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POLICING POST-9/11

*Robert J. Loudon**

This essay was originally envisioned as a straightforward presentation and review of policing America in 2005. Life is seldom as uncomplicated as it may first appear.

As my research progressed it became apparent that commenting on aspects of present-day policing would not be meaningful without a consideration of the formation of the police function in the United States. The trend in America toward community-based and problem-oriented policing preceding the September 11, 2001 (“September 11” or “9/11”) attacks also presents a window of opportunity for reflection on various formal components of police organization and activity.

This paper therefore is an attempt to consider post-September 11 law enforcement activities in the context of organized policing in America. Many concepts and procedures used as illustrations have been undertaken by various police agencies. This demonstrates how previously accepted police practices may be changed in part by reaction to crisis legislation or other influences. New York City programs may or may not serve as benchmarks for other agencies.

THE POLICE: SOME PERSONAL OBSERVATIONS

This nation’s police departments are charged by law and administrative code to provide certain services to the population of a given political or geographical division. The majority of services are rendered through the application of generally accepted methods of uniform patrol operations. These techniques frequently tend to appear technical or perfunctory in nature. For reasons of efficiency there has often not been enough concern for the day-to-day interaction of the patrol officer and the citizen.

Many citizens, I believe, understand that crime is currently not a critical problem in most sections of New York City; others may not appreciate the statistical drops because their personal experiences are still negative. New York City, like most of the nation, has recently witnessed a historic decrease

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in reported crime. Coupled with this change in crime statistics, there is often a perception of a lack of, or decrease in, positive relations between the police and the community that they are sworn to serve. All too often the police are viewed as outsiders in their assigned patrol areas. Likewise, police often view the community as a naïve, hyper-critical faction—often armed with a video recorder—which must be tolerated.

THE POLICE: A HISTORICAL PERSPECTIVE

An almost forty-year old publication from the University of Connecticut noted that “police duties and responsibilities are predicated upon the customs, traditions, and demands of the community served.”¹ This has resulted in a “wide diversity of tasks” which does not permit the police to “carry out effectively their primary mission - the prevention and detection of crime and criminals.”² Herein lies the essence of a major disagreement within the law enforcement community as well as in our neighborhoods: What is the function of the police in our society? Some police researchers, including Goldstein,³ equate police work primarily with crime-related matters. Many others, including myself, accept and embrace the importance of the police’s crime-related work but look toward a broader mandate which includes law enforcement, the maintenance of order and service. While these functions are sometimes considered mutually-exclusive, James Q. Wilson’s seminal work argued they are complimentary and have the end result of better preparing the police and the public to engage in the crime fighting aspects of their role.⁴ Tasks which “crime fighters” view as peripheral police duties have functional relationships to the overall mandate of the police—the protection of life and property.

Pfiffner reminds us that the police function is age-old and has undergone modification but “still possesses a set of values, standards and job goals more appropriate to the days of public hanging” than to serving the greater needs of society.⁵ Pfiffner argues against a method of policing which we appeared to be abandoning prior to September 11:

In a bureaucratic society interpersonal contacts tend to become impersonal; one does not interact with the same functionary repeatedly, an example being the legendary neighborhood beat cop, who may or may not

1. Benjamin Goldstein, *Non-Police Duties of Today’s Policemen*, CONN. GOV’T, June 1966, at 1.

2. *Id.*

3. *See id.*

4. *See generally* JAMES Q. WILSON, VARIETIES OF POLICE BEHAVIOR 1-15 (1968).

5. John M. Pfiffner, *The Function of the Police in a Democratic Society* 6 (1967) (unpublished essay, on file with author).

have existed, but who is nevertheless a nostalgic prototype of the desirable policeman for many people. Today one seldom sees the same officer twice.⁶

These two views at first may seem contradictory but upon further reading of his work it would appear that Pfiffner is seeking the best of both worlds. He advocates a method of policing which would provide for personalization but not indiscriminate actions or brutality. The type of police force that Pfiffner advocates is one that recognizes that we are experiencing a period of social upheaval. He wants a police organization which will be equipped to deal with a range of social problems and not just to react as a “holding and containment operation.”⁷

Sir Robert Peel, the British Home Secretary in the early nineteenth century, likewise wanted a particular attention to order in society and was instrumental in forming the first professional police force in 1829.⁸ It is generally accepted that his system became the model for the first police agencies formed in the northeastern United States.⁹ Thus, the British police role became ours.

The nine principles of Peel’s police outline dealt with their mission with respect to the use of force, the expectation of fairness to and from the public, efficiency and, most important, the interaction between the police and the public.¹⁰ Several of the founding principles illustrate that the formulation of the police role more than one hundred seventy-five years ago is probably the best place to look for a restatement of the police role as it should be today:

1. To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment. 2. To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval 3. To recognize always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public

. . . .

5. To seek and to preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to Law

. . . .

6. *Id.* at 1-2.

7. *See id.* at 14.

8. *See* SAMUEL G. CHAPMAN, POLICE PATROL READINGS ix (1962).

9. *See generally* A.C. Germann, et al., INTRODUCTION TO LAW ENFORCEMENT 64-72 (1970).

10. *See generally* W. L. MELVILLE LEE, A HISTORY OF POLICE IN ENGLAND 239-44 (Patterson Smith 1971) (1901).

7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police¹¹

The principles laid down by Sir Robert Peel and subsequently adopted in this country have not been discarded in the ensuing almost two centuries but seem to have lost their initial distinctiveness. Effectiveness often gave way to efficiency and both were often lost in the transition. A return to first principles was viewed as the most promising way to recapture the streets through a combination of community-based or problem-oriented policing coupled with a variety of practices. Joseph Cordes noted that when new rules and procedures are being formulated it becomes necessary to clear up obvious misconceptions, re-examine police-public relationships, and review the responsibility of each toward the other.¹² This process should foster a redefinition of the collective obligation to approach, and in some cases attack, society's problems.¹³

Traditional methods for the delivery of police service have not always effectively responded to dilemmas presented by our society. This is true in the area of street crime as well as in dealing with problems and requests for police assistance in a variety of non-criminal matters. Conventional methods of patrol allocation and response did not seem to consider that the police and the public must know each other and work toward common goals.

The pre-9/11, decade-long trend toward community-based and problem-oriented policing strived to increase the quality and quantity of personal contact between citizen and officer without sacrificing swift and effective emergency response. A consideration of various forms of operational deployment coupled with a reordering of police priorities and practices provided the most promise for appropriately empowering both the public and the police in their common quest.

To improve the quality of service, the patrol officer must not only be familiar with an assigned geographical beat but must be acquainted with the citizens who reside in and otherwise frequent the area. A better working knowledge of problems and conditions coupled with attempts at creative problem solving would lead to improved acceptance of the police by the public in many communities. A crucial benefit is that the police would gain citizen cooperation in the fight against crime, particularly violent and drug-related crime.

Officers assigned to modern radio-equipped and air-conditioned

11. See CHARLES REITH, A NEW STUDY OF POLICE HISTORY 287-88 (1956).

12. Joseph G. Cordes, Why the Police Exist 4 (1971) (unpublished essay, on file with author).

13. *Id.* at 6.

automobiles swiftly respond to calls over a wide area, but often have trouble keeping up with the volume of demand for service. Although suspects are arrested, lives saved, and a multitude of other tasks accomplished, neither the public nor the police seem fully satisfied with the results. The brisk and all too often brusque officer may boast of the number of tasks he completed, but he is often isolated from a demanding or indifferent populace. Police responsiveness to calls from the public has become measured simply by the number of jobs answered in an elapsed period of time. The police bureaucracy appears more and more task-oriented, using COMSTAT-type mechanisms to track workload and response, and to nail down accountability.

The community appreciates the swiftness of the police vehicle in emergency situations but expects more of its police. They want to see a police officer outside the context of trouble or emergency and to know more of what the police do during a tour of duty.

An increase in personal contact between the public and the police was designed to provide the stimulus needed for both to realize that more can be accomplished by working cooperatively. Resources are more limited than ever and there will continue to be a real need for swift response to certain calls; the assignment of personnel to collaborative problem solving may, however, have the long term effect of decreasing calls for service. The immediate result would be for people to have a more meaningful say in their neighborhoods and their lives.

It is important to note that Peel's first principle of policing as conceived in 1829 was an alternative to another system. Likewise, our entire justice system, and not just the police function, has undergone numerous and sometimes conflicting modifications throughout the history of the United States. Some of the most turbulent change was experienced in the 1960s and 1970s. It was during that time that social scientists interested in the police and policing seemed to emerge. Many authors have commented on the mutually beneficial possibilities of collaborative efforts between police and social scientists.¹⁴

Although there had been some form of systematic, if not scientific, interest dating at least to the mid-eighteenth century,¹⁵ the infusion of government

14. See, e.g., Morton Bard, *Implications of Collaboration Between Law Enforcement and the Social Sciences*, FBI LAW ENFORCEMENT BULLETIN (Washington D.C.), July 1974; Thomas Strenz, *Transactional Analysis and the Police: Or "Why Aren't You Out Catching Crooks?"*, POLICE CHIEF, Oct. 1975; Rick Bradstreet, *A Training Proposal: Developing Silver-Tongued Officers* (1982) (unpublished essay, on file with author); Conrad V. Hassel, *Law Enforcement and Behavioral Science: Closing the Gap* (1980) (unpublished essay, on file with author).

15. See, e.g., CESSARE BECCARIA, AN ESSAY ON CRIMES AND PUNISHMENTS (Edward D. Ingraham, trans., Philip H. Nicklin & A. Walker, eds., 2d ed. 1819) (1764) (an

funds almost four decades ago helped to make criminal justice research an appealing subject.

COMMUNITY-BASED AND PROBLEM-ORIENTED POLICING

Among the many efforts at modernizing and professionalizing the police during the late 1960s and early 1970s was team policing, a precursor to community policing. These experiments with team policing represented attempts to streamline bureaucracy, decentralize decision-making, and instill in the patrol officer a sense of commitment to the neighborhood and community. The proponents of the various team policing efforts supported both the fixing of geographical responsibility and an unprecedented degree of flexibility and diversity in daily assignments.

The 1960s and 1970s were also tumultuous times for policing in America, due to issues like civil rights, an unpopular war, and an unacceptable crime rate. The 1980s were probably at least as troublesome. Crime, especially violence and drug-related activity, was at an all time high. Citizens were more aware than ever of their rights and of the limitations of the police.

The need for a partnership between the police and the public was apparent; there was a need for return to the principles of Sir Robert Peel. The positive aspects of experimentation in policing during the past several decades seemed capable of being mobilized by various attempts at rejoining the public and the police. One common thread in the various police efforts was an endeavor to reach out to the community and establish friends and helpers in the fight against crime.

Professor Herman Goldstein of the University of Wisconsin, who has carefully observed and reported on the policing since the 1970s, is considered the father of community-oriented policing, and his text on the subject serves as a guidebook for police administrators to adapt his message to their department.¹⁶ Goldstein believes that there is a need to shift from a control-oriented, dominant perspective of policing to one that:

begins with an analysis of each of the varied problems police handle and only then proceeds to establish the most effective response. Rather than cling to the simplistic notion that the criminal law defines the police role, we come to realize that policing consists of developing the most effective means for dealing with a multitude of troublesome situations. And these means will often, but not always, include appropriate use of the criminal law.¹⁷

Enlightenment analysis of the penal system).

16. See generally HERMAN GOLDSTEIN, PROBLEM ORIENTED POLICING (1990).

17. *Id.* at 2.

Community-based and problem-oriented policing appeared to hold the greatest hope for meaningful change. And then, after 9/11, our world changed.

WHAT NEXT?

According to federal government statistics, there are more than 17,000 local and state police departments in the country.¹⁸ Even though the NYPD employs almost 40,000 sworn officers, the next largest city has only about one-third that number.¹⁹ Less than 100 local agencies have 1000 officers and less than 1000 departments employ a minimum of 100 officers.²⁰ We are largely a nation of small town—not national—policing. Although our federal government does not directly control most of the police agencies in the United States, local police policies and practice are influenced by Washington through investigative bodies, oversight mechanisms and funding. Before the September 11 attacks, early in the tenure of the Bush administration, there was a move to re-allocate federal dollars that had supported local police hiring and training to fund anti-terrorism programs.

Perhaps this shift in funding priorities was justified, but there seemed to be a blockage in the money pipeline. In August 2002, New York City Police Commissioner Ray Kelly claimed an additional \$500 to \$700 million was needed for training, resources and equipment to fight terrorism. He further noted that “there was \$3.5 billion languishing in Congress, and we are not going to get anything before the coming 9/11 (2002).”²¹ Robert Pavone, director of the New York State Police Chiefs’ Benevolent Association, expressed similar sentiments: “Not one additional resource has been provided even though all first-response comes locally.”²² Both of these statements must be considered against the backdrop of comments by President Bush, who vowed that “he would not spend \$5.1 billion approved by Congress last month for domestic security. . . .”²³

Another point of connection and influence is the federal review of police behavior and practices. Over the past several years there has been a great deal of media attention, civil litigation and federal investigation into police

18. BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, LOCAL POLICE DEP’TS 2000 1 (2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/lpd00.pdf>.

19. *Id.* at 2.

20. *Id.*

21. See Patrice O’Shaughnessy, *NYPD Beefing Up in War on Terror: Seeking 500M+ in Federal Cash*, N.Y. DAILY NEWS, Aug. 25, 2002, at 4.

22. See Graham Rayman, *State Touts Its Anti-Terror Agency to Local Cops*, NEWSDAY, July 25, 2002, at A08.

23. See Carl Hulse, *Bush and the Economy: Spending Cutbacks; Citing Economy, Bush Won’t Spend \$5.1 Billion Approved for Security and Other Uses*, N.Y. TIMES, Aug. 14, 2002, at 19.

practices that have become known as racial profiling. The FBI, a component of the U.S. Department of Justice, is a partner in many criminal investigations conducted by local police. The FBI is also an investigator of local police behavior. Yet, soon after the September 11 attacks, the DOJ requested local police departments to identify and interview, often in conjunction with the FBI, selected individuals or groups, apparently based primarily on ethnic considerations. Some police chiefs readily cooperated; others refused, or at least protested.

FINAL COMMENTS

This paper has already noted concerns about the role of police in our society and commented on police resistance to change. Confusion over their perceived newly-changed role is already problematic without mixed messages from the federal government. There are, I believe, some local police jurisdictions that see their twenty-first century role as directly and intensely related to terrorism. Other agencies seem not to notice that we were attacked. The majority probably have a more balanced perspective. Regardless of their viewpoint, the basic function of local police, although intensified, has not really changed. The “protect and serve” mandate holds true whether the threat originates from crusaders, criminals or crazies.²⁴

In these times of threat and response some important factors about preparing police for role change became apparent. First, there is a need to specify the new reality and determine what is to be done about it. Next, a review of legal and administrative directives would be appropriate. These two items should identify (1) the nature of the problem, (2) the legislated parties responsible for response, (3) the actual parties involved in attempts at resolution, and (4) suggested changes in mandate or practice which would provide an improved conclusion. Another basic factor for any role change in policing is to specify appropriate organizational change, if any, and delineate the nature of resources needed and of training required. Adequate and appropriate funding is a must.

24. *See generally* FREDERICK J. HACKER, CRUSADERS, CRIMINALS, CRAZIES: TERROR AND TERRORISM IN OUR TIME (1976).