



POLICING AND CITIZEN ENCOUNTERS: LAW ENFORCEMENT AND RIGIDITY



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Abstract: This paper deals with the tension that appears between on the one hand laws and rules which try to control police activities, police efficiency and police fairness, and on the other hand police discretion, regarded as essential by police officers on the beat. It also underlines the need for flexibility that every police officer has to use in order to preserve or to improve his relationship with the citizens. Because people have complex demands, because they don't want the police officer to apply the rules without any discretion, what would be unbearable, negotiation has to be part of the police officer's job. But the piling up of new rules is restraining this flexibility.

More and more, if we hear police discourses during interviews or meeting with police officers, police work appears to be a controlled work. In a civilised society, a police force that could be out of control would be an unbearable idea. In our democratic countries, the main current view is not only that the State has the monopoly of legal physical violence (Weber, 1919), but also that the police force, who is the one of the armed wings of this State, has to stay under the control of its authority. That means not only to obey the elected authorities, but also to respect the limits set by the other official rules.

But this legal-rational view itself crashes into some realities. Among practitioners and scientists working in this field of policing, it is well known that even in the most centralised, hierarchical and controlled police organisations, there is still room for the police officer on the ground to put a construction on the orders that they receive. But many tools, including GPS, cameras on police cars or on police officers' shoulders, or CCTV, are used to strengthen the control over the police and to reduce what is known as 'police discretion'. There is a permanent tension between control and autonomy.

The second great obstacle to a full respect of official rules is the need for efficiency. Sometimes, this requirement leads to discrepancies between

compliance with the legal standards and the outcomes that are expected from police forces.

Many fictional police stories or movies are based on the dilemmas set by this tremendous question police officers have to face: is it preferable to catch a shoplifter — or a burglar, a serial rapist or a terrorist — without compliance to all the rules, or to let him go because it is not possible to 'build' a case without cheating the law? The distinction between on the one hand purposive/instrumental rationality and on the other hand value/belief-oriented rationality is classic for social scientists (Weber, 1922): police officers on the beat are practically dealing with this distinction quite often. The 'art' of policing in the street refers to this ability to combine laws and action. But until what limits is it possible to do it?

Among all the consequences of this gap between law in the books and practices, we want to shine light on a third issue, linked to the question of relationships between the population and police officers: the tension that could emerge between law enforcement and the need for flexibility in applying the rules.

A majority of police forces in developed countries have been involved in a strategy of community policing, or in a process of improving accountability.



In order to improve such strategies, police officers have to be more tolerant with and more open minded to citizens' behaviour. Sometimes the search for better interactions with people could lead police officers not to apply all rules. This issue is particularly relevant when these police officers are in contact with youngster from ethnic minorities and poor areas, who could have cultures or habits which are not accepted by official rules. But it could also be the case in richer neighbourhood where the citizens have enough social capital (Bourdieu, 1980) in order to force police officers to be less harsh when they misbehave and commit relatively petty offences. Therefore, our second main concern in this paper will be to understand how police officers may find a good balance between law enforcement and comprehension (discretion), and how some public policies could disrupt this balance.

HOW TO IMPROVE THE FUNCTIONING OF POLICE FORCES: LEGAL AND THEORETICAL ANSWERS

In the vast majority of the developed countries, the problem of racism and unfairness inside police forces has been a concern, with concrete results or not. For years, governments have increased the number of laws and rules that set limits to police officers' power. Many NGO have used these laws in order to fight against police violence or abuse of power, and more generally to put the pressure on police officers who were not respecting people from ethnic minorities, working classes or social minorities — all those who could carry a negative reputation within the police forces. Police chiefs at the highest level have introduced internal rules to increase the level of nonviolent attitudes within their staff. More and more police forces have their own code of ethics, adding new constraints to police work, even if it provides more guarantees for the citizens.

In order to improve the relationship with the citizens, many police organisation have also developed internal documents, which have created a new kind of rules: quality and/or service charters can be found in places, where the police officers receive the public. They are included in police training. Through these

charters, police organisations recognise that the citizen, as a customer, has a right of control over police officers' work. Accountability has become more concrete for many citizens, especially those from upper or middle classes

At local level, cooperation with partners, such as social services, public housing, city offices; schools or other public organisations, has led to the production of another kind of rules: contracts or agreements stipulate how and when the police forces must intervene. These police partners have high expectations that police officers will respect the terms of the contract.

And above all, New Public Management (NPM), with a set of tools measuring and controlling the work, has put a new pressure both on chiefs' shoulders but also on police officers on the beat. From now on, the police officers have to achieve measurable goals, and they have to report to their authorities. Almost all police actions have to be justified and registered. Even if the NPM is not defined as a tool which is used to address wrong behaviours and attitudes in the police work, it is obvious that a heavy control over the work will also be considered as a mean to prevent all excesses, which is obviously a good thing.

But all these laws and rules have simultaneously reduced police officers' autonomy, which has been called 'police discretion' by police scientists' classic works (Goldstein, 1963, Waddington, 1999). Law and rules have brought on a real change in the police culture. It is nowadays difficult to meet police officers who are prone to break the rules because they would harm their effectiveness. The 'Dirty Harry's' style is likely to disappear, because the risks to be prosecuted are high. And for the same reasons, it is less easy to refuse the service due to the citizen. People who want to file complaints are better treated in the police stations. It is also admitted that there is less police violence, less racism within police forces, and less prejudices of all kind.

But it would be naive to consider that there is no problem any more and that police organisations have reached a level of efficiency, strong enough to keep all the citizens satisfied with the service provided by the police. Theoretical answers that have been presented above offered us a good opportunity to communicate on the progress done inside police forces. But many problems remain as far as concrete police work is concerned



OPERATIONALISATION OF THEORETICAL ANSWERS: CRITICISM AND LIMITS OF IMPROVEMENT

Observers in charge of the evaluation of the image of police forces can notice that criticisms against police still remain, especially among people who feel insecure or among people, like youngsters from ethnic minorities, who feel 'targeted' by police actions. These reproaches are of different nature. They regard both complaints against the lack of effectiveness, the lack of effective policing, and the abuse of power and authority — too much policing.

As far as the first point is concerned, the need for a 'better' police service seems to be a Danaids' jar. The more people suffer from insecurity or need help, the more they claim for a more present and more efficient police forces in their district. Because it is hard to work in these areas, and because the police officers don't have the tools to answer to all local demands, they prefer to avoid these areas as much as possible. But all citizens don't accept this fact. Even elected authorities have to face arguments with citizens who demand a more visible presence of police patrols, swifter reaction of the police to emergency calls, or for a more efficient control of potential offenders — whether they are real or not. All these claims lead police chiefs to create new rules, like the ones underlined above, in order to force their staff to better integrate the public demands in their policing duties.

With respect to the second point, abuse of power, people would consider that the police are unfair, racist or targeting specific groups, such as youngsters and adolescents, ethnic minorities or inhabitants of poor areas. Even if these people often lack of social capital, they have organised themselves to thwart this targeted strategies. Here and there are emerging cop-watch-style movements who gain influence on the public scene. Politicians and police chiefs are bound to react to these calls by strengthening the rules. Codes of ethics, internal controls or long-life education are the most frequently-used tools to answer to the requirement of a democratic and citizen-friendly police force.

The different expectations could be contradictory, because older people who feel afraid of juveniles may require police action against them, which

lead to targeting and control considered by the latter as unacceptable. But practically speaking, the police have to face these two demands. Therefore the increasing number of rules which are set up to meet all problems lures the police officer into a trap. Whatever they choose as a top priority, they would be accused not to address other requirement. When a police officer failed into applying one rule, the easiest answer is to censure, because they are to be considered as accountable. Of course, it is logical to act this way, but in some situations, considering one police officer being the only one accountable for a problem, is also a too convenient way for the management staff, not be involved in the challenge.

If it is not acceptable to deny the need for rules and for a control over police officers, it is still important to have a look on the consequences of this multi-fold layer of rules and laws regulating the police work. Many police officers complain about the threat of a permanent control over their activity. Our point is not to agree or disagree with their complaints, but to analyse the impact of the increasing tendency to establish a formalised response — rules — to complex problems in the field of policing. This phenomenon is not an isolated one: it is one example of the growing judicialisation of human relationships in our societies (Shapiro & Stone Sweet, 2002).

As far as the police forces are concerned, and beyond the traditional opposition between effectiveness and compliance with the law, we would argue that the mushrooming legal system could produce a pernicious effect: it could create or increase a gap between the police and the population and play a part in destroying the confidence of citizens in the police officers which is essential to do a 'good policing' and is going awry (Manning, 2010).

THE DILEMMAS OF POLICE WORK

Contradictions are 'natural' components of police work (Manning, 1977). With the development of accountability, the managerial approach of New Public Management, and, more recently, budget cuts, these contradictions have lead to dilemmas that police officers on the beat have to live with. Most of these contradictions are well known inside police units, even if they widely remain unknown outside.



Amongst all, they have to deal with budget and human resources cuts and are simultaneously required to increase the quality of the service for the citizens. This doesn't mean that a better police activity is always linked to more expenses and more staff, but the current need for an optimal use of public resources leads to crucial difficult choices and therefore it may lead to withdraw from some activities and priorities. All public demands cannot obviously be fulfilled under the given restrictive conditions.

This structural lack of means makes us question the relevance of this notion of 'accountability' (Skolnick and Fyfe, 1993, Walker, 2005). With fewer 'troops', some demands have to be ignored, and citizens, or some of them will be disappointed or dissatisfied with the service offered by the police. Moreover, the concept of accountability has to be challenged in a centralised and hierarchical organisation. Who has decided where the cuts have to be done? It is very rare that the citizens are associated to this kind of decision. Whatever the budgets are, the leaders of the organisations are always reluctant to share their power with customers or citizens. Even if authorities promote accountability, it is hard for them to bring it into effect. Internal logics are more absorbing than citizens' demands. And their plurality and diversity make them less coherent than clear top down style orders (Monjardet, 1996).

As far as fairness is concerned, one could note that the pressure being put on police officers to be more efficient and more productive has led to limit the time available to listen to protagonists and resolve disputes. Patrols units have to go as quickly as possible from one intervention to the next one. Lacking the time needed to listen to all involved parties, the police do have less opportunity to find a suitable answer. In many police organisations oriented to efficiency, such an attitude, i.e. taking time for discussion, could be interpreted as a waste of time and energy. Zero tolerance policies have increased this trend to avoid the development of robust relationships with the public: because the police must address each incident as a problem and not as an occasion to interact with somebody, the police enter into a system of confrontation rather than cooperation. Therefore, fairness is hard to maintain.

In many police organisations, all these contradictions would not be tackled. Police officers on the beat are too much often the only

who have to make choices. They have to take into account all constraints. But the worst thing is that police authorities are adding their own pressure over police officers in the street. As it was underlined above, the management produces regularly new rules in order to impose their view and their priorities. This phenomenon is not a new one: it is well known as the vicious circle of bureaucracy (Merton, 1940, Crozier, 1963). The procedures have to be followed by the civil servants. If they do, the social system becomes too rigid. It is impervious to external inputs. If they don't, the organisation reacts in creating new rules and procedures. It has to be recognised that police organisation are often involved in such administrative mechanism. Many police officers complain about the pile of rules that they have to adhere to and apply. And at the same time, many others ask for more rules because they feel more comfortable with prescribed attitudes, which prevent them from taking too much responsibility.

By adding internal rules on top of, or besides, the criminal code of procedure and other criminal laws, the police organisation is about to paralyze the whole system of policing. Of course, this paper is not defending non-ruled organisation of police forces. Relationships between policing and rules are quite a complex issue. Following Brodeur's argument (Brodeur, 1984), one could argue that laws are anyway submitted to police organisations' requirements. But with the piling up of new rules issued by diverse pressure groups, citizens, NGO's, local elected authorities, it seems that police forces are no more able to cope with all rules, let alone to control them. And above all, there is a gap inside police forces themselves between backstage officers and street-level troops (see in detail Reuss-Ianni 1982). The latter are in favour of more rules in order to better control the former.

THE UNINTENDED EFFECTS OF JUDICIALISATION

Police forces are both a part of the judicialisation process and a victim of it. In our democratic societies, embedded in a customs' pacification and civilisation process (Elias, 1974), conflicts and disputes are more and more solved through legal ways, with at least three impacts on police officers:





Firstly, they are called for a growing number of cases that could have been solved without their intervention, including a lot of disputes inside families or among neighbours;

Secondly, nowadays more people are better qualified. Citizens are able to use the existing rules and regulations in order to criticise the police work. They know their rights and can use legality in order to oppose to police officers orders if they don't agree with them;

Thirdly, as it was already underlined, there are more and more rules restricting the freedom of police officer in their job. It has become for them a real challenge to apply these rules in a complex world, while fellow citizens are denying their legitimacy. And they are also accused of not respecting the law.

As a result, many officers consider law and rules as a permanent constraint and impediment, which leads to attitudes of rigidity. They restrain them from developing negotiation strategies. They tend to follow the prescriptions and to avoid every risky initiative that could have legal consequences prejudicial to their career. In a micro-society like a police force where rules, laws, and New Public Management tools are applied, the police officer on the beat is the only one who has to face the real gulf between theory and practice, and the lowest level of the hierarchy is the one responsible in case of excess or non-respect of the rules. It is a very easy situation for the authorities that can always argue that they cannot be guilty of anything because they have produced rules that were not respected. It is better to put the blame on one single person rather than questioning one organisation or one policy.

But police officer's rigidity could be a source of incomprehension in the citizens' view. Of course, many of the citizens call for more severity. But same people are also claiming for tolerance when they commit an offence or on the occasion of traffic check. People who are calling for police interventions in case of petty incivilities often prefer mediation rather than punishment. If police discretion is a problem for the hierarchy, it is often the expression of this room for

negotiation that both the police officer and the citizen need in order to build up a relationship based on mutual understanding.

A police officer on the beat is trapped within a police organisation too much bound on regulations, because whatever they would do, they are at risk of being punishable. If they are too tolerant, the hierarchy could put the blame on them, they are seen as not enough efficient, or by a judge, they do not apply the law. If they are too severe, it would generate tensions, conflicts, hate and a spirit of revenge among parts of the public. It is no more possible to build a relation where the police officer gets information and may solve problems without engaging into a judicial case. As a consequence, their legitimacy is threatened.

Of course, misdemeanour, or racism, especially when they come from police officers, has to be sanctioned, and rules, regulations and laws are appropriate tools to fight against these excesses. But excess of rules is not a good solution either, even if it could be sometimes an easy one. It is hard to precisely define the good balance between top-down orders and local police officer's discretion, but addressing all problems with more and more rules could place the officers in a too fragile situation, with the risk of reaction out of all proportion. Some police officers' excesses are also the result of this feeling of weakness.

To avoid such situations, politicians and authorities have to be careful in using new laws and new rules as answers to all problems. They have to take into account the specific consequences of their decisions. The best thing is to make a global diagnosis of the organisation instead of putting the pressure only on the police officer in the street. A first priority here must be to analyse the effects of the 'culture of performance' and its measurement on the relationships between police officers and the public.



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