

## Legality and Workmanship: Introduction to *Control in the Police Organization*

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The organization and control of police work is said to be in very sad shape. We have heard this said for a long time, we hear it often, and we hear it in various contexts; one wonders if there are any experts left who have not yet joined this chorus of condemnation. This unanimity is not matched by a unanimity of opinion on what, precisely, is the matter with the prevailing state of affairs. Nor is there very much agreement on what, specifically, ought to be done about it. Of course, the absence of consensus has not kept resourceful people from mounting projects of every conceivable kind to change the ways policing is done. Borne by a sense of urgency, most of these projects did not produce the expected results. Thus, the complaints survive the efforts to meet them.

George Kelling's paper, in this volume, eloquently expresses the feeling of many people who participated in police affairs during the past fifteen years, namely, that nothing has changed, that things are done today as they were done two decades ago, and that the oldest prejudices about the way policing ought to be done not only survive but now appear strengthened by, no less than, scientific evidence. But how much lasting change can one expect to take place in any fifteen years? And how much of the frustrating perception of sameness arises out of the sheer proximity of the observer to the observed? One thing seems fairly clear: two decades ago the topics of this volume of studies could not even have been formulated. How naïve the recommendations of the President's Commission on Law Enforcement and the Administration of Justice of 1967 seem now! Some of the specifics, to be sure, are as germane today as they were then. But no one thinks any longer that to argue the cogency of going back to an increased use of foot

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patrols, is enough to bring it about. Thus, one might say that while it is true that the considered or attempted changes have not yet taken a firm hold, the introduction of change has become a realistic and respectable project for all concerned.

It is tempting to think that the time may have come to try to formulate some detailed and systematic conception of all the elements of the control of policing. Building on what has become known about the nature and scope of police work, one could begin to develop a fully integrated method of internal coordination and the appropriate structures of supervisory monitoring. The authors of the essays making up this volume have not undertaken anything of this sort, even by implications. Instead, they elaborate on various specific aspects of potentially stable, practically feasible, and rationally purposeful forms of police organization and control. In some of the essays the focus is on matters that impede stability, feasibility, and rationality; in others, it is on structures that do or could enhance them. In either case, the studies are grist for the mills of some hard-headed managerial thinking and planning of the sort the editor of the volume urges. Such thinking, it must be emphasized, is guided by the permanent consideration of the actual realities of police work, on the one hand, and by a willingness to draw on the resources of comparative organizational analysis, on the other. But while the work offered here is always specific, concrete, and practical, its reading suggests a possible conceptual systematization of control in policing, a tentative version of which might possibly involve the following.

Police work, like many other activities that comprise the execution of a public trust and that do not have an easily identifiable and tangible output, is troubled by two relatively distinct adequacy problems, which call for two correspondingly distinct control mechanisms. The first, which might be called the problem of *legality*, concerns compliance with explicitly formulated schemes of regulation. While there is no general principle for excluding anything from explicit regulation, experience indicates that some aspects of police work lend themselves more readily to such regulations than others, while some may be wholly incapable of being explicitly regulated. The second problem, which might be called the problem of *workmanship*, involves the maintenance of minimally acceptable levels of knowledge, skilled, and judicious performance. The criterion of workmanship, in the sense intended here, always allows – indeed, calls for – reference to standards of excellence that cannot be fully formulated in advance of the occasions of use. Nevertheless, in every known sphere of vocational competence people assess work critically by the use of such standards. To be sure, elements of routine do enter workmanship, and they can be made more or less explicit but at its core workmanship consists of the ability to call upon resources of knowledge, skill, and judgement to meet and master the unexpected within one's sphere of competence.

One should consider, with some justification, that the criterion of legality specifies the level of adequacy people are entitled to expect because the body of governing regulations contains what has been spelled out, in so many words, as the terms on which the public employs its public servants, which are also the terms on which the servants agreed to serve. The criterion of workmanship would, then, specify a level of adequacy one might possibly hope for, but solely as a product of the servants' dedication and loyalty, so to speak, over and above what was paid for. But this is true only for functions that can be limited, in all their essential respects, to following instructions. While such functions no doubt exist, policing is most assuredly not one of them. Not only are many aspects of police work not explicitly regulated, but it is clear that competent officers are, at times, expected to act contrary to formulated regulation on the basis of what is colloquially referred to as 'knowing better', and what, in the terms proposed here would be regarded as considerations of workmanship. Thus, while it is true that the criterion of workmanship represents a higher vocational aspiration than the criterion of legality, the real significance of the distinction proposed here is missed if the two criteria are treated as merely two points on the same continuum of relative adequacy of performance.

The control mechanisms that correspond to the legal and workmanship criteria of adequacy are, respectively, *regulatory supervision* and *accountability*. The former constrains action in advance or at the time of occurrence. The constraint is produced by the presence and activity of personnel specifically deputized to examine compliance with rules of procedure, schedules of performance, tables of organization, schemes for the allocation of facilities and resources, and invoke and apply sanctions that are also specified explicitly. The latter consists of a state in which accountable persons must accept the scrutiny and critique of authorized others, largely with regard to actions that have already taken place. Two kinds of persons are authorized to conduct audits of workmanship. The first derives the entitlement to judge from being the one on whose behalf the work is done, that is, the community or its representatives. Since the police, like all organs of government, are comprehensively responsible to the community, the point made here is that the police are accountable to the community for meeting even those standards of adequate workmanship that cannot be formulated in advance, and explicitly.

In a formal sense, regulatory supervision and accountability stand to one another in a reciprocal relation. The more complete and the more effective regulatory supervision is or can be made to be, the less room there is for accountability; in fact, the less need there is for accountability. Under conditions of complete control through regulatory supervision, that which is not supposed to happen cannot happen, and that which is supposed to happen cannot not happen.

This state, of course, describes faultless stagnation and the reduction of the so controlled activity to mechanical repetition of fixed routines. Under ordinary conditions adequacy control involves various combinations of the two mechanisms. In connection with this it must be mentioned that neither regulatory supervision nor accountability can ever be maintained by the mere measuring of performance against norms of conduct. This is quite obvious for the mechanism of accountability, but it is also true for regulatory supervision. That is, even the auditing of compliance with criteria of legality of conduct, insofar as it is itself a form of policing, contains its own standards of workmanship. Indeed, it can be shown that strictly nondeviating enforcement of legality inevitably leads to the same kinds of mischief as the strictly nondeviating compliance with any norm of conduct. It is, after all, well known that such strict compliance is an extraordinarily effective form of sabotage.

When one considers the present, much lamented state of control of police work with the aid of the proposed conceptualizations, one is struck by the apparently prevailing tendency to administer control relative to adequacy problems of legality at the expense of any interest at all in adequacy problems of workmanship. That is, in police departments, control, insofar as it is exercised at all, is exercised in the form of regulatory supervision. Accountability, in the sense proposed here, tends to lack legitimacy; the prevailing inclination is to treat the auditing of skill and judgement as 'Monday morning quarterbacking'.

The prevalence of regulatory supervision, that is, control that merely measures performance against formulated norms of conduct, can only produce judgement that the assessed person did nothing wrong. Insofar as this is the case, an incompetent, ineffective, and injudicious officer could remain in good standing in his department provided it cannot be shown by any accepted method of proof that he has violated some expressly formulated norm of conduct. This comes very close to saying that an officer who shows up for work, does what he is told to do and no more, and stays out of trouble meets the criterion of adequacy demanded of him. Of course, this could not be the case and indeed is not the case, but not thanks to the existence of any stable forms of adequacy control that would insure it. That is, expectations of workmanship are not entirely extinguished, but neither are they encouraged, or even permitted, to emerge as independently significant criteria of adequacy control.

The overwhelming preference for regulatory supervision in policing does not reflect simple managerial incompetence that could be remedied through executive training or some simple reorganization of control procedures; instead, it is a natural and unavoidable consequence of some deeply ingrained assumptions about the nature of police work that are shared by the overwhelming majority of people inside and outside the police establishment. The assumption is that police

work, especially the work of the uniformed patrol, is a low-grade occupation and that not much can be expected of the persons engaged in it.

No amount of ceremonial oratory about the virtues, valor, and dedication of 'our men in blue' can negate, conceal, or even diminish the significance of what is plainly visible in the practices of police departments. Even though it is known that officers often confront problems of great complexity, importance, and seriousness, the occupation of policing is typified around the simpler and more menial tasks that are also associated with it.

Teachers are taught how to educate, clerics how to minister to spiritual needs, social workers how to assist troubled people. All of them are expected to use the learned principles, to exercise judgement in putting them to use, and to gain further skills through practice. Police officers, however, are trained to follow instructions, and this is done even though it is known that they will be required to do things for which no instructions exist. But these uninstructed activities are held in such contempt that no preparation for engaging in them is thought necessary. The argument that no one knows how to prepare officers for activities for which no regulations exist is specious, for no one actually knows how to prepare people for teaching, the ministry, or social work either, except in such aspects of it as could be quite easily developed for policing, too. Teachers, clerics, and social workers are prepared for what are regarded as complex, important and serious tasks, making high demands on their knowledge, skill, and judgement. The opposite assumption is commonly made about persons who go into policing.

Consider what happens when a police officer, by using his firearm, kills or injures someone. Almost invariably inquests are held to determine if the involved officer is criminally or civilly liable for the act. If it is established that he is not liable, the question of the competence of the officer is regarded as established. Only very rarely, and then usually only in connection with special programs, are such actions reviewed for the purpose of determining if recourse to deadly force was unavoidable and necessary on terms of technical standards of workmanship. What is true of deadly force, an especially stressful and difficult problem, is also true of the use of physical force generally. Inquiries undertaken as the result of complaints about allegedly undue use of force are usually directed to determining if the accused officer transgressed against some rule, and ordinarily questions are not asked if he acted skillfully and judiciously prior to the moment when recourse to force became unavoidable. One cannot praise and reward something if one cannot condemn the opposite of it. To do this, however, it is first necessary to move away from the notion that policing consists of sending whoever happens to be available to do whatever they can as quickly as possible about a problem the police are usually summoned to deal with, and it is necessary to move in the direction of recognizing that dealing with an insolent and unruly youngster,

resolving a potentially deadly household dispute, talking a kidnapper into giving up his hostage, arresting a mugger, etc., are in their own way as demanding activities as teaching a ninth grader algebra, dealing with a religious penitent, or helping a distraught widow. Each of these activities involves the use of knowledge, skill, and judgement; in short, they involve workmanship. Their performance cannot be determined by simple norm, but their greater or lesser adequacy can nevertheless be analyzed and judged from case to case. To put it quite bluntly, it is not likely that police work generally, and the work of individual officers, will be appreciated at its actual value – that is, as a service capable of being complex, important, and serious – until we begin to give a damn whether it is done well.

Admittedly, the criterion of workmanship and the state of accountability with respect to it are not entirely absent in the police. Ironically, they matter the most in connection with promotions to supervisory positions. That is, the adequacy of one's knowledge, skill, and judgement – that is, the adequacy of workmanship – is taken seriously when one's removal from actual police work is under consideration. Here, if it can be shown that one's workmanship in policing is not adequately high, one is returned to doing it, but if it can be shown that it is, then one is given other assignments. This does not mean, of course, that standards of workmanship are not respected at all in police work. In fact, there is little doubt that individual officers possess and exercise a high level of skill and that they respect evidence of skill in the work of fellow officers. What is lacking is a deliberate, systematically organized effort to develop and transmit workmanship, a resolute insistence that workmanship is a standard occupational expectation, and the willingness to examine performances of officers for workmanship with the understanding that minimal levels of it are a condition of employment.

It is quite clear that criteria of workmanship and procedures for examining it must be developed from within policing. The purely technical aspects of workmanship in policing can only acquire formulation and development from the practitioners of the craft themselves. But, as is well known, policing cannot be reduced to the mere exercise of a technical craft; it is, in the first place, a public trust. Therefore, the audit of workmanship must ultimately be public. The central point here is that the police are publicly accountable not merely to the extent of not being wrong but, beyond that, for being right. Naturally, the public is entitled to assurances that officers will not transgress against any explicit regulations in doing their work, but it is also entitled to assurances that they will act with the degree of prudence, foresight, and technical acumen that distinguishes them from lay persons.

One note of caution deserves mention. Public accountability for workmanship is important because in the case of the police, a high level of technical efficiency has obvious political implications. While it matters that an officer act in an

informed and skilled manner in achieving desired ends, neither the choice of the information nor of the skill are matters of moral and political indifference.

It is of some interest to note that of the two adequacy problems we have identified, the one connected with the criterion of workmanship deserves closer public scrutiny than the one connected with the criterion of legality. It is of interest because even while we seek to create better police services we must be mindful of the fact that the police organization can be the more dangerous the better it is. It is in some ways sad and reassuring that we are a long way from having to fear the kind of police we would like to have. The essays collected in the volume attest to the fact that in North America and in Western Europe the stirrings of the past two decades have brought about the realization of the need for change in policing, and they have set some change into motion. While the papers clearly indicate how much remains to be done, outsiders might be surprised by the richness of topics of inquiry in what at first glance must seem to be a rather narrow area of concern.

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