

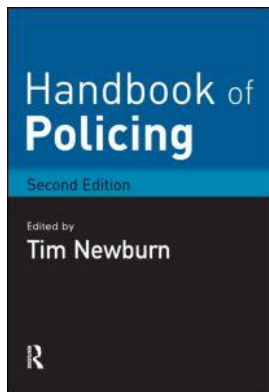
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## **Handbook of Policing**

Tim Newburn

### **The pattern of transnational policing**

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## Part II

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# The Context of Policing

*Tim Newburn*

Part II of the *Handbook* can in some respects be viewed in two parts. Whereas the first five chapters deal with the structural and organisational context of policing, the last three chapters deal with police culture, practice and representation. Together, they provide the context within which contemporary policing should be understood. Policing is increasingly international. Bodies, structures and forms of co-operation proliferate in the international arena, and Neil Walker's opening chapter describes and explores the nature of the major arrangements in this area. His focus is very explicitly upon 'transnational' rather than the 'international' dimension of policing. This, as he explains, is because the key developments are by no means confined to policing that is authorised and practised within the territorial and institutional confines of the state. Rather, his focus is at least as much upon policing which is not reducible to co-operation between actors whose main reference point is their state of origin, but instead involves relatively autonomous networks or where authority and allegiance are primarily to other non-state 'polities' or political communities such as the European Union. Indeed, Walker's primary focus is on developments within Europe, though he notes the seeming re-emergence of a classic internationalist logic in the increasing influence visibility and influence of the United States in the aftermath of 11 September.

The context of policing has been changing domestically as well as internationally, and Adam Crawford's focus is upon the pattern of policing in the UK. Recent decades have seen a massive expansion in private and quasi-public forms of policing provision and this chapter explores, and provides an overview of, the emerging new policing division of labour. Its primary focus therefore is on 'policing beyond the police': on private security and other non-constabulary forms of provision. Partly because of the absence of formal regulation until recently, understanding the nature, shape and size of the private security/policing sector has been limited. This chapter de-mythologises private policing and draws out the similarities and differences between public, private and other forms of policing provision. Considerable attention is paid to the emergence of the new, and increasingly visible, forms of patrol service that are now to be found in many major towns and cities, as well as to what this means for how we understand policing criminologically and sociologically.



Two chapters then follow which provide further detail about the history, structure and organisation of policing in the UK. In a departure from the first edition of the book we now include specific, dedicated chapters on policing in Scotland and Northern Ireland. In the first of these, Daniel Donnelly and Kenneth Scott identify three factors that have shaped – and continue to shape – Scottish policing in distinctive ways. These are, first, the particular historical and legal traditions within which policing has developed; second, the ways in which broader socioeconomic and political changes common to the UK have played out in the particular context of Scottish society, and lastly, the increasingly visible influence of devolution in Scotland. Following from this, Aogán Mulcahy explores the history of policing in Northern Ireland and, more particularly, the recent replacement of the Royal Ulster Constabulary with the Police Service of Northern Ireland and the ramifications – political and social – of such a practically and symbolically important set of changes.

The fifth chapter in this section focuses more directly on the nature of the police service itself. Much of what is written about the police assumes a knowledge of how the service is organised. In my view this is a mistake. Students in particular often have only a passing familiarity with the nature and structure of the police and tend to find that there is no obvious source they can turn to for such information. The chapter by Rob C. Mawby and Alan Wright fills this gap. It describes the structure of the British police service and, more particularly, how forces are structured internally. It includes an overview of the rank structure in police organisations, of the different way in which uniformed officers' work is structured (beat, response, etc.), and the division between general and specialist departments and roles. It looks at the location and size of police forces, provides a brief history of police representative bodies such as ACPO and the Police Federation, and examines the roles of the growing proliferation of bodies that scrutinise police performance.

Understanding the behaviour and practice of police officers is at the core of the following two chapters. Police 'culture' is often considered to be both a cause of police deviance and an obstacle to police reform. Understanding the culture of the police is therefore central to understanding the delivery of policing services. However, as Louise Westmarland explores, following other recent authors in this field, there is of course not one but several police cultures. Her chapter examines in some detail some of the key pieces of literature in this field, and what they have to tell us about the nature of police cultures, how they are produced and reproduced and, in the light of this, what lessons can be drawn for successful reform of police conduct.

The following chapter takes a close look at the use and abuse of police powers, focusing in particular on key areas of activity such as detention and arrest and, in particular, the operation of the Police and Criminal Evidence Act and its impact on the treatment of suspects by the police, including such issues as the right of silence and the right of access to legal advice. It is the very fact of the existence of extensive powers that facilitates the exercise of generalised police authority. Consequently, in order to understand this very particular authority that the police bring to the situations they confront, it is important to understand how particular powers are organised. As the authors, Andrew Sanders and Richard Young, argue, 'the importance of legal powers is not that

they are *actually* invoked particularly frequently, but that they *could* be'. In reviewing this area, Sanders and Young take a particularly critical look at police practices and are relatively pessimistic about the likelihood of enlightened change in this area, pointing, for example, to the way in which backtracking after the 2003 Criminal Justice Act returned the primary focus toward punishment and exclusion.

The style and tone of this chapter illustrate one of the important attributes of this volume. In addition to seeking to attract the leading authors in particular fields, we have deliberately sought to include differing viewpoints within the volume. These range from critical criminologists to senior police officers. The inclusion of this variety means that particular chapters have useful counterpoints and can helpfully be read in conjunction with each other. Thus, for example, Sanders and Young's chapter in this section can usefully be read in conjunction with Peter Neyroud's chapter on ethics in Part IV. Both concern the issue of police conduct and its governance, though they differ in part in both their diagnosis and prognosis. Such differences of approach and opinion, it seems to me, are illustrative of the existence of a serious and healthy debate about both the nature and the future of policing.

Whether criminologists or criminal justice professionals, all the authors in this volume have an intimate knowledge of at least some of the realities of policing. In this they differ from the majority of the public who, if they have any contact with the police, will generally do so relatively fleetingly and occasionally. As such, their impression of the police, of police function and culture, will most likely be largely derived from the media. As Robert Reiner wrote 17 years ago, 'mass media images of the police are of central importance in understanding the political significance and role of policing'. On television (from Dixon to Morse, and *Ironsides* to *NYPD Blue*), in film (from *The Blue Lamp* onwards) and via the press, our mass mediated images play a vital role in framing how policing is understood and legitimated. Robert Reiner, in the chapter which closes Part II, examines the changing media representation of policing and how this is linked with changing perceptions of the threat of crime and of police legitimacy. Whilst mass mediated images of policing have changed markedly, he argues that they continue to display an entrenched police fetishism – an assumption that the police are a functional prerequisite of social order; something without which there would be chaos and uncontrolled disorder. That this should still be so after several decades of fairly intense public scrutiny and no little criticism is testament to this 'Teflon service's' stature as a continuing symbol of order and security.



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## Chapter 6

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# The pattern of transnational policing

Neil Walker

### Introduction

The purpose of this chapter is to map some of the most salient developments in transnational policing, to locate and explain their causes and to identify current trends and future prospects. Before we proceed to these various stages of discussion, three preliminary issues of orientation should be addressed. The first concerns the title of the chapter. The term *transnational* is preferred to *international* for an important reason. If we are concerned with policing other than policing that is authorised and practised within the territorial and institutional confines of the state, then only some such policing can be properly labelled 'international'. That is to say, policing beyond the state often does take the form of 'international' or (more correctly) 'interstate' policing – police co-operation and common action between officials and bureaucracies who owe their authority and allegiance first and foremost to the discrete states in question – yet it may also take a different form. For some forms of policing beyond the state are not reducible to co-operation between actors whose main reference point is their state of origin, but may instead involve networks which are relatively autonomous of these states of origin or which owe authority and allegiance to other non-state 'polities' or political communities – of which the EU is, in the policing field as in so many others, the primary example.

This leads directly to the second introductory remark. While the general horizon of this chapter is global, constraints of space demand a more selective approach. Accordingly, much of the focus is on European developments, not just because the European domain may be of most immediate interest to the primary readership of this book but also because, due to the emergence of the EU as a post-state polity (Walker 2002b, 2007), the EU is at present the limiting case of transnational police co-operation. But of course there are other important themes and developments in transnational policing. Many of these have taken place within a more traditional international paradigm, and with the USA as a particularly important point of influence. Indeed, it is arguable that since 11 September we have seen a resurgence of this classical state-



centred internationalist logic, and this resurgence and its structural antecedents also deserve – and receive – due attention. However, 11 September, and the changes in the geo-political logic of security which the seismic events of that day set in train or reinforced, has had other effects on the global framework of transnational policing which are less state-centred, and these too are acknowledged below.

Our third and final introductory remark concerns the formulation of a general framework to bring together our discussion of origins, current trends and future prospects within a coherent framework. Such a framework is supplied by an exploration of the very conditions of possibility of transnational policing, and is to that exploration that we now turn.

### **The conditions of possibility of transnational policing**

For many, the very idea of transnational policing may strike an incongruous note – may even be viewed as counter-intuitive. One need go no further than the table of contents of this volume to gain the impression that policing is typically and principally treated as an affair of states and their internal security concerns. What arguments, then, underscore the state/policing coupling, and how compelling and how comprehensive in import are these arguments (Walker 2000: ch. 8; Loader and Walker 2001, 2007)?

To begin with, most theories of the modern state place the maintenance of internal (and external) security at or close to the centre of their conceptual scheme. Policing and internal security are often seen as definitive functions of the state – as *necessary* characteristics of statehood. This conceptual centrality is typically elaborated in functional terms. To the extent that the modern state differs from its dynastic and imperial predecessors, it is in its claim to comprehensive and legitimate authority over a definite territory and a definite population. In turn, this seems to require a strong commitment by the state to monopolisation or control of the means of force, both as a ‘stick’ with which to maintain its own position and as the ‘carrot’ of the establishment and maintenance of general order that provides the population with a legitimate reason for accepting the authority of the state.

Yet if we bracket off the function of the self-interested, self-preservation of the state, which though it points to the undoubted sociological significance of the self-perpetuation of powerful bureaucracies and the interests with which they are associated (Marenin 1982; Loader and Walker 2007: ch. 3), tends to view the might of the state in crude, monolithic terms, and if we concentrate on a second and more general function – the maintenance of general order – even here we see that the ‘stick’ and the ‘carrot’ are closely connected within a unified logic of political action that highlights the crucial place of state coercion as both root and vehicle of a socially coherent project of collective security. So for Thomas Hobbes and the social contract theorists, the unitary force at the root of the state was a necessary means of overcoming the problems of collective action that stood in the way of collective security. If each values the peace and the minimisation of everyday threat which all require to pursue their lives effectively, but if no individual or section of the population

has the power to guarantee its own security still less the security of all others without the consent of all others, and if there is insufficient mutual trust to bring about or perpetuate such mutual consent – with some concerned that others will abuse whatever coercive power they hold or, alternatively, that even if they do not hold or seek coercive power, they will nevertheless ‘free ride’ on the costly efforts of more willing parties to provide collective security – then there is a case for the prior establishment of the overweening force of the state as the binding framework of the political community. That is to say, if mutual consent does not naturally occur then the political community as a whole must be persuaded or contracted to the belief that the state and its monopoly of force be secured. Yet – in an inescapable paradox of ‘legitimate’ coercive authority – effective persuasion is only possible if the state is *already* endowed with the power to prevail against abusers or free-riders, using its coercive threat as an ultimate or ‘second order’ power to secure the requisite general compliance to guarantee the stable ‘first order’ resources of coercive capacity necessary for the system of effective policing which the community desires but cannot provide for itself (Loader and Walker 2007: ch. 8).

If this provides a close linkage between the early modern ‘nightwatchman state’ (Nozick 1974) and the policing or internal security function, as the state has developed and expanded other equally important ties between the state and policing have been forged. The etymology of the term ‘police’ indicates its origins in the idea of the general government of a polity or political community, and this link has again become palpable as the modern state has expanded its functions. Familiar contemporary labels and themes such as community policing, multi-agency policing and problem-oriented policing testify to the fact that the tasks of modern policing are woven closely into the fabric of the welfare state. As the modern state has assumed responsibility and claimed credit for the broader well-being of its citizens, the functions of the police have come to interlock closely with those of various other services – health, social security, environmental protection, utility supply, etc. – involved in that broader welfare project. With their 24-hour availability and powers of legal coercion the police have both the presence and authority to reinforce these other services not just as reactive ‘stand-ins’ (Cohen 1985: 28) at the point of delivery but also as proactive players in the planning and co-ordination of both local and central administration. In this sense, policing has shaped and been shaped by the broader framework of multi-functional, co-ordinated regulatory activity we call government and the general container of government power we call the state (Loader and Walker 2007: ch. 5)

Finally, the link between policing and state is also symbolic. The deep implication of policing in the consolidation of the coercive power of the state and in its sponsorship of an increasingly broad conception of governance, both of which tasks have also been vital to the social legitimacy of the state, has not been without cultural consequences. The close and venerable instrumental links between policing and the state project have provided copious materials through which the two may also be joined at the level of popular consciousness (Walden 1982; Loader 1997; Emsley 2000; Loader and Mulcahy 2003; Loader and Walker 2007: ch. 4). If national identity is the main medium



through which the state is experienced by its citizens as a community of attachment – as common membership of the polity – then policing is of no little significance as a resource through which this ‘we feeling’ (Deutsch *et al.* 1957: 36) is developed and sustained or, indeed, dissipated or lost. The presence, practice, reputation and iconography of policing have been important in many nation-building exercises and in forms of collective self-understanding which sustain national feeling, just as they have in the divisions and fractures which rupture national identity (Ellison and Smyth 2000). Crucially, as with coercive power and the development of broad governance capacity, the symbolic relationship between policing and the state is a symbiotic one. The state depends on policing’s familiar signifiers as one source of common identification and on its reputation before various populations as a mark of their willing and confident belonging to the political community. Yet reciprocally, and in a mutually reinforcing logic, policing also depends for its legitimacy and efficacy upon levels of trust in, and common feeling with, anonymous others associated with common citizenship of a state. For without this social and political bond the public resources for policing conceived of as a public good will not be forthcoming and the levels of consent necessary for an effectively informed and acquiesced policing strategy will be absent (Loader and Walker 2001, 2007: ch. 6).

For all these close ties to the state project, that policing beyond the state exists and is a growing phenomenon is undeniable. In examining the conditions of possibility of this phenomenon, we can distinguish between those tendencies which complement the close link between policing and the state or at least do not directly challenge it, and those tendencies that invite a more radical reappraisal of the state–police coupling.

As to the first set of factors, we can make a further distinction between political factors and professional factors conducive to policing beyond the state (Walker 2000: ch. 8). The political factors concern the need for states to encourage and allow some measure of liaison and co-operation between their police forces and related criminal justice agencies in order to respond to the dangers posed to their capacity to secure order within their own territory by the planning and perpetration of crime on an international scale. In other words, co-operation between states is encouraged on pragmatic grounds to match and to address the forms of co-operation between deviant groups that cause crime to ramify across borders. This pragmatic justification is most straightforward in the area of ‘normal’ crime, where the security of the state as such is not at issue and where co-operation is facilitated by the fact that the general framework of criminal law shows a striking similarity across states. Yet even with regard to crime such as terrorism which may present a direct challenge to the ‘specific order’ (Marenin 1982) of the state and where the state is likely to be most jealous of its policing prerogatives and least trustful of the motives of other states, the international context within which such crimes take place and the urgency of the threat they pose may overcome objections to co-operation. Finally, political pragmatism may also have a more strategic edge. The opening up of an international agenda in police co-operation may displace pressure upwards from national governments uncomfortable with insistent domestic pressures for a successful criminal justice policy and may

provide a new and less democratically scrutinised arena within which to argue for more resources and increased powers.

At the professional level, there are also strong pragmatic reasons for co-operation, and these track the motivating factors already alluded to at the political level. Yet the thrust towards professional co-operation is perhaps even more dynamic. Police officers typically have a more immediate sense of the urgency of particular avenues of co-operation than do their political masters. In addition, notwithstanding the national particularity of police institutions, police officers can find a solidarity, trust and empathy with foreign colleagues born of similar working conditions and priorities and even of a similar sense of professional isolation within their national milieus. Furthermore, police officers, partly because they work 'in regions of low visibility' (Van Maanen 1974), and partly because their definition of success is not so closely tied to public approbation, do not necessarily share the broader sensitivities of their political colleagues about the ideological fit and public acceptability of transnational initiatives within a state-dominated paradigm of policing (Marenin 2007; Sheptycki 2007). Indeed, taken together, these factors suggest a conclusion that will be borne out in our subsequent historical overview: although there is often eventual convergence of agendas, the initiative in international police co-operation has frequently been a professional one rather than a political one. More forcefully, their greater predisposition towards co-operation at certain points means that police professionals have often ventured into domains of co-operation where their political masters would not, or at least not so boldly, dare to tread. One recent analysis, indeed, takes the argument about the possible gap between the professional and political worldview a stage further. It ties the emergence of systematic forms of international police co-operation in the nineteenth and early twentieth centuries precisely to the growing institutional autonomy of national police organisations from the political centre of the state, and to the development of a common transnational organisational interest in the fight against international crime that escapes the more cautious prism of general state interests (Deflem 2002: 21–2).

What of these tendencies in transnational policing that involve a more radical reappraisal of the state–policing coupling? Here we are primarily concerned with the way in which, in a world of increasing globalisation of economic activity, communications media, cultural influences and forms of political organisation (Held *et al.* 1999), we may observe the emergence of post-state polities and other associations of interest that begin to claim authority of a type traditionally associated with state sovereignty (Walker 2002b). As noted in the introduction, the shift has been most profound, and with most significant consequences for policing, in the context of the EU. Here, as we shall see, the political logic of police co-operation is increasingly that of a distinct political community with autonomous capacity, authority and allegiance, even though this logic continues to compete in highly complex ways with a more traditional statist conception of co-operation both within the EU itself and in its relations with other polities. Before we discuss this novel complexity, however, we need to attend to the earlier history of police co-operation.

## The growth of transnational policing

### *Origins and consolidation*

The earliest attempts to institutionalise transnational policing involved a series of initiatives among European states in the second half of the nineteenth century to combat what were seen as political threats to the established state autocracies or oligarchies (Deflem 2002: ch. 1). The so-called 'year of revolution' of 1848 provided the impetus for a number of measures aimed at securing the existing political order against a wide range of destabilising political influences, influences which tended to be framed under the conveniently pathologising label 'anarchist' but which in fact covered a wide range of liberal, socialist and nationalist movements. Some of these policing initiatives were bilateral and others multilateral; some were more or less openly institutionalised and others clandestine; some were properly international and others, notably the Police Union of German States of 1851–66, tracked close patterns of political interconnection in a manner which anticipated Europe's much more intense integration project a century later.

The emergence of a similar framework of police organisation in many European states facilitated the co-ordination of these initiatives. Yet that same common bureaucratic development, together with the growth of a sense of a common foundation of professional police knowledge in matters such as criminology and investigation techniques and an increasing appreciation of the contribution of communications and transportation systems to a nascent 'world society' (Deflem 2002: 78) in which transnational criminal opportunities were expanded, also provided the context within which police-led initiatives in operational co-operation concerning ordinary crime became possible. As Fijnaut has argued, slowly but surely there developed a professional 'fraternity which felt it had a moral purpose, a mission to perform for the good of society' (1997: 111). This was no smooth progression, but an untidy accumulation of tentative beginnings and false starts against a backdrop of fragile and fluid international political allegiances and the threat of war and its massive disruption of the general framework of transnational co-operation. Indeed, it was not until after the First World War that the first permanent international agency – the International Criminal Police Commission (ICPC) – provided a general template for international police co-operation. Established in Vienna in 1923, while the ICPC would have been impossible without the prior and complementary establishment of the League of Nations as a more general institutional framework for the international political community, it was nevertheless a professional rather than a political initiative. Both the ICPC and its post-Second World War institutional successor, the French-based International Criminal Police Office (ICPO) – or Interpol as it soon became known – supplied a communications exchange for the participating national police forces as well as providing a 'policeman's club' (Anderson 1989: 43) in which senior officers could nurture professional and social contacts with international colleagues. These organisations were conspicuous in their lack of formal foundations in international law, and with the striking exception of the Nazi takeover of the ICPC in 1938, governmental involvement remained marginal and low key (Andreas and Nadelmann 2006: ch. 4).

The contemporary scenario of transnational policing has seen Interpol expand its activities significantly. Its membership, originally 19, has grown tenfold. In recent years it has begun to regularise its position in international law, it has exploited developments in information technology to increase the flow and quality of its information exchanges through its system of national central bureaux, and it has rationalised its organisational structure to provide a separate European unit. Yet in many ways it remains the paradigm case of an *international* police organisation and is limited by the constraints inherent in internationalism. It has never challenged the statist prerogative in police operations and lacks the legal, symbolic and material resources to be anything other than parasitic on national police authorities. Partly because of these restrictions, but also because of a more general expansion in the network of transnational policing relations, it is no longer the dominant actor on the scene.

Two developments over the last 30 years have had a particular impact in this regard. To begin with, there has been a marked internationalisation of US law enforcement activity (Nadelmann 1993). Although the USA has always been a player on the international policing stage, often it was a reluctant or peripheral presence (Andreas and Nadelmann 2006: ch. 3). Its geographical distance from the main European stage, the more general legacy of isolationism from its revolutionary beginnings and the fragmented nature of its internal law enforcement design and the attendant difficulties of identifying the most appropriate and legitimate representatives of federal policing interests, all contributed to this. However, particularly since the eruption of international traffic in narcotics in the 1960s and 1970s and President Nixon's declaration of a 'war on drugs', there has been a sharp increase in activity, much of it outside the framework of Interpol. Instead, internationalisation has tended to take the form of the increased concentration of resources on international activities dealing with drugs, internal revenue, organised crime, immigration, etc., including the widespread placement of liaison officers, training units and other support agencies in embassies and law enforcement institutions abroad. In turn, as we shall see below, the end of the Cold War has led to a more pronounced internationalisation of the internal security agenda and, indeed, a blurring of the boundaries between internal and external security. September 11 may have led to a marked consolidation and further intensification of much of this activity, but it is important to appreciate the significance of the structures and attitudes in place even before that watershed event.

The other major development of the past 30 years has been in the policing capacity of the EU, and it is to this that we now turn.

### **The European Union**

The EU may today be hosting the most audacious and potentially far-reaching experiment in transnational policing, but the beginnings of its law enforcement capacity, too, were inauspicious (Anderson *et al.* 1995: chs 1–2; Denza 2002: ch. 3). While the Pompidou Group had earlier inaugurated policy-level collaboration in the area of drug-trafficking, the Trevi organisation did not provide the first major initiative in the policing field until 1975, a full 18 years after the Treaty of Rome established the supranational initiative that was eventually to

become the EU. From its earliest years, aided and abetted by a precociously self-assertive approach by its main judicial organ, the European Court of Justice, the European Communities (as they then were) had carved out an original constitutional niche at an intermediate point between the two traditional Westphalian poles of statehood and international organisation (Weiler 1999: ch. 2). The new supranational entity did not itself aspire to statehood, and in particular its *political* organs remained either weakly democratically legitimated (in particular the Assembly, later to become the Parliament, was originally only indirectly elected, maintained a very low public profile and had few powers of policy-making or policy intervention, while the more powerful Commission, as permanent executive, was merely an appointed body) or, as in the case of the Council, which comprised national executives with veto powers, continued to be dominated by the member states themselves. At the same time, however, through the development of constitutional doctrines of supremacy and direct effect and through an expansive interpretation of their own jurisdiction, the new European Communities – with the European Court of Justice in the vanguard – began to make *legal* claims which in many ways were reminiscent of the state.

Yet policing and criminal justice policy were for a long time not powered by the main engine of legal integration. Certainly, there was an expansion of co-operative activity in parallel with the deepening and widening of the core areas of the community law. Trevi grew from its beginnings in the area of counter-terrorism, to cover drugs, organised crime, police training and technology and a range of other matters, and its activities were given a further significant boost with the launch of the Commission's '1992' Single Market Programme after 1985 – a programme which in its explicit aspiration to remove internal border controls over persons, goods and services ushered in the possibility of a new 'security deficit'. The supposed security deficit consequent upon the liberalisation of internal controls was also the catalyst for the other major European criminal justice initiative of that time, namely the Schengen system. The original Schengen Agreement of 1985 covered a core of five member states who committed themselves to a pre-emptive initiative in abolishing border controls. Aided by a later Implementation Agreement of 1990 the Schengen idea gradually expanded to cover all the EU member states with the exception of the island-members, Britain and Ireland, who refused to dismantle their sea and air border controls, and even came to embrace two non-EU members of the Nordic Passport Union – Norway and Iceland. When, after various false dawns, it eventually became operational in 1995, the Strasbourg-based Schengen organisation incorporated a number of compensatory law enforcement measures, including the computerised Schengen Information System and police co-operation both in the exchange of information and intelligence and through a raft of more concrete operational measures –including 'hot pursuit' across borders, cross-border observation and controlled delivery of illegal substances (Den Boer 2001). But in the final analysis, both Trevi and Schengen remained strictly outside the community structure. For all the political salience of its areas of interest, Trevi was no more than a forum for policy discussion and information exchange, one that operated in the shadow of the supranational legal structure. Schengen had a more

elaborate and more entrenched institutional system and, unlike Trevi, could boast a formal legal basis, but again it was quite distinctive from the legal organisation of the European Communities.

Only with the passing of the Maastricht Treaty of 1992, establishing the EU, was police co-operation formally integrated into the supranational structure, but even then the legacy of political ambivalence and policy lag remained apparent. Police co-operation was located in a new 'Third Pillar' of Justice and Home Affairs alongside criminal justice co-operation, civil jurisdictional matters and immigration, asylum and visa policy (Peers 2006: ch. 2). In this way, it was kept quite distinct from the traditional 'First Pillar' of common market measures (which itself increasingly embraced flanking social measures such as environmental policy, cultural policy and employment policy), as indeed it also was from the new 'Second Pillar' of Common Foreign and Security Policy. Each of the pillars retained its own distinctive institutional methodology, and the single most important differentiating factor between the First Pillar on the one hand and the Second and Third on the other remained the extent to which real policy and implementation power passed from national to supranational authorities. So within the Third Pillar the member states retained important powers of initiative and control over policy-making; the measures themselves tended to be 'soft' rather than 'hard' – facilitative rather than compulsory – and did not penetrate the national legal systems sufficiently to confer direct rights and obligations on individuals; implementation was controlled by national actors operating through the Council rather than the more supranational Commission; the European Court of Justice was largely excluded from supervising the legality of policy activity and implementation; and other European institutions, such as the Parliament and the new European Ombudsman, were also largely excluded from a supervisory role vis-à-vis the new operational agencies (Walker 2003).

Nevertheless, the Maastricht Third Pillar was much more than a token initiative. Beneath the Council of Justice and Home Affairs Ministers an elaborate policy-making and policy-implementing structure of steering groups and working parties was established, including a number relating to policing. The most important initiative, however, was the creation of the legal basis for the establishment of Europol as a central organisation in a network of relationships with national units in each member state – which in the case of the UK was the recently established National Criminal Intelligence Service (see Chapter 18). The working premise of Europol was that the central organisation would supply the national units with criminal intelligence and analysis and would receive from them information on themes and issues connected with certain forms of transnational crime. This, together with the integrated policy structure and a novel facility to develop supporting legislative measures in criminal justice co-operation gave a pronounced new impetus to police co-operation.

Yet when the next wave of treaty reform beckoned at Amsterdam in 1997 one of the few matters on which there appeared a broad European consensus was that the Third Pillar initiatives, including the policing measures, had disappointed expectations (Denza 2002: ch. 5; Peers 2006: ch. 3). They were criticised, on the one hand, for their slow and inefficient progress and, on the

other, for their opaqueness and lack of accountability. In what has been a recurring theme in the justice and home affairs sphere, the national jealousies which prevented the forging of a fully fledged supranational capacity tended to lead both to a cumbersome and frustrating progression of policy initiatives – with the requirement of unanimity often blocking progress at the behest of the most reluctant member state – and to impede the kinds and degrees of empowerment of European political organs (such as the Parliament and the Court of Justice) in a policy-influencing or monitoring capacity required to match the scale and scope of the new Europe-wide legislative and executive security function.

Most pertinently, notwithstanding its high-profile conception at Maastricht, Europol itself had a difficult and protracted birth. The German government argued for its early negotiation, but in fact initial progress was tentative, leading only to the creation of a precursor organisation – the Europol Drugs Unit – in 1993. The legal Convention for Europol itself, the draft of which remained within the control of the member states in the Council with the European Parliament not consulted, was not signed until 1995, and the organisation did not become fully operational at its Hague headquarters until 1999. Many factors contributed to its delay but, tellingly, they included arguments over the range of crimes covered by its mandate – going to the question of its efficiency and viable capacity – and unease as to the adequacy of its data protection system and the extent of the jurisdiction of the European Court of Justice – going to the question of the sufficiency of its political and legal accountability.

Indeed, by the time Europol was fully operational, with a broad remit to cover all crimes with an ‘organised criminal structure’; its underlying constitutional basis had already been much revised by the Amsterdam Treaty. This treaty, which – only slightly modified by the 2000 Treaty of Nice – remains the main constitutional fundamental of the EU policing capacity prior to the expected implementation of the new Treaty of Lisbon in 2009, gave voice to the dissatisfaction of its sponsors and introduced radical changes to the Maastricht framework. Visa, asylum, immigration and other policies related to the free movement of persons were transferred from the Third to the First Pillar, while even in the residual Third Pillar dealing with police and judicial co-operation there was a move towards a more supranational institutional methodology. The right of initiative is now shared by the Commission and member states, the measures to be used are more formal and better suited to the articulation of stable and authoritative legislative norms as opposed to ad hoc agreements, there is a modest increase in the consultative powers of the European Parliament, and there is clearer recognition of the adjudicatory powers of the European Court of Justice – although this is still limited and uneven and the court is specifically prohibited from ruling on the validity and proportionality of the operations of domestic police forces and other law enforcement agencies, or on the exercise by member states of their responsibilities with regard to the preservation of law and order and internal security.

More specifically, policing competence was extended to embrace operational co-operation between the competent authorities, including the police, customs and other specialised law enforcement services of the member states. Consist-

ent with this new general constitutional permission, Europol was provided with the legal basis to acquire a range of new functions, including the authority to establish joint operational teams to support national investigations, the power to ask the competent authorities of the member states to conduct and co-ordinate investigations in specific cases, the capacity to develop specific expertise which may be put at the disposal of member states to assist them in investigating organised crime, and the facility to promote liaison arrangements between prosecuting or investigating officials specialising in the fight against organised crime. And alongside these marked increases in policing competence, the Amsterdam Treaty significantly strengthened the capacity to develop common measures for harmonisation of both substantive and procedural criminal law and to facilitate co-operation between criminal justice agencies, as well as incorporating the Schengen arrangements into the new Area of Freedom, Security and Justice (see below), and distributing them across the First and Third Pillars.

The significance of Amsterdam, however, cannot be seen merely in aggregation of new increments in competence and institutional capacity. Amsterdam also marked a shift in the macro-political climate. Internal security, it seemed, was no longer to be treated as the poor cousin of European integration, never able to keep up with its rich relatives, but rather as its precocious child, one who had made remarkable progress in a very short period of time and who was ready to be treated as a mature member of the European family. Indeed, to extend the metaphor, in some regards at least, internal security could be seen to be vying for the mantle of head of the family. While the Amsterdam Treaty split the old Justice and Home Affairs sector between two pillars, it also reunited them under one single policy label, namely 'the establishment of an Area of Freedom, Security and Justice'. This label, for some at least, was seen as a key mobilising project for the union as it entered the twenty-first century. By the late 1990s, Freedom, Security and Justice was already the busiest area of policy according to indices such as Council meetings held and measures proposed (den Boer and Wallace 2000: 503). At Tampere, Finland, in October 1999, the European Council – the thrice-yearly meeting of the Heads of State of the European Union – took the unprecedented step of focusing their meeting on one single theme, and the development of the Area of Freedom, Security and Justice provided that theme. The meeting itself sought to kick start the post-Amsterdam agenda, and in the area of police co-operation it signalled various other initiatives which were to come to fruition in due course, including a European Police Chiefs Operational Task Force, a new European Police College and the launching of Eurojust (composed of prosecutors and magistrates from each member state) as a body which would complement at the level of judicial investigation the co-ordination and information-sharing activities of Europol at the operational level.

Again, as with North American law enforcement, the events of 11 September 2001 have given yet additional impetus to the new Area of Freedom, Security and Justice. Not only have there been further substantive developments within the framework of police co-operation, but that framework itself – in the form of the legal and institutional edifice of the Treaty of Amsterdam – is on the



verge of being eclipsed. But before we examine the post-11 September developments, let us look more closely at the factors which accounted for the remarkable growth of European police co-operation up to that point.

### Explaining recent patterns

In examining the conditions of possibility of transnational policing above we have already sketched the main explanatory contours of present developments. Beyond the EU domain, the early mix of political and professional initiatives, the growth and consolidation of ICPC and Interpol and the late-century surge in North American international activities can all be explained within the classic parameters of the statist model. We see both the incentives and the limitations to bilateral and multilateral co-operation at the political level, particularly in those areas of 'high' or political policing where the very national interest that makes co-operation crucial also sets limits to that co-operation. We see the importance of professional, practically motivated initiatives, and they have often been in the vanguard of developments where there is an absence of political initiative or even endorsement. We see the development of a strong US capacity in international policing shadowing their more interventionist foreign policy generally in both Cold War and post-Cold War eras. In a globalising world, the USA increasingly responded to the interconnectedness of its economic and political stability with external forces in a proactive manner, and policing was necessarily part of that policy thrust.

But what of the EU? As was said above, it is not plausible to explain the nature and extent of common police activity in its regional setting purely in terms of a statist logic. Certainly, statist thinking played its parts in Trevi and in the original Maastricht settlement, and even after Amsterdam a significant part of the support for police co-operation, especially among the more Euro-sceptic states such as the UK, can be explained in these terms. Nor should we underestimate the importance of professional interests and ideologies. The fact that there is now a permanent Justice and Home Affairs bureaucracy under the aegis of the Council, as well as permanent agencies such as Europol and Eurojust, provides an institutional context that amplifies the common interests and sympathies which are at the root of professional co-operation and also creates a new set of vested interests in the consolidation and extension of the very structures and agencies created (Bigo 2000a). However, if only statist political and professional interests were in play, it would be difficult to imagine that a more powerful brake would not have been put on the expansion of policing capacity. Other factors are at work that concern the logic of the political development of the EU itself, and its acquisition of state-like tendencies. What are these factors? In general terms, we may identify three sets of forces – and three sets of arguments underpinning or rationalising these forces – which contribute to a more distinctive EU dynamic in this area, each of which draws upon one of the rationales linking policing to the state – security, governance and symbolic association (Walker 2000: ch. 8). In addition, these three sets of forces and attendant discourses are in some respects mutually reinforcing.

In the first place, there is the prevalence of a new internal security discourse, one that bears a family resemblance to the traditional security rationale linking policing to the state. The new Area of Freedom, Security and Justice is a telling indication of the maturing of a project which conceives of the EU as a self-standing 'security community' (Adler and Barnett 1998) – even if the relative underdevelopment of the Common Foreign and Security Policy and its high-profile shortcomings in crises such as Kosovo and the Iraq War demonstrate that the external dimension of this project remains seriously underdeveloped in comparison with the state archetype. But to concentrate on the internal dimension, this is premised upon the identification of a range of interests among the peoples and polities of western and central Europe which are increasingly presented as interests held in common rather than merely concurring or overlapping, and also upon the perception of a series of threats to these common interests and of the appropriate security responses to these threats.

There are significant economic and political factors underpinning this matrix of rhetoric, belief and action. The healthy economic prosperity of the EU in the post-Cold War era stands in stark contrast to the insecurity and poverty of the polities to its south and east. The present wave of central European and Mediterranean enlargement which increased the EU from 15 members at the turn of the century to 27 by 2007 might seem to have addressed some of these problems, but extending the borders does not resolve the question of the relationship to the 'outside' and, indeed, the strict conditions and delayed rewards of new membership (including, tellingly, in the area of internal security, where trust appears to be in particularly short supply – Walker 2002c) threaten to create a two-tier structure inside the union.

The use of a rhetoric of security with its connotations of urgent threat has provided western European political elites with a conveniently reductionist way of viewing the complex problems associated with these questions of economic advantage and political pedigree. The security metaphor allows core anxieties associated with the prospect of sharing the privileged European space with outsiders to connect with more specific concerns about the development of criminal organisational links across internal and external borders. In this vein, Bigo has argued that the emergence of an 'internal security ideology' around the institutional edifice of the Area of Freedom, Security and Justice has allowed a number of issues ranging from immigration and asylum and terrorism, organised crime and public order to be located along a single 'security continuum' (Bigo 1994: 164) and treated to a one-dimensional securitised response. When what is projected to be at stake is the security of the western European 'way of life' itself, the argument for the development of a coercive apparatus becomes highly persuasive. Recalling the discussion of the logic of security earlier, we may note that the EU seems to be in the process of severing the Hobbesian connection between the ultimate coercive power of the polity and the capacity of the polity to bind its citizens to a system of compulsory policing. The EU may lack the 'second order' power of the ultimate means of violence, instead still relying on the member states themselves to provide this, but is nevertheless developing a 'first order' policing power which, though historically derived from the states, increasingly

possesses an independent momentum and a self-referential authority. The internal security discourse is both a reflection and a reinforcing cause of this growing autonomous power.

A second discourse which contributes to the deepening of the EU internal security capacity, albeit in a much lower key, is that of functional spillover (Lindberg 1963). Since its inception, a key argument associated with the extension of the European project into new domains has been that the development of a programme of intervention in one sector prompts adjustments in related policy sectors, either to secure optimisation in the original sector or to prevent perverse effects in the other sectors. The development of a competence in internal security matters is no exception to this trend. Just as the development of common anti-discrimination and environmental measures are justified, at least in some measure, by the need to ensure that the common market is not distorted by unequal socially responsive side-constraints in different national sectors, so too the development of a competence in Justice and Home Affairs was justified, at least in some measure, by the need to ensure that the opening of borders did not have inordinate consequences in terms of the increase in security risks.

As we have seen, this reasoning provided a significant impetus for the growth of an internal security capacity during the '1992' programme of the pre-Maastricht phase. More generally, functionalist thinking can be seen to resonate very closely with the governance logic associated with state policing. Not only does the prevalence of functionalist thinking help to explain how the EU came to develop a security competence but it also aids our understanding of how policing and related security matters are becoming more deeply embedded within the structure of a multisectoral post-state polity just as they embedded themselves within the structure of the multisectoral state. For wherever a polity develops a broad competence to govern, there is a continuous spillover into the police sector from the range of other 'governed' social activities. To take but two examples from the recent history of the EU, the introduction of the euro currency in 2002 brought in its wake problems associated with its counterfeiting, and so the argument was successfully made that the combating of this freshly minted economic crime should be added to the functions of Europol. Similarly, the development of EU thrice-yearly councils as high-profile political occasions and, as such, attracting high-profile demonstrations by civil society groups opposed to their political and economic programmes – a trend which reached an early peak in 2001 in Copenhagen and which was part of a broader momentum of anti-globalisation protests at major political occasions, most notoriously at the G7 meeting in Genoa in the same year – provided the impetus for the new European Police Chiefs Operational Task Force initiative in developing a co-ordinated public order policing capacity at major summits (Bunyan 2003).

Inasmuch as they suggest a compelling relationship between cause and effect, action and reaction, functional arguments for the growth and consolidation of a polity are clearly flawed. Yet precisely because they present matters of political choice as natural or predetermined, such arguments are popular and persuasive within the EU. In a manner that tends to operate symbiotically with the increasing use of an uncompromising security rhetoric and logic

discussed above, functionalism appeals to a bureaucratic conception of policy and a technocratic conception of policing as tasks insulated from, and sustained and nurtured regardless of, the broader vicissitudes of political life (Balzacq 2008).

A final discourse affecting the development of a EU policing capacity, one which resonates with the general symbolic dimension linking police and state, is the macro-political discourse of European integration itself. With its citizenship provisions introduced at Maastricht, its new Charter of Fundamental Rights proclaimed in 2000, its grand Constitutional Convention chaired by Valéry Giscard d'Estaing in 2002–3 and leading to a Constitutional Treaty in 2004, and with its flags, anthems and annual 'Europe day', Europe has become an explicit project in polity-building in recent years. Of course, as the referendum defeats in France and the Netherlands in 2005 and the subsequent failure of the Constitutional Treaty to obtain sufficient ratification graphically indicates, this project is challenged by Eurosceptic voices (Walker 2006). Yet we should not underestimate the extent or resilience of self-conscious polity-building, not only through these direct symbolic acts but also in the development of particular policy sectors, even in areas, such as policing, where one would expect the forces of statist resistance to supranational ambition to be strongest. For instance, it is noteworthy that the crucial foundational Third Pillar measures were planned and perpetrated at the high point of institutional self-confidence in the early 1990s, following the success of the Commission in bringing the 1992 project to fruition. In particular, German Chancellor Kohl's initial proposal for Europol in 1991 was well attuned to the political mood, an audacious statement of intent by the increasingly dominant and most explicitly integrationist member state. It was meant, and partly succeeded, as a sign of political virility, chosen and highlighted precisely *because* it challenged one of the traditional areas of state hegemony. Similarly, the priority given to the Area of Freedom, Security and Justice is not just about the pursuit of a vigorous securitisation approach within a particular policy sector, but again a massive statement of symbolic intent. If the idea of the state is about the coincidence of territory, population and authority, then the prioritisation of an explicitly territorialised conception of security conveys a powerful message about the ambitions of the EU as a 'state-like' entity, even if not a full-blown state.

More generally, the emphasis on the internal security area speaks eloquently not only to the authority claims of the new polity but also to its identity claims. Recall that policing in the state tradition connects to the formation of political community through the prism of national identity. In order to secure its broader legitimacy the project of polity-building at the European level must also be concerned with issues of identity, and must address the oft-voiced concern that the EU lacks the symbols and vehicles of identity formation – common language, shared sense of historical origins, etc. – which are so central to the 'imagined community' (Anderson 1983) of the state. In the absence of these features, and given the fears of political and economic instability noted earlier, the idea of a security community may acquire a particularly vital cultural dimension. A strong security element within the politics of the EU dramatises what Europeans have in common, even if it is an identity which

tends to emphasise what Europe is *not* – the ‘other’ beyond the borders – rather than its positive features.

### **Current trends and future prospects**

In this final section, we examine three trends in the configuration of transnational policing and then seek to draw a few modest conclusions as to future prospects. Two of these trends, the rise of the EU as an autonomous force and the development of the USA, draw upon on the arguments and analysis set out in the course of the chapter. The other trend, and the first we consider, introduces a new theme, but links it to some of the broader trends in globalisation we have discussed above.

#### ***Transnational private policing***

Over the last 15 years policing studies have at last caught up with the fact that private forms of policing are outstripping public forms in terms of numbers and resources, if not yet perhaps significance – and, indeed, have done so for some time. The reasons for this are too familiar to repeat at length; suffice to say that they are related to the fiscal crisis of the social democratic state and its general decentring as the dominant societal steering mechanism, the increased acceptance of cultural and interest pluralism which cuts across territorially defined populations, the rise of ‘mass private property’ (Shearing and Stenning 1983) which shares many of the same priorities – and problems – as public space, the post-Fordist move away from the large-scale top-down bureaucracy as the paradigm form of social organisation, and a consequent and reinforcing cultural normalisation of private or ‘club’ (Hope 2000) solutions to questions of security (Jones and Newburn 1998). It would be surprising if this shift did not also impact upon transnational policing, especially since many of the factors which underpin privatisation also underpin transnationalisation.

In particular, and running through all the discrete factors named above, the gradual decoupling of territory and population in the structure of our contemporary political forms finds its specific manifestation in policing in the growing distinction between the policing of territory and the policing of ‘suspect populations’ (Ericson 1994; Sheptycki 2002). Where once the paradigmatic policing sponsor was the state and the paradigmatic object of policing was the territorial citizenry in general, increasingly we see a shift either in the sponsor or object of policing – and often in both – from the territorially general to the non-territorially particular. Much of transnational policing, then, makes sense in terms of the relocation of the particular (sponsor or object, or both) beyond the confines of the state boundary. Where the state or the post-state polity is still the sponsor, this often still takes a public form, as we have seen in the concentration upon particular territorially indistinct populations (drug-traffickers, terrorists, anti-globalisation protesters, irregular migrants, etc.) in EU policing, or indeed in contemporary US policing. Yet, both in cases where a foreign state remains a prominent sponsor and where its involvement is less

significant or apparent, this new particularism often manifests itself in the transnational extension of private forms of security. This is most likely where particular interests or particular forms of expertise that are either not commonly recognised or available in general public police organisations, or are of a type with which these public police organisations or their political masters do not want to be closely associated, are engaged in specific forms of security surveillance or enforcement against limited populations. This tendency can be seen, for example, in the corporate security guards of transnational companies, in the involvement of private agents in matters of state security abroad where the interests of 'high politics' and private finance intersect (as in industrial espionage and counterespionage), and in the employment of specialised private security guards to contain irregular immigrants in secure zones while they await the processing of their cases (Johnston 2000; Sheptycki 2002: 329–34). It can also be seen to high profile effect in the activities of private organisations such as Blackwater in the multiple, quasi-military security tasks implicated in the broader occupation and regime transformation project of the United States in Iraq (Scahill 2007; Verkuil 2007). And in so far as the Iraq occupation is part of a broader trend in American foreign security policy (see below), the close interlacing of private and public transnational security interests that it indicates cannot be viewed as an isolated case. Both here and more generally across the transnational private sector, it is, of course, difficult to quantify such a diverse, fragmented and sometimes clandestine pattern of security activities. However, such evidence as does exist dovetails with our understanding of the nature of the underlying forces at work to suggest that this is very much a growing dimension of transnational policing.

### **The European Union**

Earlier we explained how Amsterdam in 1997 and Tampere in 1999 had given a significant boost to police and criminal justice co-operation in the EU, and how a diverse array of powerful professional and political motivations underpinned these developments. Recent trends suggest that these dynamics have gained in strength. In particular, the events of 11 September instantly and significantly added to the momentum of the internal security dynamic, spawning a number of new initiatives (Bunyan 2003; Gilmore 2003). A task force was quickly created within Europol for the fight against terrorism. Independently of Europol, multinational ad hoc teams for gathering and exchanging information on terrorists were set up under the aegis of the European Police Chiefs Task Force. The EU Joint Situation Centre was established to conduct strategic analyses of the terrorist threat, while co-ordination meetings and multinational teams to combat and destabilise suspected terrorist groups were also formed under the banner of the Counter Terrorism Group – a new framework of EU security and intelligence chiefs (den Boer *et al.* 2008). Measures were passed allowing both for a common list of terrorist organisations and for the approximation of laws against terrorism in the member states; unlike many European First Pillar measures which aim at minimum or 'lowest common denominator' harmonisation, the logic of the

approximation instrument is one of maximum harmonisation, with both of the staple components of the definition of terrorism – the ‘violence’ used and the ‘political ends’ sought – defined in a very inclusive manner to include theft and property destruction under the first head and a wide range of forms of destabilisation, intimidation and compulsion or frustration of the acts of governments and international organisations under the second head. The classic internationalist instrument of extradition was all but extinguished within the EU due to the creation of a common arrest warrant which dispenses with most of the national judicial protections associated with the former instrument, most strikingly the principle of double criminality, and so greatly facilitating the transnational transfer of the accused person (Gilmore 2003). And Europol’s younger sibling – Eurojust – achieved formal legal status following the Treaty of Nice in 2001 and a series of implementing instruments. Many other developments that expanded the network of EU security agencies were soon to follow, including the G5 (later G6) group of the largest EU countries combating terrorism in 2003, a common European external border agency (Frontex) in 2004, and, still in prospect, a European Public Prosecutor (Monar 2007; den Boer *et al.* 2008).

It is difficult to discern an overall pattern in this renewed acceleration of activity, but four trends may be identified which allow us to observe a qualitative shift in the kaleidoscope of new measures and agencies of European police co-operation. In the first place, patently the anti-terrorist theme has taken centre stage since 11 September, justifying not only various specific initiatives in the anti-terrorist field but also providing a pretext for the intensification of various other measures, such as the European arrest warrant which covers 32 offences – most of them unconnected with terrorism. Historically, anti-terrorism has been perhaps the most ambivalent theme in transnational police co-operation, the site at which the respective logics of a traditional international approach and a more pervasive transnational approach most directly clash. Because of the gravity of the threat posed, terrorism has often been the catalyst for co-operation, as in some of the early forms of international co-operation in the late nineteenth century and in the development of the Trevi forum. Yet the close connection of terrorism with the specific order of the state has meant that such co-operation has often remained highly contingent on particular circumstances where national interests overlap, and conditional on the retention of national prerogatives. For instance, despite its important place in the foundations of European police co-operation, terrorism was not included in the first wave of crimes falling within the settled remit of Europol, even if it was soon added. With 11 September, terrorism now seems to be at the centre of the EU’s permanent internal security capacity, the urgency of the threat having largely eclipsed national sovereigntist concerns. As of March 2007, indeed, the European Commission could boast 51 adopted and 33 proposed pieces of legislation under the anti-terrorist label, together with 22 Communications and 21 Reports (European Commission 2007). This focus may, of course, shift again in due course, but unless and until it does, it provides a more powerful and relentless engine for integration than many of the more prosaic themes of transnational police co-operation (Balzacq 2008; den Boer *et al.* 2008; Edwards and Meyer 2008).

The other three recent developments are more nuanced, but perhaps of equal long-term significance. Secondly, then, although neither Europol nor any of the other transnational agencies have independent powers of legal execution (arrest, search, etc.), increasing involvement post-Amsterdam in operational matters and increasing control over operational information are shifting the power balance significantly between transnational and national operational units. The possession of direct legal powers of coercion over the individual citizen has traditionally been seen as a key preserve of sovereign statehood, a non-negotiable dimension of the state's Hobbesian compact with its population and a guarantee that any transnational police facility will remain in the service of national needs and capacities. Yet the shift in informational, strategic and operational resources upwards to the European level, particularly as advanced information technology (using increasingly interoperable systems) is peculiarly suited to the proactive styles of policing developed to combat the dispersed security threats targeted within the supranational environment, suggests that executive powers may have become a somewhat outmoded index of control, and may obscure a real transfer of authority to the supranational level under the rubric of "intelligence-led policing" (Balzacq 2008: 94).

Thirdly, the field of European police co-operation is increasingly implicated in a broader system of criminal justice co-operation. Earlier, we talked of the importance of functionalist thinking in European integration, but in the first phase of Third Pillar activity, the major point of reference for functionalist extension remained the First Pillar. Put crudely, the First Pillar acted and the Third Pillar reacted. While elements of this relationship remain, the advent of Eurojust and Frontex, the very recent intensification of the programme of harmonisation of substantive and procedural criminal law, and the proposals for a European Public Prosecutor – initially confined to offences against the financial interests of the EU but with the potential to cover all cross-border crimes – speak to the development of an autonomous systemic logic within the security field. Developments in one piece of the security jigsaw tend to support the case for the preparation of another piece. Police co-operation became a feasible proposition against a background of reasonable approximation of substantive and procedural criminal law, and the degree of common purpose and mutual trust this allowed. In turn, the consolidation of police co-operation has provided a favourable empirical backdrop against which the case for greater integration of capacities of judicial investigation and prosecution could be made and, subsequently, we may expect such greater co-ordination at the prosecutorial level to provide an argument for yet more police co-operation. Like all functionalist thinking, the logic of this approach may well be flawed, may present as inevitable that which is often highly contestable, but there is no denying its influence none the less.

Fourthly and finally, there is the continuing thread of macro-institutional development. The Constitutional Convention on the Future of Europe may have been aborted, but the Treaty of Lisbon promulgated in its place promises to retain the new developments it signalled in institutional capacity (Convention on the Future of Europe 2002; Walker 2003). In particular, it eradicates the 'pillar' structure which has accompanied Justice and Home Affairs throughout its career in the EU and creates in its stead a single decision-making



methodology in which the old Third Pillar – the traditional home of Justice and Home Affairs – will be assimilated to the First Pillar. As of 2009, then, provided the Treaty of Lisbon is successfully ratified legislation in police and judicial co-operation in criminal matters will involve the European Parliament as co-decision maker and will proceed on a majoritarian rather than a unanimous basis. The supranational centre is further strengthened by the creation of a new Standing Committee on Internal Security to secure and promote operational co-operation. As well as dovetailing with broader integrationist ambitions, these developments clearly respond to a securitised political climate – evident in the Convention and its aftermath – in which a concern with the adequacy of existing instruments to achieve security objectives after 11 September and the later Madrid bombings came to dominate the agenda.

The constitutional opening provided by the Convention and the later Lisbon Treaty has led many to hope that this preoccupation with capacity-strengthening would be matched with a concern for ensuring more robust forms of public participation and accountability. In this regard, however, the new Treaty is at most a partial success. There is some increase in the monitoring powers of both European and national Parliaments, and also of the Court of Justice, but this is either highly restricted or non-existent with regard to specifically operational matters or those bearing upon national security. Moreover, the capacity for national opt-outs as well as for 'opt-in' co-operation amongst more limited groups of countries – an exceptionalism always enthusiastically utilised and jealously guarded by the UK government – remains, and is indeed in some respects made easier. It appears, therefore, that a combination of residual statist ambivalence about strengthening certain central institutions and curtailing national discretion, the greater urgency in a climate of increased security fears of the need to ensure 'effectiveness' over the demands of accountability, and the genuine constitutional difficulties of supervising an unparalleled concentration of executive and operational authority in the transnational domain (alongside a similar but constitutionally more familiar increase in legislative authority) has produced a settlement in which capacity continues to outstrip control (Carrera and Geyer 2007).

### **The USA**

One dimension of the EU internal security capacity not yet discussed has been its fast-developing external dimension, its extension to cover co-operative relations with other global regions. Until recently, the major focus of this effort was eastwards, both in preparing the enlargement countries for accession, and in managing relations with those countries situated on or beyond what one former EU ambassador to Moscow termed the 'arc of instability' (*The Economist*, 7 November 1998) from Russia, through the Ukraine, the Balkans and Turkey into the south and eastern Mediterranean – embracing those countries which will provide the new external border post-enlargement and other countries further east and south, which, as suppliers of illegal drugs and immigrants, are perceived to be important sources of Europe's security problem. By comparison, relations with the USA were slow to develop, but

received a significant stimulus after 11 September. The tone was set by an early joint statement against terrorism just nine days after the Twin Towers attack, an extraordinary European Council meeting the following day to develop a fuller response and George Bush's open letter to the EU of 16 October containing 47 separate requests for co-operation against terrorism. Many of these initiatives bore fruit in an extensive co-operation agreement between the USA and Europol signed at Copenhagen in December 2002 (Bunyan 2003). Among other matters, this provides for more intensive co-operation at the level of the exchange of personal data (despite American data protection standards being much lower than EU standards), development of the role of European liaison officers in Washington to include direct co-operation with specific US agencies such as the FBI and the Drug Enforcement Administration (DEA) on intelligence matters and investigative methods, US representation on EU Third Pillar working parties and committees, and greater controls by US officials over the entry of EU persons and goods. There has been considerable criticism of some of these developments as representing a one-sided US agenda in which EU concerns and priorities are given short shrift (Bunyan 2003). A particularly notorious recent example concerns the Passenger Name Record Data initiative which allows American law enforcement and border agencies extensive access to information on European air carrier passengers. The EU was pressurised into a hasty agreement on this in 2004 – so much so indeed that it had to be subsequently renegotiated after the European Court of Justice upheld the European Parliament's challenge to its legality in 2006 (Monar 2007; Balzacq 2008).

Yet, aggressive inter-regional collaboration is only one component of a new approach to internal security in the USA, which, as noted earlier, was already well developed before 11 September. There has been much talk by security scholars in recent years of the merging of internal and external security agendas (Anderson *et al.* 1995: ch. 6; Bigo 2000b). While in the European domain it is perhaps more accurate to talk about the transnational extension of the internal security agenda to the boundaries of the EU, with external security matters still primarily controlled by the state, in the USA, by contrast, where jurisdictions over internal and external security are both still coterminous with the sovereign state, the metaphor of merger is more apt (Andreas and Price 2001). In the post-Cold War era we have seen a significant reconfiguration of US security strategy in response to the end of bipolarity. Security threats, and security resources, can no longer be easily compartmentalised into the domestic and the global, with police and military the dominant players in their respective domains. Instead, these threats are perceived as more fluid and more various, requiring new security rationales and operational methodologies, but still drawing upon old institutions and rhetorics. So, in a pervasive militarisation of security rhetoric, organised crime has been variously named the 'new Evil Empire' (Raine and Cilluffo 1994) and 'the new communism' (Naylor 1995) and security policy in many domains, particularly Latin America and the Caribbean, is now mainly driven by drugs control, illegal immigration and other issues of law enforcement. Alongside this shift in rhetoric and in priorities we see significant technological change in the conversion of military hardware for police missions, and organisational

change in increased linkages and overlaps between police and intelligence communities. This is particularly evident in the creation by the Department of Justice of the Executive Office for National Security and the development of the Special Task Force on Law Enforcement/Intelligence Overseas, and in the increasing deployment of the military in 'military operations other than war' (MOOTW) which owe as much to policing as to traditional soldiering in their methods and objectives (Andreas and Price 2001).

To some extent, 11 September may be seen as a reversion to the tradition of the 'warfare state' (Andreas and Price 2001: 36) with the explicit remilitarisation involved in the 'war against terrorism'. But this, like the slogan itself, would be a gross simplification. Alongside the aggressive military dimension – particularly prominent in Iraq – in many other domains the merging of internal and external security logics can be seen to have accelerated. The very nature of the attack on the Twin Towers served as eloquent testimony to the redundancy of any clear distinction between the internal and the external, and much US security activity since has been aimed precisely at developing a more holistic approach. This can be seen in the new arrangements with the EU mentioned above, which are part of a broader reconsideration of all dimensions of security under the New Transatlantic Agenda. To name but one other prominent initiative, it can also be seen in the launch of the new domestic Department of Homeland Security in November 2002, which brings most of the functions of domestic security – including Immigration and Naturalisation, the Coast Guard, Customs and Federal Emergency management – under one roof, and which forges close links to police and intelligence service in providing a central clearing house for the assessment of the domestic vulnerability of the USA (Wheeler 2002). Needless to say, much of the preventative and assessment work of the various elements of this new integrated capacity faces outwards to the international environment in its efforts to 'secure' the domestic environment.

According to one influential view, a key general feature which differentiates US international policing actions from those of Europe and other regions 'are the relatively higher number of endeavours in which US officials act unilaterally and coercively' (Andreas and Nadelmann 2006: 241). In light of the above evidence this seems indisputable, but we should not neglect these forms of American unilateralism which are educational and ideological rather than coercive. Throughout the post-war years, and accelerating in the 1990s, the United States has provided a plethora of programmes for training or educating foreign police and security forces and for developing or reforming police organisations, primarily in the context of 'failed' or fragile states. These assistance initiatives tend to fly under the banner of democratisation or democratic consolidation, but, like their more coercive counterparts, they remain vulnerable to the charge of being primarily concerned with the protection and promotion of narrowly American interests (Bayley 2006; Sheptycki 2007)

### ***Future prospects***

Many of the trends set out above in the areas of privatisation of transnational policing, the intensification of EU capacity and the internationalisation of US policing appear deeply embedded, and set to continue into the foreseeable

future. Yet as the events of 11 September reminded us, a key characteristic of post-Cold War, post-Westphalian security politics is precisely the shrinking horizons of the foreseeable, and so we should not be surprised if future events significantly disrupt current tendencies. That having been said, three general conclusions as to future prospects may be drawn from current trends.

In the first place, what is striking about the emerging configuration of transnational policing is precisely its lack of any single defining pattern or template. Unlike the earlier phases of internationalism – the Westphalian system with its state monopoly over the means of violence – there is no stable background geopolitical structure to lend coherence to the new tendencies. Supranational absorption of many of the traditional capacities of the state in the EU, the powerful and to some degree unilateral reassertion of national sovereignty in a style which increasingly overrides the division between internal and external security in the case of the USA, and a more general transcendence of traditional forms of polity-based ‘security sovereignty’ – state or supranational – in the case both of the privatisation of transnational policing, and – as we shall see – in an emerging set of practices and attitudes concerned with policing as a global public good, exist simultaneously in a complex matrix of competition and co-operation (Andreas and Nadelmann 2006: ch. 6; Loader and Walker 2007: ch. 9).

In the second place, in this new age of diversifying and fluidly evolving forms of policing and internal security, one common concern is the resistance to adequate individual and democratic accountability of the new transnational arrangements. Many factors conspire to support this diagnosis. As we have seen in the European domain, an obdurate faith in and reliance on primarily national forms of control for increasingly supranational arrangements is one difficulty. In the US context, there is a parallel problem of mismatch between the democratic ‘principal’ on the one hand and the policing ‘agent’ on the other. That is to say, the category of those affected by US policing agencies, given their burgeoning transnational dimension, manifestly and increasingly fail to correspond to the sovereign US citizenry who, at least formally, possess the constitutional capacity to hold US policing to democratic account. And in the context of transnational private policing, the key concern is even more stark, namely that there is *no* available forum of public accountability whatsoever. Furthermore, the problems of tracking fugitive power in each of these three domains are compounded if we consider the active relations which exist between them, and the exponential increase in complexity and opaqueness such networked relations produce. If we add to this the general tendency for questions of democratic accountability and civil liberties to be marginalised in conditions where the security imperative prevails, as in the post-11 September climate, the problems become greater still. Indeed, even where a window of opportunity exists for constitutional reflection on the problem of accountability, as it did in the EU Constitutional Convention, and even where the urgent security agenda does not obscure the long-term issues at stake, the sheer novelty of the problems of designing adequate accountability arrangements on a scale where the population as a whole only has a weak general attachment to the polity in question (Cederman 2001) and limited specific sympathy with many of those who are subject to transnational policing arrangements, may frustrate the discovery of adequate solutions (den Boer 2002;

Hayes 2002; Loader 2002). *Quid custodiet ipsos custodes* has always been one of the most profound and pressing questions of statecraft. Where both the custodians and those who provide the object of their concerns come systematically to escape the confines of the state, the problems of finding adequate and legitimate governance arrangements run even deeper and demand yet more urgent consideration.

In the third place, and to close in a somewhat more optimistic spirit, we should point to the incipient development of a train of thought and practice centred on the idea of policing as a global public good (Loader and Walker 2007: ch. 9). The partial breakdown of the Westphalian system has led, as we have seen, to a complex mosaic of transnational policing templates and forms, most of which have neither the ambition nor the potential to be comprehensively global. However, certain marginal institutional and cultural developments may point in that direction. The growth of UN-sponsored civilian policing initiatives (CIVPOL) in peacekeeping in vulnerable or transitional societies, pursuant upon its post-Cold War development of a more interventionist approach to international order based upon both security and humanitarian grounds, is significant here (Bellamy *et al.* 2004; Chesterman 2004; Linden *et al.* 2007). So too is the growth, in consequence of the increasingly dense web of interconnected policing agencies institutions, of a 'transnational policy community' of policing experts who have become accustomed to sharing knowledge and best practice, and who, in one view, represent the beginnings of a global civil society in the policing sector (Marenin 2007: 194). And at the operational level of everyday transnational policework, a similar objective increase in the density of interconnected activities, together with the sense of there being a genuine structural continuity between the dynamics of security-threatening situations across a broad range of national and transnational contexts and a real appreciation of the value of a common policecraft in repairing these situations, has led to speculation about the emergence of a shared 'constabulary ethic' (Sheptycki 2007).

We should be careful neither to overestimate the intensity of these developments nor to underestimate the dangers and difficulties associated with them – in particular the dangers of a self-confirming political and professional consensus masquerading as a genuine unity of security purpose. Yet, to recall the conditions of possibility of the transnational domain, the capacity and legitimacy of transnational policing will always be limited to the extent that it is seen merely as the point of negotiation and competition between quite distinct communities with their quite distinct security interests. Unless and until at least some security interests begin to be broadly understood as part of the global commons, transnational policing initiatives are fated to continue to threaten and to foster the *insecurity* of some collectivities in the name of the security of others.

### Selected further reading

On the general history of transnational policing, Deflem's *Policing World Society* (2002) is an excellent general source, as is Andreas and Nadelmann's *Policing the Globe* (2006),

while Anderson's *Policing the World* (1989) provides a clear and interesting account of the development of the role of Interpol. Anderson *et al.* *Policing the European Union* (1995) and den Boer and Wallace's 'Justice and home affairs' (2000) are good general sources on the origins of policing in the EU, while Nadelmann's *Cops across Borders* (1993) remains the best history of the internationalisation of US policing. For more recent European developments, den Boer's 'Police and judicial co-operation in criminal matters' (2003) is helpful, while the regular *Statewatch* bulletins and *Centre for European Policy Studies (CEPS)* briefs provide unrivalled sources of critical contemporary commentary. For more recent US development, Andreas and Price's 'From war fighting to crime fighting' (2001) is particularly useful. For general contemporary developments Goldsmith and Sheptycki's edited volume *Crafting Transnational Policing* (2007) provides a very useful conspectus, as does Chapter 9 of Loader and Walker's *Civilizing Security* (2007).

Other useful sources for some of the more specific themes covered in this chapter include Sheptycki's 'Accountability across the policing field' (2002) on the operational sociology of transnational policing; Loader's 'Governing European policing' (2002) and den Boer's 'The incorporation of Schengen into the TEU' (2001) on the accountability of transnational policing; Loader and Walker's 'Policing as a public good' (2001) on the broader normative implications of moving beyond the state as the main source of policing; Johnston's 'Transnational private policing' (2000) on the privatisation of transnational policing; Bigo's 'The European internal security field' (1994) and 'When two become one' (2000) on the politics of transnational policing; the 2008 (Vol. 46, No. 1) special issue of the *Journal of Common Market Studies* on the cumulative impact of anti-terrorist measures on European security and political culture; Peers' *EU Justice and Home Affairs Law* (2006) and Denza's *The Intergovernmental Pillars of the European Union* (2002) on the legal dimension of transnational policing in the European domain; and Gilmore's *The Twin Towers and the Three Pillars* (2003), Bunyan's 'The birth of the EU's Interior Ministry?' (2003) and Carrera and Geyer's *The Reform Treaty and Justice and Home Affairs* (2007) on European policing and security responses to 11 September.

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