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The Paradox of American Policing: Performance without Legitimacy

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The 2004 National Academy of Science report on policing argued that in recent decades the objective quality of policing in America has improved. The police are more effective in fighting crime; they are less corrupt; and they are less likely to engage in unprofessional acts such as unlawfully shooting civilians. While there are many ongoing issues involving police performance, in particular in terms of their relationship with minority communities, the overall impression given by the report is of increasingly professional and effective police departments and of more and more sophisticated policing practices. There is indeed a new professionalism in policing and it benefits all people who deal with the police.
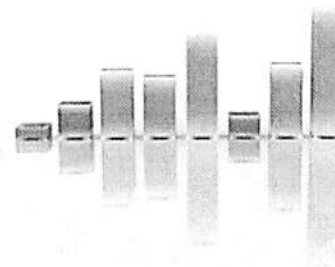
These increases in the objective quality of policing notwithstanding, the other consistent finding of studies of the police is that in the last 30 years public support for the police—often indexed as "confidence" in the police—has been more or less unchanged. The percentage of Americans expressing confidence in the police between 1980 and 2009 has generally ranged between 50 and 60 percent. In 2009, it was at 59 percent (U.S. Department of Justice).

Similarly, there has been a large and persistent racial gap in confidence. In 2000, a national Gallup poll suggested that Whites were 27 percent more likely to express confidence in the police, while in 2009 a national Department of Justice survey reported that Whites were 26 percent more likely to express confidence in the police. Meanwhile, a 2007 Pew Research Center study suggested that Whites are 29 percent more likely to have confidence that the local police will enforce the law; 29 percent are more likely to say that the police will not use excessive force; and 30 percent are more likely to say that the police will treat all races equally.

This discrepancy between the improving level of police performance and generally unchanging levels of public support suggests the need to focus on what shapes public views about the legitimacy of the police. If public confidence in the police is not linked to objective performance, the nature of confidence needs to be addressed as a distinct question in and of itself. That issue is: What is the basis of perceived police legitimacy? Understanding how public views about police legitimacy form and change can provide us with a new framework through which to evaluate policing policies and practices. That framework is the lens of public views on police legitimacy.

The theoretical basis for current policies

Current policing policies and practices reflect a psychological framework of social control referred to as deterrence: the use of the threat of or use of punishment to motivate behavior. This model shapes how the police behave in their everyday interactions with the public; it supports policies such as racial profiling, zero tolerance policing, and the massive use of arrest and incarceration as a law enforcement strategy. Research suggests that this model is false and that it is simply not the case that punishment—real or threatened—is the best mechanism for effective policing. This is true both because punishment is not the best way to achieve compliance and because its use undermines willing deference and voluntary compliance, both of which greatly aid the police in performing their jobs.

In the last 20 years, research has shown that people obey the law and cooperate with legal authorities if and when they view legal authorities as legitimate. That legitimacy, in turn, is a product of how the police treat people when they are exercising their regulatory authority. Fairness in decision-making, i.e. neutral and nondiscriminatory behavior, is key to being viewed as legitimate. Realizing that the fairness of police behavior—not the fear of police force and the threat of punishment—creates legitimacy, and through it drives public actions has dramatic implications for a range of policing policies such as racial profiling and zero tolerance policing.

There is need for a new approach to policing in America. The framework of policing needs to focus upon how policing policies and practices affect public views about police legitimacy. The police need to select, train, and reward officers with an eye to those whose encounters with the public build legitimacy—a focus that leads to concerns about the quality of people's experiences, not just their outcomes. Even legally trivial interactions, i.e. situations in which a person is not arrested or incarcerated, can have a strong influence on people's views about the police.

This framework further suggests that we need to measure police legitimacy when evaluating the police and policing practices, not just arrest or clearance rates. This argument involves accountability to the public. It suggests that accountability involves focusing on how the public evaluates the police and then building policies and practices that reflect this public conception of justice and accountability. And studies clearly suggest that the public holds the police accountable for delivering justice.

Legitimacy as an issue

To address the question of the legitimacy of the police and policing practices among members of the public, we need to think about policing in a new way. We must focus on the influence of police policies and practices and on the views that the public has about police legitimacy.

How do people evaluate police practices?

From a legitimacy perspective, we should treat every encounter that the public has with the police, the courts, and the law as a socializing experience that builds or undermines legitimacy. Every experience is a teachable moment and the question is what the public learns. And, to know that we need to consider which aspects of people's personal experiences the public considers when reacting to encounters with police officers.

What does research tell us about how people evaluate their personal experiences with the police? Fortunately, there are a number of research studies that explore personal experiences with the police. These studies show that the primary issue shaping people's reactions to personal encounters with the police is whether or not the police exercise their authority in fair ways, something referred to as procedural fairness.

The importance of legitimacy

Why do we care how people end up feeling about the police? Success in policing efforts depends upon gaining supportive public behavior. This includes the compliance with police orders already discussed. In fact, police researchers have noted that skill in "handling the rebellious, the disgruntled, and the hard to manage" in ways that lead to compliance is the litmus test of the quality of a street officer's performance. Based upon observational data studies estimate that the general public noncompliance rate when dealing with the police is around 22 percent. Such public behavior depends upon how members of the public perceive the police and interpret police behavior. If people evaluate police policies and practices as procedurally fair, they view the police as legitimate and accept their decisions.

More broadly, public judgments matter because the law relies upon widespread voluntary public compliance with the law and cooperation in police efforts to fight crime. Other studies suggest that such general compliance and cooperation is linked to overall assessments of the procedural fairness of policing policies and practices through the role of such judgments in shaping people's judgments about the legitimacy of the police. Justice leads to legitimacy, which promotes compliance and cooperation. Hence, it is also important that those members of the public who have little or no personal contact with the police and the courts believe that those authorities generally exercise their authority through fair procedures.

Changing police practices

Can the police implement changes and develop practices that lead them to be viewed as fairer? The answer is clearly yes. First, the changes in police procedure needed are simple and easy to implement. They involve learning to provide people with opportunities for explanation before decisions are made; explaining how decisions are being made; allowing people mechanisms for compliant; and in particular treating people with courtesy and respect. These changes are inexpensive. Certainly in comparison to the costs of putting more officers on the streets or buying new technologies, these programs would be low cost. Hence, these low-cost, high-impact changes are a smart use of limited policing funds.

Conclusion

This is an ideal moment to consider transforming policing. If we put into place policies that encourage an approach to communities, particularly the minority community, in which public views are central, we are addressing the concerns of both the minority and the majority population. We can build upon that approach through adopting policing styles that motivate voluntary acceptance and willing cooperation on the part of the public.

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