

THE *GENDARME*, A JUDGE ON THE ROADSIDE

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In the 1950's, a change occurred in the status of motor vehicle traffic control in France: immediately after World War II, the damage suffered by the highway network and the necessary reconstruction of the country had enabled the engineering corps of the *Ponts et Chaussées* (Bridges and Roads) administration, who occupied strategic positions within the Ministry of Transportation, to define the problem exclusively in their own terms: that is, the protection of the highway infrastructure against the deterioration caused by a fleet of excessively large, heavy trucks considerably overloaded with freight.

The great increase in the number of private cars, and consecutively, of serious accidents, led to the reformulation of the issue in terms of "safety". It is a fact that the count has been heavy in that respect for the past twenty years, although the figures have been declining regularly since the all-time high of over 16,000 deaths and close to 400,000 injured in 1972, and were down to 9,000 deaths and 180,000 injured in 1995. This steady downward trend is the product of a very firm government policy aimed at reducing losses of lives and the considerable costs connected with them.

A number of social actors partake in the production of road safety: technical administrative agencies such as the Bridges and Roads and the Mines, citizens' associations, insurance companies, the automobile industry, the criminal justice system... This paper is concerned with the latter. Traffic offences constitute a large portion of the cases handled by the French criminal justice system, with more than 20 million police reports annually, as compared with some 4 million recorded offences of other types.

While the lawmakers (in the broadest sense: the public actors that set the rules, be they laws, regulations, ministerial or municipal rulings are the main actors in this system, inasmuch as they decide what behaviour constitutes an offence, they are nonetheless quite helpless, since the practical enforcement of these definitions depends on another actor — the police, national or municipal, and the *Gendarmerie*.

Concretely, this enforcement involves detecting an offence, then putting the fact in writing, often reduced to a minimum in the form of a ticket (*timbre-amende* or *TA*) or slightly more explicit, in the form of a report (*procès-verbal* or *PV*). This recording generates penal consequences for the offender: simplified payment of a fine or court trial, generally resulting in some payment, at the least.

We shall focus on the role of the police: as every driver knows from experience, it is no robot exerting an absolute eye on motoring offences, recording and prosecuting them as soon as detected, but rather a social actor making decisions, who does or does not detect, record and prosecute those offences that transpire within his field of vision.

We studied these practices through participant observation on their work with two *brigades territoriales (BT)* of the *Gendarmerie Nationale* completed by interviews. These units, located in the greater Paris area, were chosen for their contrasting fea-

tures: Montreal¹ is based on the outskirts of a new town, a territory 2670 hectares in size, while Neuvic is based in a small town surrounded by scattered rural dwellings, with a territory 2.5 times as large. Both districts are policed exclusively by the BT, with no competition from the National Police, and are crossed by a same highway, two, three or four lanes wide depending on the location. But whereas Neuvic devoted 7.5 % of its outside activity time to traffic control in 1993, the proportion was 2.8% for Montréal², in comparison with a proportion of 1/5th for the *Gendarmerie* as a whole, for the same year³.

1. Policing the road: general aspects

Aside from the activity consisting directly of detecting and prosecuting⁴ motoring offences, *Gendarmerie* brigades do various traffic-regulation jobs aimed at ensuring the proper cohabitation of motor vehicles with other users of the road: participants in bicycle races, classes on excursions, workers doing roadwork, etc. But above all, they are in charge of the heaviest and most dreaded activity: the follow-up of accidents. The latter are uncontrollable and often painful occurrences for the young, relatively inexperienced *gendarmes* based in the Paris area: they must face the sight of mangled corpses and do the work that goes with them, such as taking pictures, visiting the morgue, receiving families, etc. Even when the situation is not nearly as dramatic, a few dented fenders may mean spending three hours directing traffic in wind and rain, waiting for the tow trucks, writing some technical reports, sending radio messages, etc.

Next, there is the paperwork, which may be just as time-consuming. Although computerisation has greatly simplified recording, they must still hear witnesses and do proper sketches, for which the manual skills — not to mention the computer skills — required are very unevenly distributed.

In the last analysis, for the *gendarme*, rushing to the scene of an accident is considered a heavy burden rather than a helpful activity, although the latter aspect does exist, through taking care of victims in particular, and makes road-policing something different from pure law-enforcement activities, which often are not viewed very positively: *gendarmes* claim to be much more willing to get up at night for an accident than to separate a fighting couple, in which case they are clearly faced with their powerlessness. But in the territorial brigades we studied, accidents definitely do not seem to structure professional identity where road-policing is concerned ; conversely, there are few activities in which officers have as many opportunities to act on their own right, fully mastering the situation, as when controlling traffic offenses.

¹ The place-names have been modified.

² According to the statistics produced by the brigades themselves.

³ *Gendarmerie Nationale*, Bilan d'activité 1993, *Revue de la Gendarmerie Nationale*, 1994, 173, pp. 27-37.

⁴ And the direct handling of the ensuing phases: making sure the papers are in order, vérification des régularisations, immobilizing vehicles not in conformity with the law, withholding registration, various notifications connected with suspended driver's licenses, custody of drunken drivers, etc.

2. Prosecuting traffic offences

Mastering a situation does not mean being totally arbitrary. But given the huge number of statutes that a *Gendarmerie* unit is theoretically supposed to enforce, the selection of cases is a structural necessity, grounded in a whole social organisation of the detection of the offence. The millions of vehicles travelling at all times throughout a territory ruled by the Highway Code are not under the panoptic gaze of the justice system, but rather, they occasionally encounter the working organisation of the *Gendarmerie* as well as actors who implement the criminal law of motoring as filtered by their own strategies and professional ethics, within a system of constraints.

Traffic policing and organisation of the Gendarmerie Nationale

Historically, policing traffic to ensure the free circulation of people and goods is one of the main missions of the French *Gendarmerie*. Over and above these principled foundations, national road safety policies focusing on penal control have gradually been incorporated in the structure and activities of the *Gendarmerie*. The hierarchy and the local political authorities also participate, using statistics or some particularly spectacular accident to support their concerns. Montréal and Neuvic are not located on the main roads taken by vacationers, so seasonal road-safety operations are hardly visible there ; nonetheless, Breathalyser and ticket book are the constant companions of patrolling *gendarmes*.

For *gendarmes* who are "going out", these policy questions are both compelling and relative: compelling because they may take the form of orders on the assignment sheet that structure their activity. Application of the order: "stationary road-policing at such and such a place from 8 to 11 A.M." will be measured by the number of *TA* or *PV* brought back at the end of the shift.

These policies are also relative, however, since their implementation may be hindered by a number of constraints. The lay of the land is one of these: a very sharp turn is not an ideal place for stopping a car, even if the driver takes it too fast. A second limit to the systematic implementation of motoring-related criminal policy is competition from alternate activities: an unforeseeable event may always force the patrol to run off to tend to other emergencies, and to give up checking on seatbelts and blood alcohol levels.

Last, a degree of lassitude, if not actual exhaustion, and at any rate the feeling of being overburdened, may occasionally cause *gendarmes* to decide not to "see" an offence, thus carrying out the selection process that is the crux of their work.

For a series of reasons, then, linked to the very nature, both proactive and reactive, of police work, *gendarmes* are led to take some distance from the strict enforcement of the Highway Code. They are not so much cogs in a machine as actors with a real degree of autonomy as to the enforcement of the rules.

Traffic-policing and autonomy of gendarmes

The *gendarmes* make use of the power to prosecute granted to them by the legislator and the organisation to which they belong. This is a proactive activity par excellence, and one of those for which what is known as the discretionary power of the police is most obvious. However, contrary to the widespread impression of sentenced drivers⁵, this power is not arbitrary: seen from the *gendarme's* side, to file a report is in fact to judge. It does not mean being an automatic distributor of

tickets, but to be fair. It is a way of defining his own professional identity in the field of traffic-policing. What, then, does being fair mean ?

First, it means being discerning, not seeing everything, and not recording and prosecuting everything. To do so, a limit must be established between the acceptable and the unacceptable, and norms for action must be defined: these definitely correspond more or less to those in the Highway Code, but do not coincide exactly with them: the dividing line is generally between fatal risks for others and the rest. Within that limit, there is always the possibility of not punishing, of preferring to prevent and educate: to prevent a serious accident by informing a driver that his or her stop lights are out of order, or to try to explain the utility of wearing a seatbelt. *Gendarmes* prefer to see themselves as wielding their power sparingly, being severe when necessary and having drivers' best interests at heart: what is the reality behind this ideal portrait ?

A *gendarme* who writes a ticket or a report must have the impression of being in control of the situation, and this feeling is unevenly distributed: a rookie may prefer to simply check road tax discs, since the offence is clear-cut there, and easy to determine. The opposite situation is perhaps the reporting of truck-drivers on the road, which is frightfully complex. But still, we are talking about technical skill, which, although necessary, does not entirely solve the problem: a degree of social skill is required, and the *gendarme*, coming from a modest background, always runs the risk of being talked down to by a driver.

Next, the *gendarme* must maintain interaction: there are strikingly few reports in comparison with the number of verifications ; detecting an offence is by no means synonymous with filing a report, and the selection also occurs when a driver has committed several offences: this is a common occurrence, and yet, when *gendarme* and offender are face to face, there are very few reports involving multiple offences. Of all of the many face-to-face encounters with offenders in which *gendarmes* are involved in a position of authority in their everyday work, this particular one stands out in that it is as a rule an encounter with a peer, someone of one's own kind, with whom they may identify in many ways, since *gendarmes* are also drivers.

Identification with a night-shift worker in a hurry to get home, or with a delivery man who takes a one-way street ; identification with the officer from the *Police Nationale*, who cannot be a reckless driver, identification with poor people, who cannot afford to pay a heavy fine. And again, a *gendarme* may be sentimental and excuse a woman driver who begins to cry when stopped... It is a difficult balance, then, that the officer attempts to establish through interaction, in order to construct that identity of the fair *gendarme* in an unfair society. The underlying normative system to which *gendarmes* refer is actually based on equity rather than legality, and some are plagued by moral dilemmas, the price of their freedom: should you believe the man who tells you he is unemployed, with five children, and is unable to pay ? Particularly since it takes two to interact: sometimes both parties are civilised, and relations are more or less strained but there is nonetheless give and take. But if the offender resists and protests, the *gendarme* attempts to retrieve the control of the interaction, by donning the role of officer of the law, that he had accepted to put in the background momentarily, while he gave a lesson in driver's education, for instance.

⁵ Renouard, How Traffic violations are viewed by sentenced drivers, *Penal Issues*, 1997, pp. 3-5.

Last, to maintain interaction, BT *gendarmes* are obliged to consider their place in local society, where they must be like fish in water rather than like a thorn in the flesh, if they are to fulfil their main job, that of criminal investigation work, which requires the cooperation of the population. The concentration, in their hands, of policing activities of various kinds places *gendarmes* in a contradictory situation that is hard to solve: they must apply the criminal highway code, a general, impersonal norm, to a specific group of people with whom they must entertain good relations.

It is at the roadside, and in interaction with the offender, that *gendarmes* dispose most freely of their decisional power: in deciding whether or not to report an offence, and in choosing the level of reporting in accordance with all of these parameters. And even then, this decision includes a possibility that may reduce it to nought: the possibility of "clemency".

3. Decisions to prosecute and clemency

Having made a report, the *gendarme* is theoretically relieved of any decisional power: the written report is supposedly simply transmitted for enforcement of the sentence or opening of a judicial procedure. In reality, he must consider the eventuality of unofficial dismissal, not decided on any legal grounds: "clemency"⁶.

Where clemency is concerned, *gendarmes* continue to view themselves as judges, but judges whose decision is always fragile and constantly susceptible of being forcibly changed, or worse, who may be positively dispossessed of their power.

The practice is very widespread — a local monograph finds a figure of 57% of police reports for speeding⁷ — and the principle is that the reporting officer has the last word as to whether clemency is granted. He may therefore continue to apply his own criteria as to the seriousness of the offence, and refuse clemency for very serious speeding or drunken driving, while being more lenient for other offences, such as a broken headlight.

Another element considered is the offender's attitude: someone who is calm and deferential will be granted clemency more readily, whereas a rude person, or one who befriends the *gendarme* out of self-interest, will find his or her demand for clemency rejected. At this point too, the person's financial situation may be a factor: does the boy without a helmet have money to pay a ticket?

The *gendarme's* freedom of decision has limits, however, since the decision is not made secretly, in the officer's conscience and in a social void, but is subjected to a series of constraints. The *gendarme* works within a hierarchy, in a stratified society, and within a local community in which the system of giving and returning gifts is a powerful lever. More specifically, in this situation *gendarmes* participate in complex interaction involving 2, 3 or 4 actors: the two main roles are played by the prosecuting officer and the offender, and this is the most elementary situation. But it may become complex, when a third party and/or the *gendarme's* hierarchical superior intervenes.

The basic case, then, is that of a prosecuting *gendarme* face to face with an offender who has directly requested clemency: the *gendarme* is then caught in a "simple" sociability network. First, he may grant clemency in exchange for setting the situation in order: as soon as an up-to-date insurance certificate is

obtained, the ticket is "cancelled". The *gendarme* may also grant clemency because of an involvement, along with the offender, in set of exchanges of some kind: in criminal investigation work, valuable information may be obtained in exchange for a few "forgotten" tickets. At the more mundane level, other favours that facilitate the functioning of the brigade may be obtained: some local firm with which it is on sufficiently good terms may give the unit its out-moded but still usable computers, for instance. As a rule, the *gendarme's* impression of benefiting, along with the brigade as a whole, from this system of exchanges, is enough to make clemency self-evident.

Things are more complicated when it is a third party to whom the *gendarme* is professionally or personally indebted who requests clemency for the offender. In all of these cases, however, it is the *gendarme* who makes the decision. When granting clemency in return for correction of the problem, he has the feeling of handling his prosecution powers well, and of using them reasonably, for preventive purposes, an image that fits well with the vision of a professional identity not exclusively focused on repression. In clemency/exchange of services, he definitely is caught up in the on-going chain of exchanges, but with the notion that this endless reckoning of debits and credits constitutes the very fabric of life in society. And when, for one reason or another, he is really determined to escape from the social constraints, there remains the possibility of taking cover behind his superiors.

But inasmuch as the latter may cover the *gendarme's* decision, they may also influence it. The *gendarme* whose boss asks him, on behalf of a solicitor, to grant clemency, is not caught up in his own sociability network, within which he may view his action as meaningful, but within the network of his hierarchy, and through it, the weight of a stratified society bears down on him and strips him of his freedom of decision. The driver who scornfully flings "Anyway, I won't pay it!" at the *gendarme* makes him anticipate that loss of freedom, putting him in the situation that every worker hates most: that of "working for nothing".

A look at the *Gendarmerie's* road-policing work thus shows how important the rank-and-file officer is: while *gendarmes* truly are the military arm of criminal justice in its road safety aspects, they tend to be a free-working arm rather than a remote-controlled one. More accurately, they function within a constant dialectic of distance from and proximity to the legal norm, and actually construct their professional identity through this elasticity. Inasmuch as officers are in a situation to make choices — to hand down judgements — that are meaningful to them, they always succeed in legitimating these; if they file a report, they are covered by the law. They venture outside of this protection to a varying extent depending on their assessment of the situation, the offence, the offender and the interaction, but with the possibility of returning to take refuge there, again donning the habit of the speechless servants of the Law. If they choose comprehension and clemency, they ground their legitimacy alternately or simultaneously in their humaneness, their subtlety in managing human relations or their educational function. These are the detours that shape the concatenation of a policy with a profession. There remains the question of what hypotheses may be formulated about the ties between that policy and the *Gendarmerie Nationale* as a structured organisation.

⁶ Pérez-Díaz C. The fate of traffic tickets and reports, *Penal Issues*, 1993, 9-12.; L'indulgence, pratique discrétionnaire et arrangement administratif, *Déviance et Société*, 1994, 18, 4, pp. 397-430.

⁷ Pérez-Díaz (C.), *Jeux avec des règles pénales. Le cas des*

It does seem that despite the clamorous announcement, to policy-makers as well as to drivers in general, that the *gendarmes* are on the roads, watching and punishing, the *Gendarmerie* has chosen to observe the injunctions of the political leaders in the light of its own strategies, and repressive traffic-policing is not high on its list of priorities. It is a fact that this activity causes friction between *gendarmes* and the population, and is therefore relatively incompatible with its longstanding, basic orientation, which also most probably represents the future of all police forces in modern societies: that is, local social integration. If we suppose, in particular, *the construction of as broad and diversified as possible a network of interactions and information-circulation involving the population*⁸, the result may be both an effective investigating police force and an accepted community police force. It is probably this tendency towards local integration that prevents the *Gendarmerie* from being a pure instrument in the hands of the policy-makers in the implementation of a road safety policy.

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⁸ Montjardet (D.), *Ce que fait la police, Sociologie de la force publique*, Paris, La Découverte, 1996, pp. 135, 263 ff.