

The Future of Jurisdiction in the Age of the Global Society and the Gated Community

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Abstract

The global society and the gated community are two emerging trends that will change law enforcement because they will alter the fundamental concept of territorial jurisdiction. More and more investigations and prosecutions will cross traditional geopolitical borders. In this new world order, efficiency and effectiveness will require the "long arm of the law" to get longer. But at the same time, due regard must be shown for the long-standing and well-intentioned geographic fragmentation of police authority in America, as well as for the close ties to local communities that are essential for police effectiveness and legitimacy. Law enforcement has adapted to similar challenges in the past, but the approaches of yesterday and today may not be as successful in the next millennium. New laws, policies, practices, and strategies will be needed that recognize the global society and avail themselves of new technology, while retaining a local orientation and democratic safeguards. Florida will be affected by both trends because of its geography, economy, and demographics, and Florida law enforcement agencies must be prepared to adapt.

In Global Paradox, futurist John Naisbitt (1994), best-selling author of Megatrends, identified two simultaneous but opposite trends in modern society. We are rapidly embracing both the universal and the tribal, the global and the local, in our daily lives, he says. We now not only "Think Globally, Act Locally," but also "Think Locally, Act Globally" (p. 21). And events of the five years since this book was first published seem to bear him out:

- In world politics, the Soviet Union, Yugoslavia, and Czechoslovakia have disintegrated into a multitude of smaller, formerly constituent, now independent, states. Yet Britain, France, Germany, Italy, and other long-independent nations have formed a new economic and political federation, the European Union.

- In the mass media, a few aggressive corporations have taken over network news (e.g., Time-Warner's purchase of CNN, Disney's purchase of ABC, and Microsoft's alliance with NBC). But at the same time, desktop publishing software and the Internet have nurtured a multitude of local or individualized newsletters and web-sites.

- In business, giant multinational corporations have consolidated their domination of some industries (e.g., the recent mega-mergers of auto-makers Daimler and Chrysler, oil companies Mobil and Exxon, and financial institutions NationsBank and BankAmerica). Yet the Internet has enabled small, obscure businesses to compete in the world market through web-based niche marketing, such as Amazon.com, the Seattle-based virtual bookstore.

Mr. Naisbitt's primary interest in Global Paradox is the impact of these trends on business management and entrepreneurship. However, many of his observations are relevant to the future of criminal justice administration as well. As people travel farther and more often across geopolitical boundaries, as they interact globally but retreat to

their scattered homes, the police will face new complexities in investigations, arrests, and prosecutions. He writes:

Over time societies develop laws, regulations, and unwritten codes of conduct in an effort to maintain social harmony. When violations occur, it is the community's moral obligation to right the wrong. A fairly simple, and effective, system of governance when the community consists of one's neighborhood, city, or state. A more complicated proposition when the community is the entirety of the globe. (Naisbitt, 1993, pp. 192-193).

And, one might add, an even more complicated proposition when the community is both the neighborhood, city, or state and the entirety of the globe! Hence, our traditional understanding of the concept of territorial jurisdiction, one of the elemental aspects of traditional law enforcement, will have to evolve in adaptation to this new universal/tribal, global/local social order. What follows is an examination of the future of jurisdiction in the age of the global society and the gated community in the new millennium.

The Global Society

Territorial Conflict

Territorial jurisdiction has been the key issue in perhaps the most widely publicized international criminal case of recent years: the arrest of former Chilean dictator Augusto Pinochet. Pinochet was arrested in Britain on a warrant from Spain for crimes that he allegedly committed in Chile against Spanish nationals. The courts in all three countries are involved in the proceedings, and the case has electrified legal scholars around the world (Simons, 1998).

The Pinochet case involves allegations of human rights violations and war crimes, which traditionally have been considered to be international issues and would therefore seem to have little relevance to us as state and local officials. But American police and prosecutors in a variety of localities have also become involved in complex international conflicts over traditionally local—although serious, to be sure—crimes, such as arson, fraud, and murder. Recent news stories provide a few examples:

- French and American courts are involved in extradition proceedings over Ira Einhorn, accused of killing his girlfriend in Philadelphia in 1977. Einhorn fled the U.S. after being released on bail, and he has been an international fugitive for two decades. (Phillips, 1998).

- Israeli and American courts are involved in extradition proceedings over Samuel Sheinbein, a teenager accused of killing and dismembering another teenage boy in Silver Spring, Maryland, in September 1997. Sheinbein fled to Israel shortly after the crime and claimed Israeli citizenship because his father lives there. Israeli law does not allow extradition of its citizens for any reason, and prosecutors sought in vain for a loophole in his claimed right to citizenship. (U.S. teen, 1998; Katzenell, 1999).

- The Canadian and American governments are involved in a high-level dispute over Joseph Faulder, a Canadian citizen who was sentenced to death for the 1975 murder of an elderly woman in Texas. Canada's policy, since abolishing its death penalty in 1976, has been to seek clemency through diplomatic channels for any of its citizens who face execution in another country.

Canadian attorneys are also contesting the procedural fairness of Faulder's Texas arrest and trial. (Crary, 1998).

International jurisdictional disputes are not the only complication for investigations and prosecutions in our new, highly mobile society. Interstate extradition can be just as complex. In such matters, the states act as semi-sovereign entities, operating under their own individual laws and procedures, bound only by the Constitution's extradition clause (Article IV)¹, which requires the return of fugitives from justice, and a "treaty" known as the Uniform Criminal Extradition Act, which, if adopted by statute in the individual states, prescribes the specific protocol to be followed in such cases.

The necessity of a process for the extradition of domestic fugitives from justice among the states has been recognized since the nation's beginnings. The language in Article IV of the Constitution is nearly identical to the language of its predecessor, Article IV of the Articles of Confederation. It implies a direct, state-to-state, governor-to-governor procedure, very similar to the procedure for requesting extradition from a foreign country. Customarily it is a routine matter, but from time to time it has been subject to some major disputes.

"Extradition has usually been pro forma, except when requisitions have been technically inadequate or when people have been accused of politically charged crimes" (Finkelman, 1992). Litigation between southern states and northern states over runaway slaves on the eve of the Civil War resulted in an 1861 Supreme Court ruling that the federal government had no power to compel one state to surrender a fugitive to another. The issue flared again a hundred years later, during the civil rights movement and political activism of the 1960s and 70s, as governors refused to extradite for "political" crimes. Then in 1987 the Supreme Court reversed itself and ruled that governors have no discretion on whether or not to extradite. This was recently reaffirmed in New Mexico v. Reed, when the Court noted with some impatience: "In case after case, we have held that claims relating to what actually happened in the demanding state, the law of the demanding state and what may be expected to happen in the demanding state when the fugitive returns are issues that must be tried in the courts of that state, and not in those of the asylum state" (Ohio fugitive, 1998).

But a recent Illinois appellate case illustrates that domestic extradition is by no means automatic, although obstacles are primarily procedural. When the governor of Missouri demanded extradition of a drug trafficking suspect from Illinois, a state appeals court ruled that the prisoner had to be released because the Missouri request only asserted that the suspect was a fugitive from justice and had committed a felony, without providing supporting documentation that he had actually been charged with a specific crime. (Criminal law, 1998).

Risk Factors for Florida

Characteristics of Florida's economy make the state highly vulnerable to international jurisdictional disputes such as those cited earlier. Enterprise Florida, the quasi-governmental successor to the Florida Department of Commerce, includes the following descriptions of the state on its web-site (<http://www.floridabusiness.com/marketplace/>), emphasizing the global economy:

Florida is an undisputed strategic platform from and through which businesses can successfully compete—and succeed—in the global

economy. Whether managing an offshore business or multinational firm, engaging in export/import operations or locating or expanding a global business in North America—a Florida location offers accessibility to major consumer and industrial markets.

Florida has taken its place among the world's nations as a contender for global market share. Recognizing the state's role in international commerce, more than 60 countries have chosen to locate consular or trade offices in Florida, the third largest contingent in the United States.

With more than \$24 billion in international inward investment, Florida ranks eighth in the nation and first among the Southeastern states. . . . More than 720 international companies representing investors from over 53 countries have international manufacturing and business locations in the state. . . . Altogether, the state has 99 international banks, 74 of which are state-licensed foreign banks.

Florida Trend magazine recently wrote about the “quiet invasion” of foreign property buyers all over the state. “It’s virtually impossible to determine exactly what percentage of Florida land is owned by foreign individuals or firms,” but they are present in every region and constitute as much as 50% of all new condominium sales in Miami-Dade. The trend is spurred by aggressive overseas marketing, and it is strong enough that some are becoming concerned about the ripple effect on Florida’s economy if problems elsewhere stop the influx (Adams, 1998).

Demographics also place Florida at risk. U.S. Census (1997) data shows that Florida has the third highest percentage of foreign born residents: 16.4 percent of its population.² Presumably, many of them would have family in their homelands whom they would visit, or who would visit them. Immigration and Naturalization Service (1996) data ranks Miami as the busiest U.S. port of entry for tourists, business travelers, students, and other temporary visitors from other countries.³ About 4.5 million visitors from all points of entry listed Florida as their intended destination. Any of them could become involved in a crime—as victim, witness, or suspect—and then leave the country.

Nor is international travel the only factor. The state’s permanent population grew by 2.5 million through domestic migration between 1985-1990, second only to California (Morris, 1997, p. 563). “For every year in the past decade, Florida has been the leader in domestic migration,” said Mark Perry, a demographer with the U.S. Census Bureau. He said the increase ranges from about 105,000 to 135,000 a year” (Florida’s population, 1999). That growth may be slowing somewhat, according to Enterprise Florida (successor to the Florida Department of Commerce), but the state still added a net 1.8 million more people between 1990-1997, three-fourths of them through migration from other states (<http://www.floridabusiness.com/advantages/population.html>, 12/3/98). And that moderating pace of net growth may actually indicate greater population mobility—both into and out of Florida. Statistics show that “almost one person leaves Florida for every two who arrive” (Morris, 1997, p. 564), and according to the Enterprise Florida web-site, motor vehicle registrations show that about 479,000 people moved to Florida in 1995, up from 403,000 in 1994. That means roughly

200,000 people moved out, for a combined mobility of about 600,000 across the state line each year. Population migration aside, about 40 million tourists visit Florida each year from other parts of the U.S. (Morris, 1997, pp. 591-592).

With that much international and interstate movement by residents and tourists alike, a lot of people will commit crimes in Florida and then move to another state, while others will commit crimes elsewhere before coming here. In fact, this mobility not only complicates the investigation and prosecution of crimes that would have occurred anyway; it also breeds crime. Friedman (1993, p.209) observes:

Serious crime, however defined, is related to rootlessness—to shifting and moving about—in various ways. To begin with, the shifting and moving creates special opportunities for crime; it encourages some kinds of crime. . . . In the second place, the rootless and mobile fill the ranks of the criminal class—those who take advantage of the new opportunities. But these people also fill the ranks of victims : . . .

These expectations were substantiated by a LEXIS-NEXIS search of general news sources on December 2, 1998, for the key words “extradition” and “Florida” in the past year, which revealed more than 100 items reporting criminal extradition proceedings involving Florida. The other countries and states involved with Florida included (in no special order) Puerto Rico, Colombia, Venezuela, Maine, Massachusetts, Canada, Indiana, New York, Mexico, California, Nevada, the Virgin Islands, Trinidad, Louisiana, Ohio, Pennsylvania, Washington, Hawaii, Texas, Ecuador, South Dakota, Georgia, Maryland, and Spain. And a spot check of The Tampa Tribune Florida Metro section on that date revealed three local stories involving multi-state investigations:

- Police in Bartow, investigating a year-old multiple murder case, revealed that detectives had traveled to five states and two countries, including Ecuador (Samolinski and Heery, 1998);
- A woman in Tampa pleaded guilty in a drug-smuggling and money-laundering case involving New York and Florida (Woman pleads, 1998); and
- Customs officials arrested a Colombian stowaway on a freighter in Tampa for smuggling 158 pounds of cocaine into the country (Colombian stowaway, 1998).

Clearly, Florida law enforcement is, and will increasingly be, exposed to the jurisdictional complexities of the Global Society.

The Gated Community

National Trend

The other half of the global paradox—the tribal/local—is manifested in the growth of private, gated communities. These developments, ranging in size from a single condominium building or mobile home park to an entire residential subdivision with several thousand homes, take to the extreme the axiom (often attributed to the late Thomas P. “Tip” O’Neill, longtime Massachusetts Congressman and Speaker of the U.S. House of Representatives) that “all politics is local.” The meaning of “local” has devolved over the past generation from the level of county, city, or town, to that of the individual neighborhood. And today, the condominium or homeowners association is in

many matters supplanting the county commission and city council as the local lawmaking authority. (True, today's neighborhoods are often bigger than the towns of the last two centuries, when local political subdivisions were conceived!)

The number of gated communities in the U.S. has been estimated at 30,000 (Birth of Enclave Man, 1997). Estimates of the number of people living in those gated communities range from "3 or 4 million to as many as 8 million" (Blakely and Snyder, 1997). Broadening the definition from "gated communities" to "common-interest developments"—essentially the same kind of developments, run by condominium or homeowners associations, either with or without actual gates—increases the number of residents to about 50 million (Dilulio, 1997). In Orange County, California, during the first three months of 1998, more than 10,000 new homes for sale were in gated developments (Larsen, 1998); in the southwestern U.S. in 1997, one-third of all new homes being built were in gated communities (Dilulio).

Risk Factors for Florida

Florida has played a prominent role in the emergence of this trend. It has been called "the most gated state in the union" (Patrick, 1998); others say it is second to California (Stark, 1997). But whatever its rank order, it is almost certainly one of the top three, along with California, and Texas (Blakely and Snyder, 1997). And while they proliferated first in Miami-Dade and Broward counties, they are becoming prevalent throughout the state as well. On the opposite coast, Pinellas County fire officials have estimated that their county has more than 130 gated developments (Moncada, 1998).

Florida also has perhaps the nation's largest "gated community"—albeit one with few permanent residents—in Disney World. Disney has its own, wholly owned governmental entities: the Reedy Creek Improvement District, created by the Florida Legislature in 1967, and the cities of Lake Buena Vista and Bay Lake. Sprawling across two counties (Orange and Osceola), they levy taxes, grant permits, build roads and sewers, and provide police and fire protection. Only landowners can hold public office, and votes are allocated one per acre, assuring control in perpetuity by the Disney Corporation. And Disney claims that all of these functions are provided privately on private land, exempting them from public records laws and other provisions for public access and oversight. (Olinger, 1996).

Potential for Jurisdictional Conflict

These new gated communities are often perceived—and marketed—as offering greater safety and security by keeping out crime, even though empirical research has not supported those beliefs and claims. Critics have also raised new concerns about fostering elitism, segregation, lack of civic involvement, and other deleterious social phenomena (Blakely and Snyder, 1997; Dilulio, 1997; Hayhurst, 1998; Larsen, 1998; Patrick, 1998; Stark, 1997). And they have raised complicated questions about government, particularly about the authority of local government to act within the private development and of the authority of the private associations to act as governments within their walls, in such matters as taxation, sewers, streets, fire protection, and law enforcement (Kennedy, 1995; Owens, 1997).

This fragmentation aggravates a long-standing problem in the nation's urban areas, and threatens to bring it to the rest of the country. Bissinger (1997, p. 209)

recalls the Congressional testimony of Richardson Dilworth, then mayor of Philadelphia, on behalf of the U.S. Conference of Mayors in 1959. Dilworth advocated

“a single government for each of the nation’s metropolitan areas with jurisdiction over the city and its surrounding suburbs, explaining how “this hodgepodge of governments creates conflicts, creates an enormous manner of additional problems, and leads to the inefficient, terrible tax burdens and makes it difficult to have proper development in the area to meet the problems of democracy.”

Police powers will be affected by the private ownership of not only residential property, but also communal space such as streets and parks. For example, the Florida attorney general has ruled that police officers can enforce traffic laws on private roads only if a written agreement exists between the police and the party or parties owning the land, and if the private ownership reimburses the government for the cost of such services—unless, as in the case of shopping mall parking lots, the general public is invited by custom and practice to drive on the private property (1681 Fla. AGO 90-68). By erecting gates, these communities specifically do not invite the general public to drive on their private roads. The implication is that law enforcement authorities can be denied access, not only to a specific home, but also to the entire community, absent a search and seizure warrant. It appears, therefore, that two warrants would be needed: one addressed to the owners or agents of the development, authorizing a search for the residence, and the other to the owners or residents of the dwelling, authorizing a search of the house. Such denial of access can result in the concealment—deliberate or inadvertent—of criminal activity. Allegations have been made that Disney has used its private governmental authority to interfere with criminal investigations in order to preserve its public image, perhaps most controversially in cases of child molestation committed by Disney employees or on Disney property (McElroy, 1999). These are the challenges to law enforcement’s jurisdiction that are raised by the gated community.

Certainly no aspersions are being cast here upon the integrity or intentions of Disney or any of the current developers of gated communities. But there is a parallel from another state, half a century ago, that makes clear the potential problems for law enforcement posed by the creation of such private governments for the express purpose of promoting illegal activity. In the 1930s and 40s, the village of Halls Corners, Ohio,

was conceived and brought into being by a handful of criminal characters for the sole purpose of protecting its only industry: a gambling casino, named quite appropriately, the Jungle Inn. There, under the benign protection of officials, hand-picked by its underworld rulers, all and sundry could enjoy without fear of outside interference, practically every type of gambling imaginable (Allen, 1962, p. 122).

Finally, after 14 years of operation, the casino was raided by state agents, the officials were removed from office by the governor, and the municipality was dissolved by law.

Again, clearly, the presence of so many private, gated communities presents a special challenge for Florida law enforcement activities.

The American Tradition

To understand the constraints upon the criminal justice policy-making process, it is helpful to know a little American political history. The United States is a federal republic. It is a republic in that it has no king; it is federal in that the national government and the constituent state and local governments divide and share political authority.

Federalism refers to a political system in which there are local (territorial, regional, provincial, state, or municipal) units of government, that can make final decisions with respect to at least some governmental activities and whose existence is specially protected. . . . The special protection that the sub-national governments enjoy in a federal system derives in part from the constitution of the country but also from the habits, preferences, and dispositions of the citizens and the actual distribution of political power in society. . . . Were the American Constitution the only guarantee of the independence of the American states, they would long since have become mere administrative sub-units of the government in Washington. Their independence results in large measure from the commitment of Americans to the idea of local self-government (Wilson, 1989, p. 47).

The intent of the Founding Fathers in creating a federal structure was to safeguard against the return of tyranny by defining and limiting the scope and authority of the central government. They believed that fragmented power was less likely to rob citizens of their liberty. This approach has carried over into the part of government that has the most direct interaction with individual liberty: the criminal justice system.

In the American tradition, unlike most other countries, we consider law enforcement to be primarily a local concern. As Naisbitt might say: it Acts Locally, Thinks Locally. "In most states the peace officer has authority to act only in the territorial area employing him" (Stuckey, 1976, 26). While criminal statutes apply throughout the state, sheriffs have enforcement powers only within the geographic boundaries of their respective counties, and city police officers are empowered to conduct investigations and make arrests only for crimes that occur within their particular municipal limits.

Through the end of the Nineteenth Century, local sheriffs and police were adequate for the predominant focus on order maintenance in towns and cities. The constable on the beat simply chased away undesirables, administered night-stick justice to petty miscreants, and only arrested disorderly drunks and the occasional burglar he happened upon. In rural areas, sheriffs were occasionally called from their courthouses or jails to form posses and track outlaws, and it was those sheriffs who more often were hindered by the limitations of territorial jurisdiction.

It was held for a long time that if an outlaw was able to out-distance a sheriff to the county line, the sheriff had to discontinue the pursuit since he had no authority to make an arrest in the adjoining county. To prevent the escape of an outlaw under these circumstances, the "hot pursuit" rule was developed. This rule provided that if an officer was in "hot" or "fresh" pursuit of an offender, the officer could follow him into another jurisdiction to make an arrest. (Stuckey, 1976, p. 26).

Despite these jurisdictional hindrances, from the nation's founding through the first decade of the 20th Century, there were no state police with the power to cross county lines (other than the militias, who were called out once in a great while to suppress insurrection). And the U.S. marshals who presided over Western territories in the absence of state and local government authorities were the only real federal law enforcement officials with the authority to cross state lines. The need for state constabularies and federal investigators just wasn't seen until after World War I, when the automobile gave criminals easy transportation from one community, county, or state to another, effectively putting them beyond the reach of the local patrolmen's whistles and nightsticks and the local sheriff's mounted posse.

But when American society took to the highways and moved to the cities in the early years of the 20th Century, crime went along with it. Soon, the bootleggers of Prohibition and the Midwestern bank robbers of the Great Depression were speeding across city limits, county lines, and state borders with alarming regularity, and for the first time, the limits of local jurisdiction became a major public concern in the provision of effective and efficient police services. For example, in 1934-35, John Dillinger robbed banks in Illinois, Indiana, Iowa, Ohio, and Wisconsin, and hid out in Minnesota and Arizona, confounding authorities everywhere (Toland, 1963).

In response, law enforcement substantially changed the way it operated. "Amateur justice does not work well in a society of cities, a society of people constantly moving about. Professionals are needed" (Friedman, 1993, p. 209). Poorly trained, poorly equipped patrolmen were not up to the task. Slowly, the sciences of detection and forensics developed to trace and identify the mobile offender. Police themselves adopted the automobile; the telephone, teletype, and two-way radio; and the computer. Fingerprints became the standard means of latent identification in the 1900s (as DNA may become in the next century).

And every state but Hawaii⁴ now has some form of state police organization with statewide enforcement powers. Some are full-service state police agencies that provide patrols, conduct investigations, and operate forensic laboratories. Others have statewide authority, but, through either law or custom, it is restricted to specific types of violations, e.g., official corruption for bureaus of investigation, traffic laws for highway patrols, hunting and fishing regulations for wildlife officers, and so forth. For example, Florida has a statewide prosecutor, created by constitutional amendment in 1986 because "organized criminal activity does not respect the geographic boundaries imposed by [the state's 20] judicial circuit lines"; but:

In order for the Statewide Prosecutor to handle a case, the crime must have occurred in more than one judicial circuit or be part of a conspiracy affecting more than one judicial circuit, and it must be one of the offenses enumerated in the law: bribery, burglary, usury, extortion, gambling, kidnapping, theft, murder, prostitution, perjury, robbery, home-invasion robbery; car-jacking, narcotics violations; antitrust violations; anti-fencing violations; crimes involving fraud and deceit; computer pornography; racketeering; and attempts, solicitations, or conspiracies to commit these offenses (<http://legal.firn.edu/swp/swp.html> 12/03/98).

The same is generally true with the federal law enforcement agencies. The FBI, DEA, ATF, and Secret Service all have nationwide authority, and it has developed and

expanded over the decades to address new menaces—e.g., bootlegging, bank robbery, counterfeiting, drug smuggling, and terrorism—but they each still specialize in the investigation of certain types of federal crimes. Thus the traditional American concern over the limitation of government police authority is manifested in either broad powers in limited geographic areas, or limited powers in broad geographic areas.

But in the years after World War II, the universality of the automobile, the vast web of Interstate highways, and the availability of inexpensive airfares further exacerbated the problem, involving crimes not always within the scope of authority of the state and federal agencies. The threat is most typically illustrated by the image of the modern serial killer, traveling the highways and scattering victims throughout the continental United States, and leaving befuddled authorities in many jurisdictions. Now computers and the World Wide Web have created new varieties of criminal, from high-tech frauds to on-line sexual predators. And the ease of international travel and the conflicts in national sovereignty have become painfully evident in the problems of drug smuggling and terrorism. Any and all of these problems can occur in jurisdictions of any geographical size.

So, in recent years, multi-agency task forces have been established—usually with federal grant money—to address organized crime activity that crosses jurisdictional lines. There are permanent, standing task forces and transitory, ad hoc task forces. There are drug task forces, violent crime task forces, burglary task forces, gang task forces, arson task forces, and drunk driving task forces. Members of any particular task force are likely to include one or more federal agencies (often the major source of funding for the operation), one or more state agencies, one or more county sheriff's offices, and an assortment of local police departments from a particular geographic region. (See, e.g., Casey, 1995; Rodriguez and Branon, 1996; Lenord, et al, 1996; investigating church fires, 1996; Magaw and Doucette, 1996; McKenna 1996; and Pilant, 1997).

This improvised hodgepodge of adjoining and overlapping territories of jurisdiction developed and multiplied over the years as circumstances arose that exceeded the scope of purely local authority. But they can be plagued by interagency conflicts fed by personal and professional rivalries, political turf wars, and funding disputes. And like the state and federal agencies created earlier in the century, while their territorial jurisdiction may be broad, their investigative focus tends to be narrow, limited by agreement to a particular crime or class of crime. Rather than the model for the future, it may best be seen as an intermediate stage on the way from isolated local operations to a global, cooperative law enforcement network.

Discussion

Criteria

To be given serious consideration, a proposal must (a) provide for effective, reasonably efficient law enforcement across jurisdictional lines and (b) preserve sufficient safeguards against the creation of a giant police state. Therefore, neither a weak, fragmented system hamstrung by arbitrary and unreasonably restrictive geopolitical boundaries, nor an unrestrained, centralized, at-large police force is acceptable. Instead, some delicate balance must be struck between efficiency and

effectiveness on one hand, and liberty and the right of self-governance on the other. Thus the new global paradox raises an age-old dilemma.

Alternatives

As we have seen, in response to earlier challenges posed by geopolitical boundaries in an increasingly mobile society, law enforcement created new police agencies with broader geographic authority and established multi-agency task forces whose constituent members could together cover several jurisdictions, sometimes including statewide or national jurisdiction. But now the new agencies of 75 years ago are finding their own jurisdictions too narrow, and task forces are becoming as unwieldy as they are ubiquitous. Both were 20th Century solutions. Better solutions will be needed for the next century.

Extradition

To resolve international conflicts over fugitives, new extradition procedures must be negotiated. The U.S. government is currently addressing that problem at the international level, and many of the issues raised are applicable in some degree to domestic extradition as well. In testimony before the Senate foreign relations committee to recommend ratification of 38 new extradition treaties, Deputy Assistant Attorney General Mark M. Richard explained that the U.S. state department, in cooperation with the justice department, has moved away from the traditional “extradition treaty” and toward the broader “mutual legal assistance treaty.” The latter, he said, provides not only for obtaining custody of the fugitive but also for obtaining evidence and other assistance at all stages of an investigation. Other key provisions of the new treaties, as outlined in his statement, include:

- “Dual criminality”—A provision that provides for the extradition of any fugitive accused of a crime punishable in both countries by a year or more in prison (i.e., a common-law felony), eliminating the previous lists of specific extraditable crimes that had to be amended every time a new criminal statute was adopted.
- “Provisional arrest”—A process that allows a fugitive to be temporarily detained while the necessary documents to support extradition are prepared and filed. Related to it are the options of allowing a fugitive to waive extradition proceedings and voluntarily return to face charges, and of allowing a fugitive jailed elsewhere on another crime to be temporarily transferred to face trial, and then returned to complete a sentence.
- Citizenship exemption—A provision that explicitly rejects a fugitive’s claim to nationality as a bar to extradition if all other criteria have been satisfied. This would have permitted cleaner resolution of the Sheinbein case mentioned previously. It also would eliminate the need for “domestic prosecution,” an unwieldy process in which nationals are prosecuted in their own countries, under their own countries’ laws, for offenses committed in a foreign nation.

Naisbitt (1993, p. 23) predicts “there also is evolving a new global code of conduct . . . which will in time ensure that all communities are held to the same standards of behavior.” If so, then greater uniformity in criminal codes may further simplify the extradition process.

“Distance Justice”

Modern telecommunications technology and travel arrangements might allow another possibility, a compromise between extradition and domestic prosecution that would allow the process—including court proceedings—in a single case to take place, sequentially or simultaneously, in more than one venue.

“Distance learning” programs use television, teleconferencing, and the Internet to bring the college classroom experience to far-flung students, often in “real time.” Florida’s 10 universities and 28 community colleges offer 1,900 distance learning courses to 60,000 students through computer courses, interactive videoconferencing, one-way video/two-way audio lectures, “telecourses,” “teleweb” courses, and off-site instruction. State universities also participate in the Electronic Campus, a regional resource that enables students throughout the South to take distance-learning courses from a variety of colleges and universities. (Emil, 1999). The same concept might be used for “distance justice.”

Some might question whether Americans would accept such a process. Well, distance learning is becoming more popular every year. And through the O.J. Simpson trial, the recent impeachment hearings, and regular exposure to government proceedings on CNN, Court TV, C-SPAN, and local government access channels, we are becoming accustomed to televised legal proceedings. Many local governments are experimenting with Web-sites that allow correspondence, inquiries, access to public records, and applications for licenses and permits (Cohodas, 1998). A few are even talking about “real-time” interactive formats, allowing citizens to have the same input at city council meetings that they would have if they were in physical attendance.

There have in fact been such efforts at multi-venue proceedings. For example, Italian and American courts cooperated in the trial of an Italian citizen accused of the Christmas Eve 1993 murder of a Florida revenue agent in Miami. Italy refused to extradite Pietro Venezia because he would face the death sentence here, so they tried him there under Italian law. However, because the victim’s widow was too ill to travel, the Italian judges heard her testimony in a Miami federal courtroom. (Italian justice, 1998). Such cooperation would seem even more feasible among the states, which share basic legal and political traditions.

New Standards for Local Jurisdictions

Florida has 67 counties and 401 municipalities. Half of the state’s 14 million residents live in cities. Yet the median population of Florida cities is only 4,160, and more than two-thirds have populations under 10,000. They range in size from Weeki Wachee’s dozen residents to Jacksonville’s million. (Tipton, 1998). Each of the counties has a sheriff⁵, and most of the cities have police departments (it is their choice, under home rule, whether they want their own police.) This fragmentation of jurisdiction creates problems in communication, coordination, and cooperation among agencies,

which are further exacerbated by differences among the agencies in overall training, experience, and resources.⁶

These problems are multiplied by the proliferation of private, gated communities. First, it tends to create more and smaller jurisdictions, as these communities choose to incorporate as separate municipalities and establish their own police forces. Second, in the absence of incorporation, it hinders the exercise of jurisdictional authority by the sheriff of the county or the police of the city in which the community is located. And third, to the extent that such communities employ private security officers to patrol their premises, it creates inconsistencies in the training of the personnel responding to law enforcement situations.

The state should act to remedy all three problems by law. Incorporation requires a special act of the Florida Legislature. There should be a minimum population for incorporation; no community with less than that population should be granted a charter, and any existing city that drops below that level should be dissolved. The right of access by law enforcement to the communal areas of privately owned developments may well be a constitutional issue. But as a public safety issue, the legislature should mandate access to streets and common areas for law enforcement, fire and rescue, and other emergency services, as the Pinellas county commission mandated that gate keys be made available to police and fire departments (Moncada, 1998). Finally, the legislature, through its professional licensing authority, can promulgate minimum standards for security officers and private investigators. It should require that all such personnel meet the same good-character and training requirements as police officers. And as a related issue, it should mandate that private security forces be governed by the state's open public records laws and its provisions for internal affairs investigations.

Beyond Geography

But more than any of these specific and necessary proposals, we must begin to take law enforcement to a new level. We must ask whether territorial jurisdiction has become an anachronism in modern society. It has been repeatedly adjusted and defined in response to problems over the past century and a half. Stuckey (1976, p. 21) notes that because it is sometimes difficult to determine in which county a crime was committed, most states have decided that (a) when part of an offense occurs in one county and part occurs in another, the case may be tried in either; (b) likewise, if a crime occurs within 500 feet (or some other arbitrary distance) of a county line, the trial may be held in either of the adjoining counties; and (c) if a crime occurs on a boat, in a car, or on a bus, train, or airplane, the trial may be held in any county through which the trip passed or where it terminated.⁷ "Prior to the passage of such provisions, there was a joke among old-time sheriffs and prosecutors about wearing out dead bodies by dragging them across county lines to avoid the responsibility of investigations and prosecutions," he says—a story that may not be as apocryphal as one might hope. And as noted previously, we have tried to work around jurisdictional limits by creating new agencies and establishing joint task forces. Florida law also provides for inter-jurisdictional agreements between law enforcement agencies for "voluntary cooperation and assistance across jurisdictional lines" (Florida Mutual Aid Act). Other acts and legal opinions have addressed the conflicts between public and private property, as noted in the earlier discussion. So perhaps we have reached the point where further repairs to

the traditional concept of jurisdictional boundaries, and further rigging to work around them, are no longer practical solutions.

The answer may instead be in developing and adopting a non-geographic-based paradigm. An analogy may be found in the world of telecommunications technology. The telephone system—one of the marvels of the 20th Century—was, like law enforcement, organized along geographic lines. Over the years, the United States was divided into three-digit regional area codes, then further subdivided into three-digit local exchanges, followed by four-digits identifying a particular phone in that area and exchange. If the individual subscriber to that phone number moves to a new location, the phone number will change. And with the proliferation of regular phones, cellular phones, fax lines, and computer lines, the same subscriber may have a multiplicity of telephone numbers, at one or more locations. However, with digital communication by computers, users get an IP-based address that is more a personal ID than a geographic location. My e-mail address doesn't have to change (unless I change ISP providers) whether I am in Florida, Ohio, or Colorado.

Perhaps that is the direction we should be going. After all, jurisdictional lines are an arbitrary, invisible, intellectual construct. As syndicated Miami Herald columnist Leonard Pitts (1998) observed:

As a child, I was fascinated by borders, the idea that this side of an invisible line was one place, but the other side was somewhere wholly different. Traveling across country at 11, I remember trying to stay awake so as not to miss it when we crossed state lines. Needless to say, I was a little disappointed. As we passed from state to state, California to Arizona to New Mexico to Texas, I kept expecting an instant . . . something. Waiting to feel different, looking for some sign in the sky to acknowledge that we had come abruptly into a new place. Doesn't work that way, does it? Trees on one side of the border seemed pretty much like trees on the other.

Conclusion

All of these alternatives have potential. Some, such as the negotiation of mutual legal assistance treaties, the use of telecommunications technology for "distance justice," and closer regulation of ultra-local communities, offer more immediate and practical approaches to the challenge of jurisdiction in the age of the global society and the gated community. Others, such as creating a non-geopolitical jurisdictional paradigm, are more far-reaching and radical. However, let us not forget that our nation's founding fathers, meeting in Philadelphia during that hot summer of 1787 to simply amend the existing Articles of Confederation, instead drew upon their study of history and political philosophy, and their observations of kings and human nature, to create a radically new type of government. Perhaps we should follow their example, using our education and experience to conceive a radically new criminal justice system more suited to the world of today and tomorrow.

If we could find a way to set truly national—if not international—standards of behavior, as Naisbitt predicted; if we could find a way for law enforcement to operate more as a network of accredited professionals; if we could find a way to share information, resources, and operations without regard to geopolitical boundaries; if we

could make full use of telecommunications technology at all phases of an investigation and prosecution; and if we could still provide proper safeguards for constitutional and lawful behavior by the police, then we would perhaps have a system of criminal justice more suited to the circumstances of the new millennium.
We could start in Florida.

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Notes

¹ “A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.”

² Approx. 9.7% of the total U.S. population is foreign-born. The states with the highest percentages of foreign-born residents are California (24.8%), New York (19.6%), Florida (16.4%), New Jersey (15.4%), and Texas (11.3%).

³ Four ports of entry accounted for half of all visitors from foreign countries: Miami (15.7%), New York (15.5%), Los Angeles (11.5%), and Honolulu (7.6%). In Miami, of the total 3.9 million, approximately 1.6 million came from South America, 1.1 million from Europe, just under 1 million from Canada or Mexico, a half million from the Caribbean, about 300,000 from Central America, and the rest from Asia, Africa, and Oceania.

⁴ Yes, McGarrett’s state police force in Hawaii Five-O was just TV!

⁵ In Dade County, the office of sheriff is incorporated into the metropolitan department of public safety.

⁶ Chapter 943, Florida Statutes, sets minimum standards for basic training and continuing education. However, beyond those statutory minimums, the only independent monitors of law enforcement agencies are the national and state accreditation programs, both of which are voluntary.

⁷ Florida law is consistent with Stuckey’s observations. Chapter 910, Florida Statutes, separately addresses crimes that wholly or partly occur in this state; attempts or conspiracies in another state to commit crimes in this state; attempts or conspiracies in this state to commit crimes in another state; an offense that is based on an omission to perform a duty required by state law; offenses on boats that occur outside the state’s territorial waters; aiders, abettors, and accessories in one county to a crime that occurred in another; a person in one county who commits a crime in another; stolen property possessed or carried in more than one county; kidnapers who take or confine a victim within more than one county; crimes in vessels, vehicles, and common carriers that travel through more than one county, etc.