

DRAFT

Democratic Policing

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Introduction

The challenge of policing a democratic society is to design a means by which public preferences are converted into policing outputs. This is less easy than it sounds, for reasons well known to democratic theorists. Moreover, it may not always be desirable. Foremost among the concerns is the fundamental risk of majority tyranny. The public may well prefer solutions that are exclusionary, or indeed, draconian, to the great disadvantage of the marginalized minorities against whom they are directed. Compounding this is the fact that people from disadvantaged backgrounds are less likely to participate in any political process, even those through which they might further their own interests. The flip side of this is the risk of minority tyranny, where a shrill minority would prevail over an apathetic majority.

This article will discuss a variety of mechanisms for converting citizen preferences into policing practice. The traditional model of police exercising their independent professional judgment will be noted, but the pages that follow will be primarily devoted to the various mechanisms of community consultation, including representative government on the Westminster model, policing boards, survey research, and community meetings.

Particular attention will be accorded to mechanisms designed to ensure that the preferences of the disadvantaged and inarticulate are not ignored, and that the most disadvantaged citizens are neither neglected nor persecuted. The ideal mechanism (or combination of mechanisms) will be one that empowers all citizens, including the disadvantaged, to identify and to address their own security problems to the greatest extent possible.

The questions of scale, and the level at which community consultation might optimally be undertaken will also be discussed, as will the question of the cultural resonance of the various mechanisms of consultation that have been proposed.

Why Democratic Policing?

In his book Strong Democracy (1984) Benjamin Barber suggests that the general principle of an active, engaged citizenry is inherently good, for the participant as well as for society. According to Barber, when an individual sees herself as a

citizen, and not merely as a subject, her support for the political system, and ultimately the stability of that system, is enhanced.

Participation can also be an educative process. The exchange of information among citizens, and between the police and the public, can increase awareness about the strengths and limitations of various policy options. It can also serve to broaden the outlook of the citizen, and to enhance an individual's community mindedness (Pateman 1970, 42-3).

Beyond this, active citizen involvement in the process of government may instill in members of the public a sense of competence and efficacy that in turn may facilitate the development of higher moral and ethical standards. Civic engagement thus serves to improve both the government and the citizen. Ideally, the citizen becomes more knowledgeable and tolerant, more sensitive to others' interests, and more introspective (Dryzek 2000; Warren 1992). But Dahl (1989, 92) suggests that this may be wishful thinking.

If what Barber says can be generalized to policing, citizen involvement has a number of potential benefits. Democratic policing is more likely to be perceived as legitimate by the public than is a system of policing imposed from above. All else equal, it is likely to lead to a greater degree of compliance (Sunshine and Tyler 2003).

Lord Scarman's observations in the aftermath of the Brixton riots suggests that policing an alienated public is fraught with risk. Policing by an institution perceived as less than legitimate is less likely to be effective, or worse. His concerns were fundamentally instrumental, when he observed that a police service that failed to consult locally would fail to be efficient.

Problems of Democracy

Democratic theorists will differentiate between the aggregate of individual private interests, and the public interest or the common good. (Dahl 1989 71). Most law-abiding citizens, if asked, would prefer to see a greater police presence in their own neighbourhood than in somebody else's across town. Conversely, proposals to close down police stations tend to be greeted with considerable dismay by local residents. It may not matter much to the self-interested citizen that his preferred outcomes might entail an inefficient or ineffective allocation of police resources. "Looking after number one" is a familiar mindset in our individualistic society. Citizens are usually competent judges of their own interest, but less so of the interests of others or of the public in general.

Whether the opportunity to exchange information with other than like-minded citizens can lead to a higher level of consciousness is by no means certain. As

Dahl (1989 61) notes “Most people seem unwilling to give the interests of a stranger, or anyone unknown to them, anything like equal weight in comparison with their own.” He further notes that democracy may not be a panacea for individual or collective shortcomings. “(T)he conjecture that political participation tends to create a stronger sense of self worth, greater tolerance, and more public spiritedness is only weakly supported by systematic observation, if at all” (Dahl, 1989, 92).

Dimensions of Democratic Policing

Skogan (1998) observes a continuum of public involvement in policing. At one extreme, policing is done by a specialized elite, on behalf of the public. In The Republic, Plato entrusted rulership to a minority of people with superior knowledge and virtue. Like Plato’s Guardians, police in the English-speaking world have relied for most of the modern era on their own professional judgment to determine public security needs. Until relatively recently, they enjoyed a quasi-judicial independence from political control. Unfortunately, for most of the modern era, police have fallen short of this Platonic ideal. Disclosures of corruption and abuse of power, combined with evidence of inferior service (or worse) to the disadvantaged and inarticulate, suggest that police have not always been able to claim monopolies on virtue or wisdom (Westley 1970; Sherman 1978; Mollen 1994; Queensland 1989; Wood 1997). As a result, their independence and autonomy are now much less than they once were, and the “playing field” of policing policy is now very crowded.¹

Toward the middle of the continuum, the public serves as the eyes and ears of the police. They provide a degree of surveillance and intelligence data, but have no input as to where and how police resources are used.

At the other end of the continuum, the public are actively involved in the identification of policing needs, and in the development of policing policy. Moreover, they are fully involved in the co-production of policing, through such activities as neighbourhood surveillance, dispute resolution, and target hardening to reduce criminal opportunities.

In the 1960s, interest in participatory democracy began to emerge in the United States. The suggestion that members of the public (especially members of minority groups) knew better than the police what their security needs were, met with initial resistance from law enforcement. But the public was not content to remain passive. Support grew for civilian review of police misconduct. Arguably even more significant was the rise of the feminist movement, accompanied by trenchant

¹ Jones, Newburn and Smith (1994) refer in the British political system such players as the Home Office, Her Majesty’s Inspectorate of Constabulary, the communications media, various community groups, inter alia. One might also mention police unions.

criticism of the traditional manner in which police handled victims of sexual assault and domestic violence.

This pattern was repeated in the United Kingdom, Canada and Australia. In the 1980s Australian police services became more attentive to public preferences, and most began to establish mechanisms of community consultation.

The Machinery of Democratic Policing

What is the optimal mechanism for identifying public preferences, reconciling them with community security needs, and translating them into public policy (or security outcomes delivered by public, private, or hybrid institutions)? For reasons that will become clear in the following discussion, there is no single ideal solution. Each mechanism has its strengths and its limitations. The appropriate combination of mechanisms will vary depending on the relative capacities of the public, the public police service, and the private sector.

The administrative or other means by which public preferences are registered may take diverse forms. Media of transmission can vary from institutions of direct democracy, such as town meetings, through mechanisms of representative democracy such as elections and representative government. They may be broad in scope, or targeted in a manner designed to identify the needs of special minorities.

1. Elections

In Western democracies, elections are the basic institution of political participation. Elected governments with constitutional responsibility for policing may implement those policies that have been endorsed by the electorate. Electoral systems vary widely, but in most instances, elections are contested on a broad spectrum of issues. To the extent that parties and/or candidates have different policies on policing and criminal justice, they tend to be inextricably packaged with policies on many of issues ranging from health and education to roads and refuse removal. Ultimately, the elected government is responsible for determining the composition and deployment of policing services, including such complementary services as health, education, recreation and welfare. The presentation of these policy packages, moreover, is done in a manner that does not encourage thoughtful deliberation on the part of the public; the “seven second grab” has replaced meaningful discourse.

Electoral systems, however, are very imperfect instruments for the transmission of policy preferences. In places where the franchise is restricted or where voting is optional, significant segments of the population may not be heard. Moreover, minority groups may be too small to make a difference in terms of electoral

outcome. For example, with citizens of indigenous background comprising less than 3% of the Australian population, their ability to influence the outcome of elections is limited indeed.

2. Initiatives and Referenda

Some political systems provide for citizen initiatives or for referenda, enabling the electorate to vote for or against a specific policy proposal (Bowler, Donovan and Tolbert 1998). Depending upon the constitutional arrangements of the jurisdiction in question, a particular proposition that receives a requisite number of signatures may be placed on the ballot for ratification or rejection by the electorate.

Alternatively, it may be referred to the electorate by the legislature. For example, California's "three strikes" legislation arose as a citizen initiative. (Zimring et al 2001).

These instruments of direct democracy also have significant downside risks. Most prominent among these is again, the risk of majority tyranny. It has been suggested that initiatives and referenda facilitate the targeting and indeed the stigmatization of vulnerable minorities (Wenzel, Donovan and Bowler 1998). California's "three strikes" initiative, passed by a 72% majority, sought permanently to banish repeat offenders; an earlier initiative sought to deny health care, education and social services to illegal immigrants and their children.

Like elections generally, referenda may not facilitate thoughtful deliberation by voters. Even where explanatory materials setting out arguments for or against a proposal are distributed prior to a referendum vote, they may be ignored. The result is a vote that reflects knee-jerk reaction rather than thoughtful consideration of an issue.

3. Sample surveys of public opinion

One of the more rigorous ways of gauging public opinion, including public preferences relating to policing services, is the sample survey. A well- designed survey administered to a carefully selected sample will provide a very accurate assessment of public attitudes toward police, security concerns, fear of crime, etc.

In a society that includes one or more small minority groups, however, it may be difficult if not impossible to achieve reliable estimates from the smallest group or groups. A statewide survey with a sample size of 2000 for example, would yield very few Indigenous or transsexual respondents, too few from which to base meaningful generalizations.

There may be other sources of bias in sample surveys. Normally respondents are limited to persons aged 18 and over, thereby excluding children.

Oversampling and weighting may compensate for some of these sources of bias. But there are others that may be less tractable. For examples, persons who are linguistically challenged may be underrepresented in telephone or face-to-face surveys. Those who are illiterate are also less likely to complete paper and pencil questionnaires unless they receive special assistance.

Surveys conducted by telephone will exclude respondents who, by choice or circumstance, do not have a telephone. Surveys based on samples of residential premises may miss the homeless or transient, as well as tourists generally. Special surveys may be conducted of such sub groups where appropriate.

And then, there is the risk that the respondent, rather than thoughtfully consider her response, will respond in an instinctive and/or intolerant manner

4. Community Forums

Assuming that they are well publicized and held at a convenient time and place, community forums provide an opportunity for interested citizens to express their security preferences. Such forums are, however, vulnerable to the intensity problem. They will amplify the voices of the intense, and mute those of the apathetic (Thurman and Resig 1996). As with most forms of participation, the economically disadvantaged and socially marginalized will be disinclined to participate.

5. Beat meetings

These entail regular periodic meetings of residents within a prescribed geographic area. That is, they are “turf-based.” The system of beat meetings is the core of the system of community policing that was introduced in Chicago in 1993. (Skogan and Hartnett 1997). They serve as forums for identifying and prioritizing local problems. In Chicago, they suffer from the same kind of bias as most citizen-initiated contributions to policy decision making: a degree of middle class bias. As Skogan (2003, 59) observes, “beat meetings are composed of those who happen to hear about them, and those who choose to attend”. Once again, the relatively disadvantaged are under-represented. However, at least in Chicago, complementary surveys of neighbourhood residents reveal a convergence of views between beat meeting participants and non-participants in terms of priorities. (Skogan 1992, 1998)

6. Consultative Boards and Advisory Committees

These usually take the form of standing committees that meet periodically and are designed to be broadly representative of community interests. In some jurisdictions, they may be required by law. In the United Kingdom, the Police and Criminal Evidence Act imposed a statutory duty on police authorities to set up consultative arrangements (Jones et al 1994, 22). Their effectiveness will depend

on the degree to which board members are in fact representative of significant community interests, and the capacity of these representatives to articulate the needs of their constituents.

7. Focus Groups

Focus groups are another means of determining public attitudes. The challenge here is to recruit a focus group that is representative of the larger population to which one seeks to generalize. Focus groups are a particularly useful means of tapping into segments of the population (ie high school students) who might not be reached by a general sample survey. They are also means of determining the preferences of small minorities such as transsexuals, whose representation in a general survey is likely to be extremely small, and whose attitudes may not be amenable to measurement through community surveys.

8. Deliberation

Given the inherently selfish perspective adopted by many citizens, it has been suggested that democratic processes entail a degree of deliberation, where proponents of a particular course of action will meet face to face with those who may be skeptical or opposed to the idea (Fishkin 1991; Dryzek 2000; Fishkin and Laslett 2003). Theoretically, this will better enable citizens to empathise with their fellow citizens, improve the quality of decision making, and reduce the likelihood of tyrannous outcomes.

It is not very comforting to note that face to face deliberation is the very basis of the legislative process, which all too often deteriorates into a dialogue of the deaf and is hardly a recipe for empathetic understanding, even when the playing field is level. We know, of course, that the playing field is rarely, if ever level, and that the better resourced interests in a community are also likely to command advocacy skills that are superior to those of the marginalized.

Goodin (2003) encourages what he describes as “reflective democracy” where citizens are encouraged to reflect on their preferences, and to internalize the perspectives of others. He encourages this even when the other might not be physically present.

Groucho Marx is reputed once to have commented, “Why should I worry about future generations? What have they done for me?” Goodin nevertheless suggests that it should be possible to give consideration to future generations, and other so-called mute interests. “Conversation is useful, but imagination is essential.” (Goodin 2003, 228) He uses the term “democratic deliberation within” to refer to such a process.

9. Specific Targeting of Peak Bodies

Most societies are rich in organizational life. Even the marginalized, who themselves are not organized, may have advocates able to speak on their behalf. Strategic consultation with these organizations or advocates can help identify the security needs of special interests who would not otherwise have a voice.

Many groups, by definition, lack political and moral competence, that is, the ability to engage in reasoned decision making and to know what is right or just. Children, the insane and the developmentally disabled come immediately to mind. Members of these groups still have very real security needs. For obvious reasons, they will be unable to articulate these needs, and therefore usually need an advocate.

10. Foot patrol

Police officers on foot gather information in their day-to-day contact with members of the public (Hornick et al 1993). Absent a clearly defined data collection protocol (which is not what foot patrol is about), they are an unsystematic means of collecting information, as they depend on those who would approach (or those who would be approached by) police officers. Nevertheless, observant and inquisitive patrol officers are able to form an impressionistic assessment of security preferences on their beat.

11. Kobans and Shop-front offices

The police box or mini-station has long been a feature of Japanese policing (Bayley 1976). The size and location such a facility (usually in well traversed public places) places it on a human scale, enhancing its physical and psychological accessibility to members of the public. Its apparent success in Japan led to its adaptation in Singapore in the mid 1980s, and in various other locations over the succeeding years. Like foot patrol, kobans permit at best an impressionistic assessment of security preferences.

12. Emergency response calls

Over the past two decades, the dominant mechanism for mobilizing the police, at least in English speaking democracies, had been the telephone. Emergency numbers such as 000 in Australia or 911 in North America provide a medium through which the public can communicate its preferences for police attendance directly to police themselves. This will give some indication about the demand for police services on a day to day basis, but are only indirectly indicative of policy preferences.

13. Market solutions

There are those who will seek to meet their own security needs by purchasing goods and services from the private sector. This may entail the purchase of

security hardware, or of other security services such as guards. Such resort to the market may indicate (justifiably or otherwise) dissatisfaction with publicly funded policing. Issues of equity arise given the inability of financially disadvantaged citizens to afford private services. Whether the existence of a market in private security frees up public resources to better attend to the security needs of disadvantaged citizens is an empirical question.

Regardless of the nature of the medium, one should be wary of models that amplify the voice of those who are already disproportionately vocal. In many settings, a few of the people will do most of the talking. These may not be representative of the general community, nor of the public interest.

There are those who are less likely to avail themselves of basic services, even when such services may be available. Truants and early school leavers, those who do not seek medical and dental treatment (even when such services are publicly available) individuals who shun available public housing and prefer to live on the street, and those victims of crime who will not notify the police, all illustrate the difficulty of aggregating preferences for security in the wider public interest.

Scale and Scope of Machinery

The capacity for meaningful individual political participation varies directly with the size of the collectivity. The prospects for direct democracy where policy issues can be canvassed in the course of an extended moral argument, are limited.

It is much easier to have one's voice heard in a community of 500 than in a city of three million. Even then, Dahl (1998 105) reminds us that if every one of the 500 citizens were given ten minutes in which to express their views, the meeting would last 83 hours.

Dahl (1998 109) refers to "The law of time and numbers: The more citizens a democratic unit contains, the less that citizens can participate directly in government decisions and the more they must delegate authority to others." Dahl (1998, 110) also reminds us that there may also be tradeoffs between citizen participation and system effectiveness. "The larger the unit, the greater its capacity for dealing with problems important to its citizens, and the greater the need for citizens to delegate decisions to representatives."

Other structural properties of a collectivity that will bear upon the appropriate consultative mechanisms are area, homogeneity and stratification. The wider the spatial boundaries, the more heterogeneous and the more stratified the community, the greater the diversity of views one may expect. Capturing and reconciling these

views will be challenging, regardless of what medium of assessment one might choose. All else equal, the greater the diversity, the less the solidarity and the greater the suspicion amongst diverse members of the community. This will pose formidable challenges to identifying common interests, and to reconciling them when they are in conflict.

Policy questions vary in terms of scope and the scale of consultative mechanisms appropriate to address them. At the most micro level, there may be a problem of graffiti in a particular location, or a question of whether to install a stoplight at the intersection of Smith Street and Jones Avenue. Assuming the problem is confined to a specific location, so too is the solution, subject, perhaps, only to resource issues, which may have wider applications. Problems on this scale are arguably amenable to identification at the local level. The degree of devolution will depend on the scope of the issue. Issues that are everybody's business can be addressed at higher levels, while those which are micro-concerns can be addressed at the grass roots.

At the intermediate level, problems will impact upon a wider cross section of the community, for example, the level of resources devoted to traffic enforcement.

Macro-level issues deal with fundamental matters affecting the entire police service, for example whether police should be armed at all, or be equipped with more powerful weapons. Sample surveys are perhaps the most accurate means of determining public attitudes on matters of this nature.

As a general principle, it has been suggested that democratic solutions be based on the principle of subsidiarity. The keystone of Hirst's theory of associative democracy (Hirst 1994; 2002) the principle states that "as many social activities as possible should be devolved to self-governing voluntary associations" (Bader 2001, 1). In other words, the ends and means of policing should be determined at the lowest possible level, and by non-state interests to the greatest extent feasible. Nevertheless, there are obvious economies of scale that militate against extreme decentralization. Moreover, size varies inversely with exclusivity. The smaller the group, the less likely its members will reflect a diversity of views. Devolution may well be accompanied by parochial thinking.

Another general principle holds that regardless of their level, decisions made about policing should be made through deliberative processes. Translating this principle into practice is no mean feat, because citizens vary in both their interest in, and in their capacity for, deliberation. Those individuals or groups unwilling to articulate their own interests should arguably not be required to do so. Those or incapable of

stating their own case may require encouragement or assistance. In the end, a proxy may be required in both instances.

Problems of Democratic Policing

Police Resistance

Throughout most of the modern era, police in many jurisdictions were regarded as the living embodiment of the law, and enjoyed a kind of quasi-judicial autonomy. Although this has changed over the past three decades, many police will still cling to their traditional role as contemporary equivalents of Plato's Guardians, monopolists of wisdom and virtue (Dahl 1989, 52). To the extent that they do, they will be resistant to the idea of letting citizens set the police agenda. In this regard, police are no different from members of other professions, who have usually had little time for lay people claiming a degree of knowledge or expertise. Few professionals like to be told how to do their job.

The problem of conflicting or divergent preferences

In a diverse community, there are bound to be differences of opinion regarding the desirability of certain policy alternatives. These options may be mutually exclusive, or differences may be irreconcilable. Consider the case of injecting drug use. There are those citizens who would advocate the provision of hygienic premises that injecting users may visit with impunity, and indeed, those who would advocate providing heroin on prescription to those who are certifiably dependent. Other citizens however, would favour the automatic arrest of any injecting drug user. Even within minority communities, there may be intense differences of opinion, not to mention internal conflict, that would make a consensus difficult, if not impossible, to achieve.

Short of solutions that are mutually exclusive, there are some issues that might be described as zero-sum in nature. These often involve questions of resource allocation. That is, one person's gain comes at the expense of another. The decision to locate a police station in neighbourhood "A" and not across town in neighbourhood "B" is one such example. So too would be the decision to double the size of the drug squad at the expense of traffic enforcement.

Fortunately, the apparently irreconcilable may lend itself to compromise. Enforcement strategies keyed to time place and manner might be illustrative. Police may turn a blind eye to discreet marijuana consumption in places like concert venues, but may mobilize the law when such activity occurs on or near school premises.

The problem of unrealistic expectations

Elsewhere, we have discussed the notion of an “expectations gap”-- the fact that police cannot be everywhere and do everything the public might expect of them. The extent to which police have succeeded in portraying themselves as omnipresent and omniscient means that public expectations will exceed the capacity of police to fulfill them. The challenge of consultation processes is to train the public in what police can reasonably deliver, and what the public can constructively contribute to meeting their own needs.

The problem of imperfect information

The capacity of the public to make reasoned assessments may be limited by the quantity and quality of information to which they have access.

Police services may have good operational reasons for not disclosing certain types of information. Obviously, one does not wish to alert prospective offenders to potential criminal opportunities. Needless to say, premature disclosure of some information can jeopardize ongoing investigations. And too much information might serve to instill a level of fear in the public that is largely unwarranted.

But even when information might not be inherently criminogenic, there may be barriers to an informed public.

Moreover, neither police nor their political masters like to be the bearers of bad news. As we have seen, police have traditionally been very successful at exploiting the myth of their omniscience and omnipresence. Elected officials often remain in power because of their ability to reassure the public that theirs is the best of all possible worlds. Sir Humphrey would describe as “courageous” any police commissioner who would contradict his or her Minister.

The Problem of Things Better Left Unsaid

Even the most energetic proponents of transparency in policing would concede that some matters are best excluded from public discourse. A full and frank discussion of the overrepresentation of certain ethnic groups among identified offenders, and the pros and cons of restoring capital punishment in jurisdictions that have abolished it, are but two examples. As Gutman and Thompson (1996, 42) observe, greater deliberation may serve to intensify conflict. Hecló (1999) sees a risk in “hyperdemocracy” where issues can be over politicized. There are some issues best treated with benign neglect, lest they awaken darker impulses within the citizenry.

It is hardly surprising therefore that information flowing to the public from police or politicians tends to be selectively filtered.

Impediments to Democracy

Apathy

One of the basic facts of life in democratic societies is political indifference. Whether born of perceived inefficacy, resignation, alienation, or other preference, this attitude of “preferring not to get involved” may well be increasingly common in modern society, where those who are employed tend to be working longer than ever. Or, as Oscar Wilde is reported to have commented, “The problem with socialism is that it would take too many evenings.”

Apathy may also arise from the fact that many citizens have become dependent on the state for a wide range of benefits and services, and have grown out of the habit of looking after themselves. And others are simply time-poor. Entire industries exist today to serve people who simply don't have the time to do the things, from food preparation to housecleaning, that people did for themselves a generation ago.

There is, of course, more to a passive citizenry than laziness and dependence. This is reinforced in the realm of criminal justice by very significant legal constraints on what one can do in self-defence. Disproportionate response to an actual or threatened criminal act may find the original victim facing criminal charges more serious than those to which the original offender was liable. Indeed, the modern professional criminal justice system evolved to preclude private revenge.

Whatever the causes, it is instructive to note Grinc's (1994) observation that “...despite the apparent popularity of the community policing approach, community residents may not want closer interaction with the police nor the responsibility for maintaining social control.”

Fear of retaliation

Buerger's (1994) report of an evaluation of innovative neighborhood policing programs (INOP) in the United States noted that fear of retaliation from drug dealers was the primary inhibitor of public participation.

Distrust of Police

Buerger (1994) also noted that estrangement between police and public can also inhibit citizen participation. Then, there are those who, for whatever reason, simply do not wish to have contact with the police. Perhaps they themselves have something they would not wish to draw attention to the authorities. Perhaps they immigrated from societies where police were repressive. Perhaps if they are not fluent in the official language of their place of residence, they may feel self-conscious. Perhaps they simply do not like symbols of authority. Perhaps mobility and turnover in police ranks precludes the formation of bonds with communities or neighbourhood residents.

In a study of a multi-ethnic New York neighbourhood, Davis (2000) concluded that members of ethnic groups that perceived themselves as politically disempowered, were less likely to regard the police favourably, and less likely to report crimes. These cultural influences were found to be more important than individuals' personal experiences in shaping their attitudes towards police.

This suggests that, while important, the general demeanour of police may not be sufficient to improve police community relations. According to Davis, what is required is close dialogue with the communities in question, and encouragement of these communities to set priorities and develop strategies.

Differential Capacity

Elite theorists of the 20th century such as Michels (1949) and Mosca (1939) remind us that every society develops a ruling class. In any society there will be some variation in citizen competence. Access to information, or at the very least the ability to process it, is by no means uniform. There are those groups who may lack organizational skills, financial means, or other political resources such as knowledge and social status. And there are others who will be both knowledgeable and articulate. There are those individuals who may lack sufficient knowledge to state an informed preference. Simplistic and demagogic solutions are not uncommon in criminal justice. As Dahl (1989, 182) put it, "We cannot assume that citizens are invariably guided by an enlightened understanding of their interests."

Differential Moral Competence

Not every citizen has an equally legitimate moral claim—knowledge of what is virtuous and in furtherance of the common good (Dahl 1989 58). In matters of criminal justice, there are those who would like to view the world as a morality play, a struggle between good and evil. This may be true, but only to a limited extent. Not all moral claims should have equal weight. Recidivist armed robbers have some moral claims, but arguably fewer than law-abiding widows who live alone.

Paternalistic authority may still have a place in public security. Consider the mentally ill or developmentally disabled person who threatens passers-by. Or, take the 10 year old who thinks it in his interests to hang out on street corners and smoke cigarettes. There are few people today who would regard the criminal sanction as an appropriate means of dealing with either of these kinds of matter. Nevertheless when other institutions in either the public or private sectors are unavailable to deal with such situations, The preferences of the individuals in question may have to yield.

The Problem of Intensity

On almost any issue of public policy, preferences will vary in intensity.

There are those individuals who feel deeply, indeed passionately about an issue, those whose opinions are more moderate, and those who couldn't care less. The risk that a passionate and shrill minority might prevail over a more apathetic majority cannot be ignored (Shapiro 2003). Elsewhere, one of us (Grabosky 1992) has speculated on the risks of a "hyperactive citizenry." (see also Jones, Newburn and Smith 1994, 40).

Lucia Zedner (2003) has queried whether there can be such a thing as "too much security" This is hardly a farfetched question. In recent Australian political history, the issue of capital punishment was traditionally were kept off the political agenda by all major political parties, despite the fact that survey data reveal a majority in support of reintroducing the death penalty.

Zimring, Hawkins and Kamin (2001) argue that because of their tendency to inflame public opinion, issues of punishment should be insulated from direct democracy. Just as interest rates are best set by central banks, so too should criminal sentences be determined in a manner apart from the democratic process. The inflation that is likely to occur as a result of public preferences for low interest rates would be mirrored by the inflation in rates of imprisonment likely to arise from direct translation of public preferences into criminal sentencing. This, after all, is the role that judges are supposed to perform.

Paradoxes

Ironies abound in criminal justice. Indigenous Australians suffer disproportionately as victims of crime, mostly at the hands of other Indigenous Australians. Objectively, their security needs are much greater than those of the general non-indigenous population. At the same time, they express concerns that they are "over-policed" and that indigenous people are overrepresented as clients of the criminal justice system. To be sure, the circumstances of indigenous criminality lie beyond the capacity of police alone to control. But reconciling their policy preferences and security needs is a real challenge.

The challenge of guardianship

Until only recently, the role of the police was that of guardians or trustees of the common good or public interest. The criminal law as enacted by legislatures provided general guidance, and public input was not encouraged. Much of the criminal law on the books served an expressive rather than instrumental purpose. That is, it was enacted to send a message rather than to provide the basis for response to undesirable behaviour. Or at the very least, it was retained on the books rather than repealed, in order not to send the wrong message. As a result, the statute books were cluttered with archaic laws of embarrassing scope. One of the authors once lived in a jurisdiction which made it a crime to have sexual

intercourse with anyone other than a lawfully wedded spouse. Fortunately, he managed to avoid official notice.

Although police would often recite the mantra that they were only enforcing the law, without fear or favour, in fact they exercised considerable discretion. This discretion was not always exercised in an even-handed manner. The annals of policing contain many examples of bias and discrimination in the enforcement of law and in the provision of service, as well as police misconduct as troubling as it has been diverse.

The blessings of apathy

On the other hand, some observers suggest that apathy is a blessing. Consider the problem of excessive demands on limited resources. If every victim of crime were to report his or her misfortune to the police, law enforcement agencies would be hopelessly overloaded. Indeed, even with the substantial dark figure of unreported crime that prevails today, police have more business than they can handle. A hyperactive citizenry may not always be a good thing (Jones et al 1994 40).

Moreover, Pateman (1970) observed that “non-democratic attitudes are relatively more common among the inactive” and suggests that apathy and disinterest may contribute to stability.

Conclusion

At the end of the day, it is the elected government that is accountable for the provision of public safety. To the extent that they can afford to ignore minorities, they sometimes do. This will be easier when the minorities are quiescent. When they are not, the government faces the challenge of placating the intense minority without antagonizing the mainstream public.

Alternatively, there are those minorities that are singled out for stigmatization and persecution. Some political cultures actually encourage the demonization of minorities.

Police should beware of models that amplify the voice of those who are already disproportionately vocal, and guard against instinctively according less moral weight to claims made by those people from disadvantaged minorities.

Pure democracy is likely to lead to some fairly brutal outcomes. Three strikes legislation, publicly accessible sex offenders registries², and indeed, capital punishment, are among the policies introduced in jurisdictions where there is an efficient and unbuffered transformation of public preferences into public policy

² <http://sex-offender.vsp.state.va.us/Static/Search.htm> (Visited 21 July 2003)

Indeed, many years ago a very senior judge mentioned to one of the authors, “The role of the judge is to stand between the man in the dock and the angry public.”

There is no one recipe for democratic policing. Democracies differ dramatically, and the mechanisms of consultation that prevail in Norway may be inappropriate in South Africa. As Sherman (2000, 17) observes, “Diverse democracies require diverse means to achieve compliance among diverse peoples.”

We know that preferences differ. There are those who feel over-policed, and those who see themselves (or at least their immediate environment) in need of more police attention. Of course, it should be patently obvious that all security needs are not equal. There are those who, by choice or circumstance, are at much greater risk of suffering criminal predation than are others. Weighing these needs, and devising policing solutions that provide an optimal level of freedom and security in society, will require a variety of means of public consultation as well as the exercise of professional judgment. Providing widespread opportunity for input may require that the most marginalized members of the public be sought out.

Ironically, non-democratic means may be required to address specific failures resulting from the democratic process (Dahl, 1989, 177). Plato’s Guardians and participatory democracy can coexist, and probably should.

As Bayley and Shearing (1996; 2001) have observed, the current era has seen a pluralization of who authorizes policing, and who actually implements it. In addition to public police as we know them, there are a variety of private sector and public/private hybrid auspices for policing. This pluralization may make for more democracy.

In conclusion, there will be no perfect mechanism for translating public preferences into policing practice. What is required is some institution that will receive input from as wide a cross-section of the public as possible, and reach beyond them to identify those groups who may lack the capacity to articulate their own needs. The challenge is to select a combination of consultative mechanisms that will compensate for the inherent defects of each, and that will be sufficiently responsive as to maintain legitimacy, but not so responsive as to produce irresponsible outcomes.

A fundamental question remains what or who is best situated to broker and distill the articulated and unarticulated needs of the public, and who is best situated to deliver a policing package that meets the most essential of these needs. In other words, who or what will command the requisite wisdom and virtue, and political entrepreneurship essential to this task? The question is more than academic, for the legitimacy of the legal order may be at stake.

The answer, of course, will vary from location to location, depending on the local political structure and culture. Some would argue that in the ideal world, the public police themselves are best suited to this task. Others would argue that because public police have been less than successful in adapting to a rapidly changing policy environment, they have been displaced by private and other public sector providers of security (broadly defined). As a result, some form of cabinet government is the appropriate mechanism. And there are those who would invent entirely new institutions such as policing boards to broker security (Shearing 2001). Suffice it to say that if the public police of today are unable or unwilling to undertake a more comprehensive management of public security with a view towards delivering a responsive and responsible product, there are other players waiting in the wings.

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