

POLICE AND TRANSPARENCY: BEYOND ACCESS TO INFORMATION

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An Ethical-Democratic Positioning

The internationally-accepted role of the police is to be a representative of the state charged with enforcing the law. Among the powers that they may deploy, two stand out in particular: force and firearms. No other public servant during peacetime may use these tools on citizens; and empirical and historical evidence confirms that police business transpires within a permanent state of tension between good and bad norms and practices in the exercise of these delicate missions. As a way of establishing my ethical-democratic position as well as the premise of this brief essay, I hold that in a democracy, the police should be read in a key of checks and balances between these powers, including a system of oversight that would inhibit any possibility of abuse. Transparency is a necessary condition to achieve such a balance.

Context

Democracy in Mexico is still weak. The advances in the liberalization of political competition are notable, as are the lags in extending basic rights to the vast majority of people who live in this country. The basic right to public safety and a democratic police service that would provide effective security is still just a work in process for most Mexicans. In the area of public safety and police, the democratic transition is just beginning, and primarily consists of conceptual reformulation and in the development of the first empirically reliable benchmarks. Political and legal discourses and dominant practices in public safety and police work are, with a few minimal exceptions, still very far away from the basic standards of a democratic regime.

This is no accident; it is the logical result of a longstanding authoritarian regime that, from its inception, wielded public security as a tool of power and used police institutions as the armed branch of that power. This model was the opposite of a democratic approach, in which public safety in a democracy is a right and police institutions are services. The theory of democratic police reform distinguishes police forces (characteristic of authoritarian regimes) from police services (characteristic of democratic regimes); and one of the bridges that allows a society to move from the former to the latter is transparency.

Access to Information in the World

When I had just begun to write this essay, I received a study of the laws and practices regarding access to information in 14 countries. Notably, it recommends that civic organizations should monitor freedom of information practices; public offices should respond to information requests in a consistent way; and laws on access to information should contain provisions that limit exceptions to public access only in situations where disclosure could harm a legitimate interest within the framework of applicable national and international laws; but in any case, government officials should be trained in the principle that the free flow of information is the generally applicable rule (something to be presumed). The report ends by pointing out that wherever an active civil society is combined with legal platforms for access to information, there are increased possibilities for governmental response and opening.¹ These findings are crucial for the conclusions of this essay.

Police and Transparency

In Mexico, the simple act of bringing together the concepts “police” and “transparency” is an innovation. There are no precedents for this. In October, 2006, the Institute for Safety and Democracy (Insyde in Spanish) and the Federal Institute for Access to Public Information (IFAI in Spanish) organized the first public forum in this country to address this issue. With few exceptions, national police experts are still timid about incorporating the issue into their thinking, although the impulse to delve into the matter both theoretically and empirically is growing rapidly.

Generally speaking, until now the historical inertia of authoritarianism has been easy to impose on the young push for transparency, at least in this area. Even today, the majority of operatives working in the field of public security and police work believe, without having thought it through carefully and certainly without having received any training in issues of transparency, that to allow access to information is to weaken their institutions. In defense of our local reality, police transparency is still a work in progress in much of the world.² However, the fact that many are suffering can offer us little consolation.

¹ Open Justice Initiative, *Transparency and Silence. A Survey of Access to Information Laws and Practices in 14 Countries* (New York, 2006).

² A report of the International Advisory Commission of the Commonwealth Human Rights Initiative Chaired by Sam Okudzeto, “Police Accountability: Too Important to Neglect, Too Urgent to Delay,” New Delhi, India, 2005.

The movement to democratize the police—which has theoretical, political, legal and practical aspects—has thoroughly clarified the value of this proposal. For David Bayley, the world’s most influential thinker on police in the world, police transparency is only one of four principles that define a democratic police force: “Police activities should be open to observation and should be regularly reported on to outside entities. This requirement applies to information on individual behavior of officers and to the operation of the institution as a whole, especially in regards to whether the police are achieving what was proposed from a cost-benefits perspective.”³ David Bruce and Rachel Neild extend and elaborate this norm, outlining key standards for policing in democracy. They propose that governments should establish policies and maintain police accountability in a clear, transparent way (*vis-à-vis* the legislature, the criminal justice system, and civic review boards); they further propose that complaints against the police must be investigated through an independent, effective oversight mechanism; and they are in favor of multiple approaches to police-society collaboration that could only be built on a foundation of firm, decisive transparency policies from the beginning—as in the case, for example, of community policing programs.⁴

More recent thinking on this has made clear that in democracies it is necessary to create complex systems of checks and balances around police power, given the risks of its abuse. Thus the need for police accountability to the law, the state and citizens. “Accountability and transparency go hand in hand [...] This transparency, which produces results by way of procedural reporting, must go beyond the barriers of police institutions. Accountability to supervisory agencies, no matter what regime they are functioning within—and which should include courts, the legislative branch, the media and complaint review bodies—is a pillar of policing in democracy.”⁵ From this perspective, accountability is an organizational principle that is articulated through transparency.

Access to Information and the Police: The New Paradox

The Federal Law for Transparency and Access to Information (LFTAIPG in Spanish) allowed the entire field of public safety to be sheltered from public scrutiny; the law’s Article 13 establishes that any information whose release might compromise public safety may be classified as reserved (and, given our weak conceptual development of the subject, it is

³ David H. Bayley, *Democratizing the Police Abroad: What to Do and How to Do It* (National Institute of Justice. NCJ, 188742. June 2001.) Available at: <http://www.ncjrs.gov/pdffiles1/nij/188742.pdf>.

⁴ David Bruce and Rachel Neild, *The Police That We Want. A Handbook for Oversight of Police in South Africa* (Johannesburg, South Africa: Center for the Study of Violence and Reconciliation, 2005).

⁵ Anneke Osse, *Understanding Policing. A Resource for Human Rights Activists* (The Netherlands: Amnesty International, 2006).

understood that public safety implies anything that has to do with the police). What does it mean to compromise public safety? Everything and nothing. In this sense the law wrote the State a blank check to construct its own criteria to reserve information—criteria that would not be subject to any sort of limits beyond that of the imagination of the particular government official who receives the request. It is unlikely that any given employee would be equipped with any technical foundation on which to base a denial or authorization of a release of information, whether in terms of accepted international standards, or as a product of some kind of ad hoc training program. However, just as police authorities are not trained to perform professional duties in discriminating between what should be accessible or inaccessible information in police matters, nor are ordinary citizens, media, other authorities, legislators or political parties. In fact, understanding what police transparency and access to related information implies are still in an embryonic state, limited to small sectors of organized civil society and academia. In this sense, education for everyone regarding these matters is essential.

It should be recognized that the launching of the legal and institutional platform for information access has revealed some substantive weaknesses of our police institutions. For example, some academics and journalists who have been able to access information have confirmed approximate data on police training and the health status of the police force. However, in general what has occurred is a double process that, first, uncovered the historical opacity of police practices, and second, constructed an expansive interpretation of the reserved category in relation to public security and the police. This expansion contradicts the general democratic principle that ordains precisely the opposite: that opening and access to information are presumed to apply to everything, while reservation is an exception that is occasionally justified according to national and international norms and criteria.

Transparency and the Police: Beyond Access to Information

I propose that we take a broad approach to policing and transparency, going beyond mere access to information. A careful reading of the aforementioned standards that would guarantee transparency and accountability of policing in democracy obliges us to recognize that transparency actually refers to a system of procedures that should include, among other reforms, information access channels. *Given that police powers are essential instruments for the protection of basic rights, but are also factors that put them at risk, both State and society should establish as many mechanisms as possible to ensure the internal and external visibility of police business, in order to inhibit risks. In the context of this institutional change process, transparency is a cross-cutting issue.* In this light, the

development of concepts, policies, norms and practices regarding police transparency is a crucial task for building a democratic regime based on a solid recognition of rights. An opaque police force does not fit with such a regime; a police force that is not transparent weakens the public's trust and, finally, "the absence of trust means, for civilians as well as for the police, much less security and much less effectiveness in crime prevention and crime fighting."⁶

⁶ Scott Dash, *Police Services, Not Police Forces. Democratization of Law Enforcement in the United States and Around the World* (Unpublished manuscript).