

Comment

RESTRAINING THE POLICE

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AS LONG AGO as 1961, a report of the Civil Rights Commission insisted that "Police brutality . . . is a serious problem in the United States." Since then, police misconduct has become a political problem of national dimension and concern. The cumulative findings of commission after commission, report after report, must sober even convinced advocates of hard line "law and order."

Too long we have tolerated such misconduct without an effective means of correcting it by impartial higher authority. The following essay puts in contemporary context a considered proposal which could soon remedy our difficulties of control.

I

AS THIS IS BEING WRITTEN, we have the results of a special Federal Grand Jury investigation of the December 4, 1969 police raid on Black Panther headquarters in Chicago, in which two black leaders were killed and others wounded. Police claimed themselves the target of heavy gunfire. But the only heavy gunfire, it is discovered, came from police weapons. "The irreconcilable disparity," the jury notes, between police accounts of their raid and the ballistic evidence uncovered by the F.B.I. "raises the question as to whether officers are falsifying their accounts." The report emphasizes the likelihood of police perjury and wilful murder in the raid which killed Fred Hampton and Mark Clark.

It is also sobering to recall again the harsh words contained in the definitive Walker Report concerning police misconduct during the 1968 Democratic Convention:

During the week of the Democratic National convention, the Chicago police were the targets of mounting provocation by both word and act. It took the form of obscene epithets and of rocks, sticks, bathroom tiles and even human feces thrown at the police by demonstrators. Some of these acts had been planned; others were spontaneous or were themselves provoked by police action. Furthermore, the police had been put on edge by widely published threats of attempts to disrupt both the city and the convention.

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That was the nature of the provocation. The nature of the response was unrestrained and indiscriminate police violence on many occasions, particularly at night.

That violence was made all the more shocking by the fact that it was often inflicted upon persons who had broken no law, disobeyed no order, made no threat. These included peaceful demonstrators, onlookers, and large numbers of residents who were simply passing through, or happened to live in the areas where confrontations were occurring.

Newsmen and photographers were singled out for assault and their equipment deliberately damaged. Fundamental police training was ignored; and officers, when on the scene, were often unable to control their men.

The Walker Report's conclusion that "a police riot" had ensued is echoed by other commissions in other cities at other times.

The Cox Commission, which studied the student uprising at Columbia University during the spring of 1968, and the Sparling Commission, which studied the April, 1968 Peace March in Chicago, found in each case that police had used uncalled-for force, often vindictively, against protesters, and often regardless of whether protesters were peaceful or provocative. There is the example, too, of Berkeley, California in 1969—where by all objective accounts police helicopters gassed children and a nearby hospital in the People's Park incident.

A Federal investigation is being conducted by Jerris Leonard of the United States Attorney General's office into the events at Jackson State College in May, 1970. (A squad of Mississippi State Police directed a sustained barrage upon a women's dormitory, killing two persons and endangering scores of others.) Police and state authorities have refused to cooperate with the federal review; moreover, as in the Panther case in Chicago, the disparity between the police account and the ballistic evidence discovered by the F.B.I. again raises questions of police perjury and willful murder.

The same issues—perjury and murder—are also present in the notorious killing of four students at Kent State. While the Ohio National Guard (rather than the police establishment) is technically involved here, this case nevertheless testifies eloquently to the general climate surrounding the policing function. (There is an increasing tendency to call up troops for police duty.) A 25,000-word report after intensive investigation by a team of seven experienced reporters for the Knight newspaper chain concluded "The four victims did nothing to justify their deaths. They threw no rocks nor were they political. The guardsmen fired without orders." The report finds *no* evidence to support guardsmen's charges that a sniper had fired at them and that their lives were endangered by student attacks. The policing unit, it adds, was poorly trained, inadequately equipped for its mission, and led at least by some officers of questionable judgment.

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During the prolonged disturbances in Isla Vista, California—adjacent to the campus of the University of California at Santa Barbara—faculty members and clergymen, acting as observers, have asked that the Justice Department investigate many examples of improper arrests and brutal treatment of students. More than 100 cases of alleged police brutality are being investigated by the Isla Vista Community Council. Los Angeles sheriff's deputies are blamed for most of the alleged mistreatment.

Elsewhere policemen, presumably on duty to keep order in the streets, have stood by and willingly condoned violence (by others). Incidents interfering with school integration in the south have been notorious for this. After an exhibition of police passivity in New York City this spring, Mayor Lindsay, without waiting for an official report on the matter, heatedly criticized the violence of construction workers (against college students) and the notable inactivity of the police.

These are all spectacular incidents which have received widespread publicity. Deplorable as they are, and as symptomatic of the police climate generally, these are nevertheless singular occasions involving circumstances of unusual intensity. Mass or group police misconduct under such conditions does not, however, exhaust the problem.

There is still the matter of everyday police routine. Individual officers—patrolling their beats, often in ghetto sections—are known to manifest their aggressiveness at random by means ranging from coarse racial epithets through demeaning stops and frisks to actual use of excessive force. The Black-Reiss Report, submitted to the President's Commission in 1966, provides confirmation of this as an all too frequent daily phenomenon.¹ The Black-Reiss study also documents the extent of racial hostility as a cause of police misconduct. 72% of the large number of officers observed in this survey freely admitted to varying degrees of racial prejudice. The figure is rendered more significant by the fact that, doubtless, many others would conceal such feelings in the presence of outside witnesses. The "Police in Protest" report (utilizing evidence reaching back as far as a 1935 Harlem Riot Commission study) found that "the majority of rank and file policemen are hostile towards black people."²

Although many incidents of questionable police behavior involve disputed factual accounts (especially in confrontations not monitored by television

¹ Donald J. Black and Albert J. Reiss, Jr., "Patterns of Behavior in Police and Citizen Transactions," *Studies in Crime and Law Enforcement in Major Metropolitan Areas*, Field Study III, vol. 1, submitted to the President's Commission on Law Enforcement and the Administration of Justice (Government Printing Office, 1967).

² *The Politics of Protest*, A Report of the Task Force on Violent Aspects of Protest and Confrontation of the National Commission on the Causes and Prevention of Violence (Ballantine Books, 1969), p. 242.

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cameras or not witnessed by neutral observers)—and even allowing that some incidents may be “promoted” by people willing to discredit the whole system of law and order—there is still little doubt that the frequency of intolerable police behavior has engendered a massive distrust of the police in minority communities and among political dissenters. Even Yale President Kingman Brewster, neither a dissenter nor minority representative, publicly expressed doubt that black people can receive just treatment from either the police or the courts.

The pervasiveness of such skepticism as the present time is indicated by its spread to at least part of America’s middle class. Even *Fortune Magazine*, the spokesman for the organized business community, has expressed alarm:

Police are guardians of social order, not arbiters of moral values. They have a right to higher pay, better training, more cooperation from civilians, more efficient courts. But they should not confuse their legitimate grievances with a license to remake society in their own image. The world, unfortunately, is a long way from being able to get along without policemen; but that does not mean that the majority of citizens will ever be prepared to trade democracy, with all its failings, for regimented order and sterile safety.³

Widespread distrust—whatever its roots—is now a reality. The need for some agency to review and criticize police misconduct is apparent. The police have been sanctioned by society to use violence; they have been in the forefront of hostile and often violent confrontations. They normally function amidst tension and potential social disorder, and are often called upon to use force. But the potential for misuse of their power is inherent in its very exercise. It would be an unwise social order that provided no effective recourse to those who perceive themselves—rightly or wrongly—to be victimized by the exercise of such power. Only a foolhardy society would consciously overlook misconduct in a time of high social tension.

Compounding the gravity of the phenomenon is the undeniable fact that the police are themselves in revolt. A growing militancy in terms of traditional union attitudes (better working conditions), confrontations with both political and social deviation, and even duly constituted political authority, were subject for comment in the report to the President’s Commission on the Causes and Prevention of Violence. Political dissenters and militants are viewed by the police as “subversive groups who inconvenience the public and espouse dangerous positions.” A “striking instance of police militancy carried into action is found in the growing number of police attacks on blacks—attacks entirely unrelated to any legitimate police work.”

³ Reichley, “The Way to Cool the Police Rebellion,” *Fortune*, December, 1968, p. 152.

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As for the "revolt against higher authority," the Commission notes the example of police reaction against Cleveland Mayor Carl Stokes' order to remain out of the ghetto during a hypertense incident in July, 1968.

When police were withdrawn from ghetto duty for one night in order to allow black community leaders to quell the rioting and avoid further deaths, the police reportedly refused to answer calls, and some sent racist abuse and obscenities against the Mayor over their radios. . . . For several weeks after the riot, posters with the picture of Mayor Stokes, a Negro, with the words "Wanted For Murder" hung in the district stations. Spokesmen for the police officers' wives' organization have berated the Mayor; the local Fraternal Order of Police has demanded the resignation of Safety Director Joseph F. McNanamon.

Although the sources for incipient, and actual, police revolt may be found in increasing tensions, changes in urban ethnic life (the departure of the middle class has apparently brought formerly insulated neighborhoods into abrasive contact with each other), or other factors presently unknown, one significant spur to its growth occurred in November, 1966. That month saw the New York City Police Civilian Review Board abolished by voter referendum as the result of an hysterical campaign mounted by the Patrolman's Benevolent Association. The magnitude of the triumph—involving a simultaneous defeat of Mayor Lindsay, most local politicians, and New York's two United States Senators—could only have fortified police determination to enter the political arena.

II

CLEARLY, THERE IS NEED to devise a mechanism to review claims of misconduct. That device must be both effective and credible, if the increasing tensions between the police and large (and often lawful) elements of the society are not to result in still more open warfare.

Present institutions are neither effective nor credible. The President's Crime Commission Report of 1967 noted that internal police review, civilian review boards (virtually nonexistent), overview by elected political officials, lawsuits and other traditional remedies simply do not work. As the Federal Grand Jury, investigating the police raid on Black Panther headquarters in Chicago, noted: the internal investigation of the shoot-out "was so seriously deficient that it suggests purposeful malfeasance" (three high-ranking police officers—including the head of the Internal Investigations Division—were demoted on the eve of the report). The final report of the Commission on the Causes and Prevention of Violence flatly stated that "our laws provide for civil and criminal sentences against illegal police conduct, but these are

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rarely effective." The "Police in Protest" report to that Commission noted the impotency of the available mechanisms, the degree of police hostility to even those ineffective bodies, and called for "institutionalized grievance procedures . . . external to any offending government agency." Unfortunately, it could not suggest even the rudiments of such procedures.

Given the magnitude and visibility of the police problem, it is not surprising that politicians, policemen themselves, and social scientists have presented various proposals. For instance, many have argued that the police should be "professionalized." This usually means that they should be given more equipment, more education, more "sensitivity" training to enable them to perform service functions more efficiently and more humanely. To attract "better men," the police should be paid more—the Ramsey Clark approach. Indeed, the latest proposal—a suggestion of Adam Walinsky—is to apply a form of the draft exemption to encourage police service (Walinsky's mentor, Robert F. Kennedy, had proposed drafting people to serve). Thus, better educated patrolmen would serve a short career on the streets and their more sophisticated understanding of the problems of youth, the poor and the minorities would restore mutual trust.

Apart from a reversal of form from current liberal tenets (draft coercion is evil and its features should be abolished) which this implies, the proposal also assumes that better people will make better police officers. But how do we know we will get "better" policemen simply by raising the educational and social (as well as pay) levels? Why should we assume that we are getting a particularly bad lot now? Studies show that there is no such thing as an authoritarian "police personality"—with all of its negative implications—among entering patrolmen. Why should college graduates who have such a variety of other more satisfying opportunities wish to go into police work (with its irrational combination of boredom and danger)?

The major problem seems to be structural rather than personal. Police professionalization has been underway in the California police departments for a long time (it was even tried in Chicago in the late fifties) and the results have been disappointing. Los Angeles requires a college degree, while Oakland demands at least two years of college, but can we say that these departments are any more resourceful or successful than those in New York and Chicago?

What of restructuring the departments themselves? There are proposals to change archaic promotional systems to reward the innovator rather than the plodder, to permit lateral entry at high administrative positions, and even to give local communities control over the police and, more importantly, over promotions. Yet, much police work is only technically innovative (if even that) and measurement of social innovativeness is imprecise. Lateral entry probably won't reduce the suspicion of outsiders in most police departments, and, again, what qualities do we look for in the potential candidates for higher posts? "Community control" may well breed corruption (which,

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in the ultimate scheme, is perhaps less of an evil than brutality) since greater democracy is often accompanied by greater submission to organized pressure by minority groups.

Let us be clear about our aims and our social failures to distinguish different aims. We want more police protection, and less brutality. We want continuing emergency police services, and community assistance. We are, however, schizophrenic about the role of the policeman in modern society, and we have also made the policeman schizophrenic. We ask him to be both law enforcer and peace officer. We want him to be a crime solver, but more importantly, a crime preventer. We want both Law and Order without realizing that the two are not harmonious; often, they are incompatible. Sometimes, they have little to do with each other. Presumably, we don't want him breaking up peaceful demonstrations, but, after all, traffic is jammed; he shouldn't shoot at looters, but a looter may also be an arsonist; he shouldn't indiscriminately search people, but in high-crime areas, maybe it's better to be safe than sorry. (Didn't the President's Crime Commission condone stops and frisks because one survey showed that 10% of the victims had guns and another 10% knives, but then again, is that statistic important in a ghetto?)

Many believe that our confusion about the police role inevitably dooms any attempt to control their behavior. There is no sign that we want the police to stop doing all the contradictory things we ask of them. Without precise guidelines about stopping crime, we will have to accept an occasional excess (indeed, the word itself loses all meaning). If we want him to preserve social order, without a clear meaning of the term, we should expect him to move rowdies along, arrest drunks, threaten unsightly hippies (also they might have drugs). If we continue to believe that "crime" is somehow solvable primarily through aggressive, beefed-up police forces, and overlook its deeper roots, then we have asked for police misconduct.

If the police are unable to decide just what "order" they are bound to maintain, they will look somewhere for the definition. Without guidance, they may retreat to the lower-middle-class values they have inherited at home. In a society as fragmented as ours, they may not look beyond that. They receive contradictory and imprecise signals. No wonder they reach for the familiar. If the familiar—with its stress upon order, respect for authority and proper demeanor and manners—is inadequate, just what is adequate?

The police function will not radically change; police personnel, most likely, will not; even if the quality of policemen undergoes radical revision, the things they are called upon to do will most likely contribute more than particular background to their "working personalities." Enlightened supervision is not immediately forthcoming, and if it were, the political problems would remain—since it is a toss-up whether an administrator influences the minions more than they influence him (the recent history of the State Department functionaries vs. their nominal superiors provides some corroboration of this).

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Society will not become any less schizophrenic; it will continue to make its outrageous and chimerical demands. It will probably continue to perpetuate the abhorrent social conditions that foster crime. More importantly, it will continue to honor our actual national goals of technology and mobility, and the resultant social dislocation will continue to breed crime (since the rate of social change is more important in the crime equation than poverty and its concomitant miseries).

Much of the confusion surrounding the police is engendered by an ambiguous or incomplete comprehension of their traditional role. Historically, organized police forces in the Anglo-Saxon world evolved from the early English practice of having night watchmen patrol city streets to keep the peace rather than to solve crime. The London police force was created in 1829 in response to a crime wave, and the first American police force, New York's in 1845, was designed to combat virtually continuous rioting. Since then at least three major styles of police operation have developed: some police forces continue to be "watchmanlike" in that they permit some crime (especially vice infractions) to exist so long as public peace is preserved; "legalistic" forces insist upon vigorous enforcement of all laws, irrespective of both community reaction and effect upon police efficiency; the "service" style emphasizes the role of the police as public servants, as expeditors, as providers of emergency services.

It is conceivable that we will continue to accept the sharp contradictions inherent in the dual police role of crime fighter and dispenser of social services. We do not readily accept the notion that one wielding tremendous discretionary power, physical as well as legal, over our lives can also benevolently serve us. Yet, as one expert has put it, "Poor, uneducated people appear to use the police in a way that middle-class people use family doctors and clergymen—that is, as the first port of call in a time of trouble."

Only recognition by both the police and the rest of us that their primary role is that of public servant (in various guises ranging from educator to social worker) and that crime prevention or detection *must always* be secondary will bridge the perceptual gap. The American policeman must eventually come to emulate his English brother who (in the words of a former British Home Secretary) "is a civilian discharging civilian duties and merely put into uniform so that those who need his help know exactly to whom to look for assistance." Means must be devised to control and prevent misconduct in our present framework.

To argue that we are crime-ridden and will continue to be so, that neither better men nor better internal police administration will change anything is not to give up the fight. Whatever the causes, much police *conduct* can be changed. Generalized expressions of social disapproval are obviously not enough; even particular departmental policies don't work. What is needed is expert direction with a broad base of public approval. The police can be integrated into the framework of democratic society only if their activities are monitored by experts, if controls can be established with knowledge.

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It should not take much to change public attitudes toward police excess. Despite our abhorrence for "elites," we reluctantly recognize that they exist and generally shape public policy (often, our quarrel is with the particular group shaping a noxious policy, not with the idea of group leadership itself). We reluctantly recognize that democratic majorities do not spring forward at the drop of a problem; they are formed tenuously by slow accretions of support for once-elitist views. If the police elite has shaped American attitudes toward law enforcement, surely it is the time for respected counter-elites to put forward alternative visions. Do not the lawyers of the nation have a special obligation in this regard?

III

WE MIGHT AT THIS POINT recall traditional qualifications of the lawyer in American Society. He is trained to create and define standards, to articulate the premises often implicit in recurrent human conduct, to innovate within a rich intellectual heritage so that new adjudicatory bodies and principles replace old ones, and, most important, to think logically and clearly (if a bit dully). Of course, he often manipulates his training and shapes his innovations to ends he rarely questions. He patches an often leaky system, and those who question the system most penetratingly are most unhappy about its most skilled craftsmen (interestingly enough, many of the "New Left" activists are now going to Law School since they perceive—correctly—where the power is).

It should be remembered that professional training, sworn responsibility to a code of ethics, and the general independence from government (inherent in the very existence of a duty not to reveal information about clients' crimes) have always placed lawyers in unique positions. When we insist upon procedural regularity, rational basis for action, and skepticism about self-serving testimony (all qualities inherent in the investigatory function) we usually ask lawyers to do the job. Lawyers, through the organized Bar, already have the power to review prosecutors; should their power of review extend to the police function, it would unquestionably extend to all aspects of law enforcement.

Somewhere within the bowels of the Bar lies the belief that arbitrariness is intolerable, that the rule of Law (often defined as the language of contract) must supersede the whims of particular men, and that Power must be restrained and made responsive to a higher authority than itself. Although the lawyer may often be a bureaucrat, he is a special kind; as a businessman, he knows exactly how much discretion he wants the other party to have and he insures that that discretion is properly bounded by appropriate language. As a prominent member of a bar association, one doubtlessly aware of the public mixture of respect and suspicion for himself and his function, he may even feel that he does have an expertise to bring to law enforcement problems. He is certainly aware of the Association's responsibility to ascertain

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whether prosecutors accord defendants equal justice under law; cheating a defendant is (or should be) as reprehensible as cheating a client financially.

While Bar Associations are undoubtedly "establishment" institutions and have been as slow as much of the rest of Society to respond to change, their performance, in many respects, is quite creditable. The New York City Bar Association, for instance, was one of the few institutions to oppose Senator Joseph McCarthy publicly in the fifties; Mayor Lindsay has asked it to station observers to oversee police conduct during peace demonstrations in the wake of the "hard hat" disorder. In many cities, especially New York and Boston, the turmoil over President Nixon's Cambodian venture has engendered increased activism by the organized Bar. Thus, the spectacle of 1,000 "establishment" lawyers descending upon Washington to protest that act may be more representative of current Bar attitudes than was the social inaction of the early sixties. While the American Bar Association may still be as conservative as ever (evidenced in their hasty and ill-advised approvals of Judges Haynsworth and Carswell for Supreme Court positions), that conservatism is increasingly at odds with the prevailing mood of local associations. The times may be changing nationally as well. When President Nixon urged the organized Bar to support some of his pending crime legislation, two committees of the American Bar Association (as well as one from the New York City branch) immediately attacked some of its major provisions as unconstitutional.

Prosecutors riding the pre-trial-publicity whirlwind will be subject to some oversight by the Bar. Although historically, most bar associations have shied away from overseeing the daily activities of prosecutors (in contrast to their interest—even occasionally approaching diligence—in exposing attorneys who misuse their clients' funds), they would do well to consider now new responsibilities to end this "hands-off" policy.

An attitude of vigilance is needed precisely because prosecutors' offices are being pushed (against their will) in new directions—closer to the European ideal of a Ministry of Justice. Today, as a result of Supreme Court decisions, prosecutors are required to turn over favorable evidence to the defense, to attempt quietly, rather than flamboyantly, to convict people, and perhaps to participate in the criminal process at an earlier stage than previously seemed appropriate. For instance, it is entirely conceivable that the Supreme Court is hinting that confessions should be taken at all-night district attorneys' offices rather than in police interrogation rooms to minimize the chances of police distortion of what actually was said.

Traditionally, the police would "sweat" a confession out of a suspect, call in a district attorney and a stenographer, and the prosecutor would perform the final ritual of reducing the statement to a writing. Whatever improprieties occurred prior to the prosecutor's entrance were for the police to defend under cross-examination at trial. This process should, and must, change. The prosecutor's office has already come in at an early stage in certain situations. The 1968 Crime Control Act, in fact, requires that prosecutors, not the police, obtain wire tap and bug orders.

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To make Bar Association review of police misconduct viable, the police and the prosecutorial function should be integrated so that police departments become responsible to, and subject to, the direct control of local district attorneys' offices. A prosecutor today simply shrugs off responsibility for police misconduct by stating that he has no control over police activity in our divided system of law enforcement. No Bar Association can ride herd upon a prosecutor for such misconduct; even stringent surveillance of a prosecutor's office is ineffective. If the Bar is to review police misconduct, it can only do so through the medium of prosecutor responsibility.

Perhaps the best argument for such control lies in the fact that it presently exists at least in theory on the Federal level. The Federal "police force," the F.B.I., is only a bureau of the Department of Justice. True, Mr. Hoover does not understand himself to be subordinate to the dictates of any mere attorney-general, but the authority still exists. Also, it can be argued, the F.B.I. does not function to maintain order but rather to gather information about, and ultimately arrest, violators of more or less specific and clear laws. Presumably, the Bureau rarely indulges in the kinds of violation which so upset minority groups and civil libertarian critics of the police. Despite these important qualifications, the precedent exists and is clear: the "police" activities of the F.B.I. are subject to ultimate review and restraint by the Department of Justice.

Integration of the attorney's and the policeman's functions would be logical. Paul Chevigny has written, "the District Attorney has enormous power to correct police abuses—more power, perhaps, than the courts themselves—by refusing to prosecute when police testimony is doubtful. . . ." Prosecutors are only slightly out of the "line of fire" directed at police. They habitually work with police, understand police problems, and are able to see the police side of the (frequently cloudy) story. Prosecutors also have—or should have—a keen appreciation of the mandates of "Due Process of Law." Although they have traditionally been reluctant to criticize the police, their vantage point is the best possible one for such criticism. Almost forty years ago, the famous Wickersham Reports recognized that the prosecutor had "much more power over the administration of criminal justice than the judges, with much less public appreciation of [that] power." Prosecutors stand halfway between the police desire for order and the public need for Justice (although "halfway" may be too generous a view of the matter).

Police criticism of civilian review boards could not fairly be applied to prosecutors. They are not "outsiders" but rather "insiders" who are trusted by the police. There is some evidence that the police, in fact, are amenable to prosecutorial advice and that bad practices are changed when prosecutors become dissatisfied with them. Whether this receptivity would extend to prosecutor control is of course another—and a different—problem.

One of the two traditional arguments in opposition to this theory is summed up by a task force of the 1967 Crime Commission Report:

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The prosecutor has an important responsibility in the development of appropriate law enforcement policies. But there are practical reasons why his involvement cannot be adequate. Usually, the prosecutor, particularly in large urban areas, confines his principal attention to cases in which there is a desire to prosecute or to issues which are important to the political life of the community. He seldom, for example, becomes involved in the development of a policy for settling domestic disputes or dealing with the down-and-out drunk or streetwalking prostitutes. In general, instructions or guidelines issued by the prosecutor relating to procedures for the prosecution of criminal cases will be accepted and followed by the police, particularly if the prosecutor is viewed by the police as seriously interested in the effective prosecution of the case in court. But neither the police nor the prosecutor assume that the prosecutor has responsibility either to stimulate or participate in the development of administrative policies to control the wide range of police practices.

The tone of the analysis rather than its substance is striking. The idea is not a good one, it is implied, because no one has adopted it before. If "instructions or guidelines . . . will be accepted and followed by the police," and if such guidelines are set by men knowledgeable in the field, why shouldn't this solution to the vexing problem of police control be tried? Police and prosecutor "assumptions" about the latter's role seem to be unimportant in the total equation. If the prosecutor exercises initial control, then the local bar association can meaningfully review it. The answer to control of the police appears almost too good—or too logical—to be true.

The most telling argument against this proposal is that prosecutors' offices are subject to the same pressures—perhaps greater ones—that operate to create police injustices. Indeed, the Wickersham Reports of the early '30's argue for police freedom from "political" controls (be they mayoral, majority party, or prosecutorial in origin) precisely because professionalism was hampered. Would we not sacrifice the tenuous advances made by the police in seeking freedom from political control, in the name of a dubious ideal?

Perhaps. But there is no doubt that cities characterized by highly political district attorneys' offices also contain highly political police forces. There really isn't too much to choose from in Chicago, for instance. At least political pressure on prosecutors' offices would be more visible and more amenable to direct intervention by bar associations. In machine-run cities, there can be little doubt that the police are effectively controlled anyway.

If the great danger is police autonomy and insularity, then exposure to another governmental agency would lessen it. Secret practices would—or should—rise to the surface. If other agencies are not handmaidens of corrupt machines, then the exposure would be beneficial. Since most cities are not Chicagos (Mayor Daley has been normally thought of as the last of his breed), but rather relatively free of partisan political control of DA's offices,

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there should be no great danger. The best evidence available indicates that most cities are cleanly—if inefficiently—governed. True, not all district attorneys' offices are run with the same honesty, efficiency, and fairmindedness of Frank Hogan's model bailiwick in Manhattan, but more are getting there. The pace and tempo of modern urban life have professionalized city government; the loss of political patronage (or rather its transfer to the Federal level) which formerly made the "machine" effective has contributed to this change.

Contemporary municipal corruption probably involves fewer people than ever before. If corruption is widespread, then too, it should be remembered, are the means for detecting it. Getting away with complex schemes for any great period of time is probably more difficult in our overly-computerized, overly-audited world than was true in Boss Tweed's heyday.

Will this proposal be a magic cure-all? Will both prosecutors and bar associations live up to the responsibilities required? The answer is uncertain. In the perspective of other solutions and of recent history, the prime virtue of this is that it has not yet been tried. No other solution—adopted or proposed—has worked or promises to be viable, since the police can readily convince themselves and their public supporters that law enforcement will be "hamstrung." Until public sentiment is educated to appreciate the real problems (what do we really want law enforcement to do? what resources do we wish to devote to it?), we can only conclude, along with James Q. Wilson, that the policies of the police administrator are most likely, in our present context, to curb police excesses. This proposal simply creates new police administrators free from parochial ethics and unprovable assumptions about the nature and demands of police work.

In the final analysis, the central problem of police control is not whether particular guidelines are good or bad (or, more often, worse or better) but where responsibilities for the making of guidelines should properly lie. No police critic or analyst can possibly make enough suggestions for improved procedures in the complex world in which the police function. Much apparently haphazard police conduct could be subject to rules. "Insofar as abuses are systematic, or are really based on a failure to grasp an element of law or proper police work, new rules can be effective," says Paul Chevigny. What can be done socially is to assign such suggestions to certain agencies and then judge the performance of such agencies by certain goals of the society. If the agencies—the prosecutor and the local bar association in this instance—are assigned the responsibility, then they can use their expertise to fulfill their mission. They can be held accountable for such fulfillment. Lay critics do not have the ability (necessarily) to make precise and finite rules; they can make judgments and perhaps suggestions about the workability of rules promulgated by experts. If the rules are inadequate, then the experts must be told to make other rules. Society has the right to demand that prosecutors develop viable rules. Once the responsibility has been delegated, the agency

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itself must devise appropriate techniques. Society should expect local bar associations to judge alleged violations of rules or the underlying policies.

Ultimately, society must judge the conduct of its police, or, in default, must live with misconduct. America has not reconciled itself to searching review of police misconduct because it devoutly wishes both Order and Law. The nature and extent of the police rebellion demands that more be done socially to control increasing instances of misconduct. Police arguments that they are "professionals" (they are not) whose conduct cannot be reviewed by outsiders is fatuous. In our system of criminal justice, police are reviewed by prosecutors, prosecutors by trial judges, and trial judges by appellate courts. We have made a commitment—whether we still believe in it or not—to systematic review of any decision to deprive a man of his life or liberty, whether that decision is made by a police official on the street or a judge in an overcrowded courtroom.

Society, that amorphous entity, can always be blamed for most social evils, and were we all better educated and more humane, presumably those evils would be eradicated instantly. In the context of American life, to view "Society" as the malefactor is too glib, simply because decision-making is divided much more finely. Responsibility for certain areas is parceled out and problems of power revolve about the attempts of organized groups to rearrange the parcels. The police are trying to grab a larger hunk of the power pie, and they can only be stymied by other power holders. This is why criticism should and must be leveled at other institutions which properly should be concerned with police work and are not.

The present problem is not whether people are "innately" liberal, but whether there is a socially shared feeling that certain groups have the authority to speak for us on certain subjects. There is a broad consensus which permits the Supreme Court to function and allows its often less than popular decisions to be enforced. At times, the rush of events may dilute the consensus, although (as the court-packing fight of the '30's demonstrates) it may remain surprisingly firm even at those crucial moments. No country is governed by its laws alone. The social fabric is truly like a spider's web, fragile, yet strong, intricate, yet forming a discernible pattern.

Today, the American consensus about the proper role of the police in society is threatened by the onrush of external events. The police have "politicized" themselves and virtually convinced us that they must be permitted to define as well as enforce "Law and Order." Other influential groups must take up the defense of our traditional beliefs in the sanctity of the person and the home from unwarranted police intrusion. The only hope—not yet wholly illusory—is that those responsible groups will come forward to challenge the dangerous new assumptions about police power.