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Ideas in American Policing



August 1999

On Democratic Policing

By Jerome H. Skolnick

The celebration of the millennium invites us to observe that we are indeed in a time of worldwide political, technological, and social change. With the fall of the Soviet Union, we see—especially in middle and eastern Europe—more emerging democracies and more consciousness of rights. As such changes happen, there is increasing interest in the role of the police as an institution in a democratic society.

In February 1999 in Budapest, I participated in a conference titled *Police in Transition* (Koszeg 1999). The primary issue was how to transform police from their formerly authoritarian assignments in communist countries to what would be acceptable in a democratic nation. Under communism, what we in

the West regard as the normal tasks of policing, such as the detection and prevention of crime in the interests of public safety, were secondary to the task of preserving political dominance of the regime.

The transition from a security police force to a democratic police is not easy. The change in eastern Europe from centrally controlled socialism to democratic capitalism was indeed revolutionary. Virtually overnight, as the total control of the state drained away, life became more open and free. At the same time, artificially maintained general employment—a feature of socialism—was to disappear. As people lost their jobs, the modest but secure living standards, which had formerly been a right, no longer provided an economic safety net. People enjoyed the

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benefits of freedom but also experienced its costs, especially in a population where freedom had not been known in this century. From a sociological perspective, this change was evidently a Durkheimian moment when the normlessness and uncertainty of anomie began to prevail.

Given the situation, crime increased substantially in the formerly socialist countries. As it did, police were inclined to revert to the organizational methods, practices, and outlook characteristic of the preceding totalitarian regime. So in all of those countries, there is a struggle to achieve democratic policing, a struggle made more difficult by the lack of a tradition of democratic policing in eastern Europe.

Thus, the underlying questions for the conference—and for a series on ideas in American policing—arise: Are there any fundamental principles of democratic policing, and, if so, what are they?

Openness

Democracy is a very old and complex idea, but the fundamental notion is that of Aristotle, who, in *The Politics* (4, 4), wrote that “Democracy exists when the free and poor, being a majority, have authority to rule.” Aristotle, of course, did not discuss the role of police in a modern democratic society. Nevertheless, it seems apparent that, as an ideal type,

democratic police forces are not supposed to be insular, self-contained, or cut off from the communities from which their power derives. *Openness* to the free and the poor should be a master ideal of democratic policing.

This ideal may sound abstractly academic, so I will shift quickly to a contemporary example. William Bratton, who was New York City’s police commissioner from 1994 to 1996, and who is widely credited with introducing strategies leading to New York City’s remarkable crime decline, recently wrote that there is “a crisis of fear” in New York City’s minority communities (1999). The crisis is attributable to the forty-one shots that gunned down Amadou Diallo, a 22-year-old unarmed African man who had no criminal

record. People of color “and particularly their teenage sons,” Bratton writes, feel that they are at risk, not from criminals but from cops. He says that their fear is out of proportion to reality. Bratton finds it “beyond imagining” that the officers who fired the forty-one shots intentionally gunned down an innocent man. He points out that the NYPD’s record on misuse of deadly force is better than that of most police departments.

But Bratton appreciates that perceptions may be shaped more by events than by statistics. New York City’s crime statistics for 1998 show sharp declines in the number of murders, dropping to an astonishing and gratifying 631. Other crimes that often hit closer to home, such as auto thefts, burglaries, grand larcenies, assaults, robberies, and rapes, fell

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as well. Ironically, in light of the present protests, serious crime declines occurred mostly in minority communities such as Brooklyn's 77th precinct (Bedford Stuyvesant), where murders declined from 34 in 1997 to 9 in 1998. No murders occurred in Manhattan's 100th precinct, which patrols Murray Hill and Turtle Bay, the high-rent areas adjacent to the United Nations complex.

Similar comparisons can be made between police precincts in the South Bronx and Central Park. Thus, the major beneficiaries of the crime decline have been residents of formerly high-crime communities; yet those are the communities most fearful of the police.

We can best explain this paradox by the symbolism of a thought experiment. Imagine a city where most of the police are black and are assigned to high-crime areas where most of the residents are white. Four black detectives fire forty-one shots at an unarmed white suspect, hitting him nineteen times. Would whites not believe that the lives and dignity of whites were devalued by the black police?

A *New York Times* poll (Barry with Connelly 1999) shows a deep racial divide in New York City. When asked whether most of the police use excessive force, 33 percent of whites answered yes, as compared with 72 percent of blacks. Still, responses to the Diallo shooting incident showed

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some consensus between whites and blacks. New Yorkers were asked if they agreed with this statement: "Based upon current knowledge, the shooting of Amadou Diallo was tragic and there is absolutely no excuse for the way the police acted." The response of 89 percent of blacks was yes, with 61 percent of whites agreeing. Black political leaders from the Reverend Al Sharpton to establishment figures such as Representative Charles B. Rangel and former-Mayor David N. Dinkins were arrested in acts of civil disobedience when they demanded the arrest of the four detectives.

Bratton (1999) argues, almost in a reprise of Aristotle, that "the role of police power in a democracy should be the expression of social consensus." The more difficult issue is how to achieve something like a consensus in a society—or a city—that appears socially fractured. There are no easy answers. Given the ignominious

historical treatment of Africans and African Americans in U.S. history, plus the current disproportionate numbers of black males in American jails and prisons, it is easy to see why blacks mistrust police. Bratton argues for powerful recruitment strategies and the NYPD is already moving to recruit more minorities. This approach is, of course, a "no-brainer." Whatever one might think of the value of diversity and affirmative action in some employment contexts, there can be no question that color, ethnicity, and gender *are* bona fide occupational qualifications for urban police departments.

For New York, and presumably other large American cities, Bratton (1999) advocates a version of the Police Cadet Corps, an idea put forward years ago by Adam Walinsky. Bratton envisions a summer youth academy that is tied to a public safety high school (New York City already has a high school of music, art, and the performing

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arts) and that continues all the way through the City College system. Whatever the details, it is imperative to take steps to draw minority youths into policing.

In addition to enhanced recruitment, a closely related strategy might be to heighten educational requirements—and salaries—for sworn officers. At the same time, we should shift many routine tasks of policing (such as taking accident reports) to what David Bayley and I have called “para police,” modeled on the idea of paramedics and paralegals (Skolnick and Bayley 1986). This strategy would have dual advantages: First, it would heighten the status, and perhaps the salaries, of sworn police. Second, in time, some of the para police would become sworn officers. But even if they did not, we can assume that a majority of para police would be minorities and women. Therefore, they would bring diversity to the police organization and should influence its cultural under-

standings beyond formal “sensitivity training” courses.

Accountability

If *openness* is one signpost of democratic policing, the other is *accountability*. Police should be accountable to the communities being policed, to the taxpayers who pay the bills, and to the legal order governing their authority. But how can we tell whether police are doing acceptable work? This difficult question has long interested police executives and people who study the police.

In the early 1960s, when I was writing *Justice Without Trial* (1966), clearance rates were being advanced as a key measure of police performance. Clearance rates were an earnest attempt by O.W. Wilson (who was then the leading authority on police management) to establish an internal control on the work of police, particularly of plainclothes detectives who were supposed to

solve crimes. In the remainder of the chapter, I tried to show the limitations—indeed, the potential perversions—of clearance rates. When I was studying burglary detectives, I saw professional thieves—who could offer to clear many cases—negotiate light sentences with burglary detectives, who then used those clearances to impress their superiors. Less skillful burglars—who had committed fewer crimes and could offer fewer clearances—were sentenced more severely.

In the 1990s, thanks mainly to Bratton’s innovations in the New York City subways and later in the NYPD, police accountability moved to using reported crime as the measure of organizational accountability. This shift happened in tandem with the development of Compstat, a sophisticated software program that compiles and maps crime statistics. Through Compstat, local police commanders and their units could be held responsible for controlling crime in their assigned area.

Nevertheless, as Bratton (1998) himself now argues, the proper ends of policing are not crime control alone. Recent well-publicized accusations of racial factors in stopping, harassing, arresting, and sometimes brutalizing non-white citizens suggest that police should be accountable for the means used to achieve crime control.

Complaints against police are

a possible measure, but they may be quite problematic in at least two respects. One, the less confidence that citizens have that their complaints will be taken seriously, the less likely they are to complain. Two, police have told me that complaints are frequently made against the most effective officers by drug dealers who seek to undermine their authority.

Hostility toward police in New York City may be related to a philosophy of policing that stems from “broken windows,” the famous theory that James Q. Wilson and George Kelling first published in *The Atlantic Monthly* (1982). The broken windows theory postulates that a broken window, when left unrepaired, signals neglect and lack of concern for the neighborhood, which, in turn, invites vandalism and further property damage.

“Broken windows” is also a metaphor for a larger conception, disorder, which includes disorderly behavior—being drunk in public, loitering, panhandling, and urinating and defecating in public. In a more recent elaboration of the theory, Kelling and Catherine Coles (1996) argue that order is a normative concept largely shared by residents in neighborhoods. Disorder includes dirty, littered streets and broken windows, but so does behavioral disorder such as being drunk in public, panhandling, and loitering for purposes of prostitution. Kelling

and Coles recognize that the move from windows to people is significant and contestable. Nevertheless, they argue that it should be part of the broader concept of disorder.

Here is where the theory becomes controversial. Can we assume that conceptions of order in the minds and eyes of police are shared by the residents of areas that are being policed? Granted that we commonly share an aversion to public defecation, but do residents who live in neighborhoods where crowded apartments lack air conditioning also deplore public beer drinking

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on hot city nights? When statutes prohibit low-level conduct, police will maintain broad discretion to decide whom to stop and cite. Citizens from different communities will surely maintain different ideas about when arrests should be made, as will the courts.

No contemporary urban or state police department explicitly advocates race conscious policing, yet it occurs repeatedly. Racial discrimination in policing is engendered partly by cultural understandings—or misunderstandings; partly by organizational policing philosophies; and partly by constitutional interpretations that permit pretextual stops. A pretextual stop is a stop, usually followed by a search, that is ostensibly for one violation but is really for another, usually possession of drugs or guns. The order-maintenance strategy advocated by Wilson and Kelling is grounded in the strategy of arresting people on meaningless charges. As Wilson and Kelling (1982, 35) write, “These charges exist not because society wants judges to punish vagrants or drunks but because it wants an officer to have the legal tools to remove undesirable persons from a neighborhood when informal efforts to preserve order in the streets have failed.”

Pretextual stops are most visibly enforced on highway automobile drivers because virtually every highway driver

exceeds the speed limit or changes lanes illegally. Lawsuits have been filed in Maryland, New Jersey, and Illinois, where plaintiffs have shown that state troopers disproportionately stop and search African-American motorists for the so-called crime of “driving while black” (Harris 1997). In some of these cases, the U.S. Department of Justice has filed a friend-of-the-court brief on behalf of plaintiffs.

On March 16, 1999, I received a telephone call from a perplexed Assistant Attorney General in Illinois who was astonished by the gross statistical differences between black and white stops that expert witnesses for the plaintiffs had presented. He asked whether they could be

true, and he seemed to be shopping for an expert defense witness. When I told him that such statistical differences were valid, he seemed puzzled and cast about for some rational basis for the stops. The only basis, I suggested, was a tragically flawed syllogism: (1) police are supposed to stop drug couriers, (2) drug couriers are black or Hispanic, and (3) therefore it’s appropriate to stop and search black and Hispanic drivers. Why? Because they might be drug couriers. I offered free expert witness advice: settle the case as best you can and change the practice.

Then I thought of a police practice I had witnessed in Budapest when I spent an evening riding with the

equivalent of New York City’s street crimes unit. The police were searching for gun smugglers, who, I was told, were either Albanians or Romany (Gypsies) or both. We stopped at a working class café that was darkly lit and was permeated by the smell of cigarette and cigar smoke. Forty or fifty men were quietly talking and sipping beer. As the police were recognized, a palpable stir arose among those who recognized the police. About a dozen people were asked for their identification, no one was arrested, and the police left.

When I was later asked for my impressions of the Budapest police, I said that this practice seemed to me to be a holdover from the security policing of an authoritarian regime. Democratic policing implies that the police should be required to articulate a reason for stopping and searching someone other than on a mere hunch or on a suspicion that is based on a person’s racial or ethnic background.

Conclusion

More than three decades ago, I wrote in *Justice Without Trial* (1966) that the phrase “law and order” can be misleading because it draws attention away from the incompatibilities between the two ideas. Order achieved through democratic policing is concerned not only with the ends of crime control, but also with the means used to achieve those ends.

Democratic policing implies that the police should be required to articulate a reason for stopping and searching someone other than on a mere hunch or on a suspicion that is based on a person’s racial or ethnic background.

Responses to shooting incidents often highlight the underlying fears of the population being policed. Those people should send a signal to police executives that the balance between the two ideas may have shifted too much in one direction.

As we approach the millennium, most European people are free from the tyranny of fascism and communism. As most people around the world are moving toward freedom, American policing ideas and American police practices inevitably become a model for democratic policing. As Jeremy Travis wrote in a 1998 speech in Budapest, "Of all governmental functions, the policing function is arguably the most visible, the most immediate, the most intimately involved with the well-being of individuals and the health of communities."

Democratic policing is always in a tension among the touchstones of public safety, openness, and accountability. As the police enforce the laws of democratic governments in a free society, the balance among these touchstones should be properly maintained to reflect democratic values.

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