, where asymmetrical power relations and low levels of police accountability characterised policing throughout the 19th century,[34] some formalisation of citizens' complaints against policing agents was nevertheless established already in the early 1840s, and procedures were inscribed into law with the *Landesverwaltungsgesetz* of 1883.[35] So, in addition to the significant role played by Prussian courts in settling conflicts between individual policemen and the public, the formalisation of complaint procedures in 1883 committed police managers to investigate individual grievances and to inform the complainant about the outcome of their investigation. Although the investigations were not rigorous and the outcome almost invariably ended in police managers declaring that the policeman had "acted correctly", these non-legal complaint procedures nevertheless provided a legally recognised forum for citizens to challenge the legitimacy and appropriateness of police behaviour.[36] Thus, during the Wilhelmine era and the Weimar Republic the Prussian police came under increasing pressure from public opinion to become more transparent and fair in their handling of complaints, before the Nazi regime broke any pretence of accountability.

In France, there was no formal recognition of citizens' right to complain about non-criminal police behaviour until the late 20th century. When Napoleon III reformed the Paris police force along the lines of the London Metropolitan model, the concept of accountability to the public was not included.[37] This did not prevent French citizens from complaining incessantly at police stations, to senior managers and to the interior minister, but police was under no obligation to investigate or provide complainants with a response.[38] In fact, the first Code of Ethics for the French police dates from 1986 and no formal police complaints procedures existed until the introduction of the *Comité National de Déontologie de la Sécurité* in 2001.

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[34] Alf Lüdtke, Gemeinwohl, Polizei und Festungspraxis, Göttingen, 1982; Albrecht Funk, Polizei und Rechsstaat. Die Entstehung des Staatsrechtlichen Gewaltsmonopol in Preußen, 1848-1918, Frankfurt, 1986.

[35] Law of 11 May 1842 Gesetz über die Zulässikeit des Rechtsweges in Beziehung auf polizeiliche Verfügungen; Law of 30 July 1883, Gesetz über die allgemeine Landesverwaltung", Titel 4, §§ 127-133.

[36] Landesarchiv Berlin-Brandenburg (LBB), A. Pr. Br. Rep. 030, Titel 94, 8872-8881: Beschwerden der Bevölkerung über Polizeidienststellen und Polizeibeamte in Berlin, 1892-1913.

[37] Deluermoz, Policiers, p. 62.

[38] Collections of complaints can be found at Archives de la Préfecture de Police, Paris (APP), BA 1554, Plaintes contre les commissaries 1896-1906; APP, BA 899, Plaintes contre les Commissaries de police et le personnel des Commissariats 1907-1911. APP, BA 895, Arrestations arbitraires, 1882-1898; APP, BA 897, Arrestations arbitraires, 1899-1902. Some complaints are in the individual personnel files of station masters APP, KA 63, Dossiers du personnel.

Before 1848, low levels of police accountability to the public was the norm in most European countries, with limited agency for aggrieved individuals to sue or prosecute police before the courts, as well as absence of formal complaint procedures. Yet, by the outbreak of the First World War, some European countries had moved with the changing public expectations towards greater engagement with citizens grievances. Even if criminal prosecution, civil suits and successful complaints only constituted a tiny fraction of the allegations made against police personnel, in Britain and Prussia police managers and government authorities at least tried to give the impression of strengthening citizens' agency in keeping police to account. In France, overall improvements in policing rested entirely on increasing police training and professionalism, strengthening of discipline, as well as attempts to promote and encourage better police behaviour. While this may have prevented some policemen from extreme excesses, no concessions were made to give the public a direct stake in keeping police to account. Many aspects of French policing did improve, but it was modernity without accountability to the public or any strengthening of citizen agency. So, despite the democratic and politically progressive credentials of the Third Republic, French policing became an outlier compared to Britain and Prussia,

4. Accountability as a measure of 'modernity' in policing

The continued lack of police accountability to the public or engagement with aggrieved citizens in the progressive and democratic French Third Republic is difficult to fit into an overarching interpretation of how democratisation impacts on policing. This is particularly clear when compared to the development in the conservative and elite-driven Prussia of structures that did make some concessions to the public by giving agency to aggrieved citizens to voice their dissatisfaction with the police. This ties into broader problems of developing overarching interpretations of 'modernity' in policing of European and North American countries from the 19th to the 21st centuries.

Currently there are two main interpretations of long-term historical change in policing. One is based on a Weberian theoretical framework, focusing on the rise of 'modern' policing in the wake of and as a product of the rise of modern nation states. It sees 'modernity in policing' as the development of law enforcement agents into bureaucratic organisations staffed with full-time, specially-trained, career professionals holding a monopoly of legitimate power, and applying the law based on rules and procedures.[39] The other framework of interpretation shaping interpretations of 'modernity in policing' revolves around the idea of 'democratic policing'. Rooted in the influential whiggish interpretation of the Peelite Model of British policing, this framework of interpretation broadly refers to the nature of policing in post-1945 Western democracies, with a never-stated underlying assumption that policing in democratic

[39] David Bayley 'The Police and Political Development in Europe' in The Formation of the Nation State in Western Europe (Charles Tilly ed.) Princeton, 1975; and id. Patterns of Policing. For a recent review of social science interpretations of historical perspectives on modern policing, see Bowling /Reiner /Sheptycki, Politics, pp. 43-48.

regimes is by its very nature different from policing under authoritarian or totalitarian rule.[40] Both interpretations correctly identify some shared features characterising changes in police organisations from the 18th to the 21st centuries, yet the interpretational framework it is too general to accommodate the complex realities of past societies. As historical research over the past three decades has increased our insights into the historical reality of policing, many contemporary historians struggle to engage with these overarching interpretations, which are based on highly selective readings of the past, sometimes covering multiple and highly diverse countries. As a result, these overarching interpretations of long-term historical developments are currently mainly referred to by social scientists seeking to provide a historical context for policing arrangements in the present.

As historians have increasingly refrained from developing cross-national interpretations of changes in policing from the 18th to the 21st century, accounts of long-term transformation in policing almost exclusively refer to single-countries analysis or studies of countries with closely related developments. For instance, Clive Emsley's interpretation of criminal justice and policing in Europe 1750-1914 only refers to changes in policing with reference to the Peelite police model.[41] This is despite Emsley being well-acquainted with developments of policing across Europe and North America.[42]

The main attempt to develop an overarching historical account of 'modernity in policing' is Hsi-Huey Liang's classical study on the rise of European police systems.[43] Weber's concept of 'modernity' looms large in his interpretation, but Liang is too good a historian to try to fit the reality of policing in the 19th and early 20th centuries rigidly into a model, and recognises the obvious dilemma that policing in Nazi Germany, the Soviet Union and the GDR were as fully modern bureaucratic organisations in a Weberian sense, but perhaps representing 'a more advanced stage of police development temporarily defeated, or a corrupt offspring of modern police, now happily discredited.'[44] Instead, Liang sees the progress of liberal values and civil liberties in relation to the State as evidence of 'modernity', or the 'right kind of modernity', much in line with interpretations of modern policing as the Peelite Model or the idea underpinning much of the scholarship on 'democratic policing'. The complexities of the highly dissimilar changes led him to operate with a high number of additional factors to indicate 'modernity'. In the end, Liang's analysis of long-term developments of policing in five European countries becomes so complex that it is difficult to apply as an interpretational framework for overarching developments across Europe. Similarly based on the Weber is Wolfgang Knöbl's comparative study of the rise of modern police in Prussia, England and the US, but focused primarily on the development of monopoly of legitimate state violence.[45] The study is based on the hypothesis that policing in Prussia as an authoritarian centralised state

[40] Charles Reith, British Police and the Democratic Ideal, Oxford, 1943; Leon Radzinowicz, A History of the English Criminal Law and its Administration, London, 1948-1968; Tom Critchley, A History of Police in England and Wales, London, 1978; David Ascoli, The Queen's Peace, London, 1979.
[41] Clive Emsley, Crime, Police and Penal Policy: The European Experience, 1750-1940, Oxford, 2007, pp. 3-11.
[42] Clive Emsley, Policing in its Context, 1750-1870, London, 1983; id. Gendarmerie and the State in Nineteenth Century Europe, Oxford, 1999.
[43] His-Huey Liang, The Rise of Modern Police and the European State System from Metternich to the Second World War, Cambridge, 1992.
[44] Liang, The Rise, p. 4.
[45] Wolfgang Knöbl, Polizei und Herrschaft im Modernisierungsproceß: Staatsbildung und innere Sicherheit in Preußen, England und Amerika, 1700-1914, Frankfurt, 1998.

differed fundamentally from the UK and the US as liberal democratic decentralised states. Looking for specific dissimilarities rather than similarities in the functions and dilemmas faced by police and government authorities in all three countries, Knöbl's study lead to conclusions that broadly confirm already-existing interpretations of policing within each country.

More recently, Mark Neocleous's extensive scholarship interprets policing in the broader 18th century sense of public administration and 'common-weal'. Neocleus is one of several contemporary scholars whose focus on 18th century policing as the early stage of 'modern' policing has undermined the sharp distinction which historians used to draw between early-modern and 'modern' policing.[46] By interpreting changes to policing since the 18th century as part of the rise of the modern well-fare state he develops a historically sensitive understanding of the development of the concept of policing, but does not really address the aspects of modern policing which characterised its defining features in the 19th century onwards, namely crime fighting and public order maintenance. Instead, he emphasises that 'modern' policing was influenced by the rise of bourgeois culture and shaped by various forms of representative rule,[47] even before any European regime could be described as democratic or even being in a process of democratisation. This emphasis on 'bourgeois representative rule' also allows him to exclude 20th century authoritarianism and totalitarian dictatorships, among 'modern police'.

The most widely used framework of interpretation of 'modernity in policing' is structured around the development of the London Metropolitan Police Force and its influence on police forces across the Western world, and beyond. Thus, historians and social scientists alike see the Peelite Model for the London Metropolitan police, and in particular the ethical standards associated with it as "the archetype of liberal democratic policing".[48] Accordingly, the definition of a 'modern' police force includes: a civilian (not military), but uniformed force, so that constables can be identified as police (unlike plain-clothes police spies) and carrying individual numbers so they can be held individually accountable for their decisions and conduct. The British police rhetoric also emphasise that police are to be apolitical, applying the law equally to all citizens; and they are supposed to be the defenders and upholders of the law rather than the enforcers of government, but serving and acting on behalf of the public, and ideologically identified with the public.[49] The impact of the Peelite Model for any notion of 'modernity' in policing is highly complex. While many police forces across Europe and beyond have claimed to be based on it, the ethical dimension and the guarantees to the public were often missing, as was the case in the establishment of both the Berlin *Schutzmannschaft* of 1848 and the Paris police force of 1854. Moreover, many countries did not adopt the principle that police should be unarmed, or that police were to use minimal force.[50] Yet, importantly, the

[46] Elaine Reynolds, Before the Bobbies: The Night Watch and Police Reform in Metropolitan London, 1720-1830, London, 1998.
[47] Mark Neocleous, The Fabrication of Social Order: A Critical Theory of Police Power, London, 2000.
[48] Bowling /Reiner /Sheptycki, Politics, p. 26.
[49] Charles Reith, A New Study of Police History, London, 1956, p.287; Critchley, A History, p.52; Manning, 2010, p. 224. For a critical evaluation of this identification see Anja Johansen, 'Police-Public Relations and the Legitimisation of Law Enforcement' in Paul Knepper & Anja Johansen (eds.) The Oxford Handbook of the History of Crime and Criminal Justice, Oxford, 2016, pp. 497-498.
[50] Egon Bittner, The Function of the Police in Modern Society, Washington, 1970, pp. 187-190; David Bayley, Patterns, pp. 7-13; See criticism Jean-Paul Brodeur, 'Police et Coercion', Revue Française de Sociologie, 1994,

standards set by the Peelite Model changed popular expectations and the dynamics between police and public,[51] even where commitments to meeting ethical standards remained patchy, weak and conditional, with police managers systematically overriding them in favour of ensuring law, order and control of the streets.[52] At the same time, in Britain despite plenty of evidence that policing frequently fell short of the high-minded Peelite principles,[53] an underlying assumption stills prevails among police scholars and in the popular culture that British policing, past and present, was and still is 'comparatively benign' and 'democratic', often with French, German or US policing as the negative counterimage.[54]

The paradoxes around police accountability to the courts and to the law in the French Third Republic, the German Empire and Victorian/Edwardian Britain should alert us to be cautious on two counts when drawing comparative conclusions. One is the risk of exaggerating the extent to which British policing was in all respects more ethical, public oriented and accountable than its French and Prussian counterparts. Secondly, we need to abandon any assumption that political regimes with democratic credentials tend to develop more ethical, public oriented and accountable policing than regimes with weak or no democratic credentials. While French-language scholarship readily recognises the disconnect between democratisation and police ethics,[55] in English-language scholarship an underlying presumption persists that policing democratic regimes tend to have higher ethical standards in policing. Empirically the English-language scholarship is overwhelmingly based on countries whose policing and criminal justice is based on the Anglo-American common law tradition.[56] While recognising that policing in democratic countries sometimes does not meet the ethical standards or levels of accountability that is desired, these interpretations almost invariably imply that standards in other contemporary countries as well as police forces of the past are worse. This is despite the obvious problems of fitting the empirical evidence into this Procrustes bed.[57] Again, the findings on the French Third Republic, Prussia of the imperial era and Victorian/Edwardian Britain call for caution on such generalisations.

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vol.35, pp. 457-485; Jean-Paul Brodeur, The Policing Web, Oxford, 2010, pp. 105-106; Bowling /Reiner /Sheptycki, Politics, p. 26 & 79.

[51] Prussia 1848; Paris 1854; Denmark 1863; Portugal 1867 (For Denmark see Mikkel Jarle Christensen, Det evige politi: redefinition og ideologi (1863-2007), unpublished PhD dissertation, University of Copenhagen, 2011; for Portugal see Gonçalo Rocha Gonçalves, 'Police Reform and the Transnational Circulation of Police Models: the Portuguese Case in the 1860s', Crime, History & Societies/ Crime, histoire & sociétés, 2014, vol.18, 1, pp. 5-29.

[52] Louis Andrieux, Souvenirs d'un préfet de police, Paris, 1885; Louis Lépine, Mes Souvenirs, Paris, 1929.

[53] Clive Emsley, Policing; id. Hard Men: Violence in England since 1750, London, 2005; David Taylor, Policing the Victorian Town, Basingstoke, 1998.

[54] Bowling /Reiner /Sheptycki, Politics, p. 76.

[55] Monjardet, Ce que fait; Jean-Marc Berlière /René Lévy, Histoire des polices en France de l'Ancien Régime à nos jours, Paris, 2013.

[56] Manning, Democratic Policing, starts with the words "Policing in the United States and among the Western democracies is assumed to be democratic in theory and practice", but he nevertheless has a chapter about 'undemocratic policing' in democratic regimes, focused on police violence, illegality and corruption.

[57] Some scholars who have access to both traditions distinguish a separate Prussian model based on the 18th century concept of *Polizey* (Marc Raeff, The well-ordered police-state: social and institutional change through law in the Germanies and Russia, 1600-1800, New Haven, 1983 and Neocleous, Fabrication) from the French Napoleonic model. Markus Dubber (The Police Power: Patriarchy and the Foundation of American Government, New York, 2005) and Chris Tomlins both emphasise the fundamental differences between the British Peelite approach to policing from American concepts of policing. Christopher Tomlins, 'Framing the Fragments. Police: Genealogies, Discourses, Locales, Principles' (Markus Dubber & Mariana Valverde eds.), The New Police Science: The Police Power in domestic and International Governance, Stanford, 2006, p.256; See also Brodeur, Policing Web, p. 43.

In order to avoid the sweeping generalisations that characterises comparison of historical changes in policing and the nature of policing in contemporary Western countries, it is necessary to isolate and compare key indicators of 'modernity' or 'ethical policing'. Only with such mapping of multiple indicators can we meaningfully assess and compare the performance of policing in different countries.

6. Conclusion

The paradoxical phenomenon of extremely low levels of police accountability to the law and to the citizens in the politically progressive, democratic French Third Republic challenges us to bring comparative research of policing beyond broad generalisations and prejudiced assumptions. In order to situate these observations within the wider context of parallel developments in policing across Western democracies, it would be useful to compare very specific, but crucial features, before attempting grand theories that tries to include all aspects of policing. Instead, we need to isolate key indicators and follow their change or non-change across long periods of time, while comparing with other countries. I propose 'accountability' as one key indicator for policing, both to assess the ethical quality of actual policing and the willingness or ability of governments to subject police, both at the organisational and the individual level, to answer for their use – and sometimes misuse – of power and authority.

Accountability is crucial because it impacts on all other ethical aspects that police may seek to achieve. Furthermore, what defines policing arrangements as influenced by the δημος lies precisely in the extent to which the police's exercise of power is counter-balanced by robust accountability mechanism, not just to democratically elected representatives (ministers, mayors, parliamentarians), but to individual members of the public. From a methodological point of view, accountability, as a set of legal-organisational features, can be measured and compared, unlike concepts such as violence, public service and even legality, which are difficult to define and whose application is normative, and often left to police discretion whether the force applied is 'proportionate and necessary' in order to achieve the stated policing goals or at what point it became 'excessive'.

Only when we know how police and government authorities in each democratic regime have arranged for citizens' grievances to be heard and acted upon can we assess and compare how, and in what ways, policing within each regime can be meaningfully described as δημο-cratic. Rather than applying the labels 'democratic', 'authoritarian', 'totalitarian' or 'repressive' to policing based on the nature of the regime they serve, we need to be able to label policing in perfectly democratic countries being 'unaccountable', 'authoritarian', 'repressive'. This is the true significance of the awkward case of extremely limited accountability of policing in the French Third Republic, as a challenge to our conception of standards of police accountability in 21st century Western democracies.