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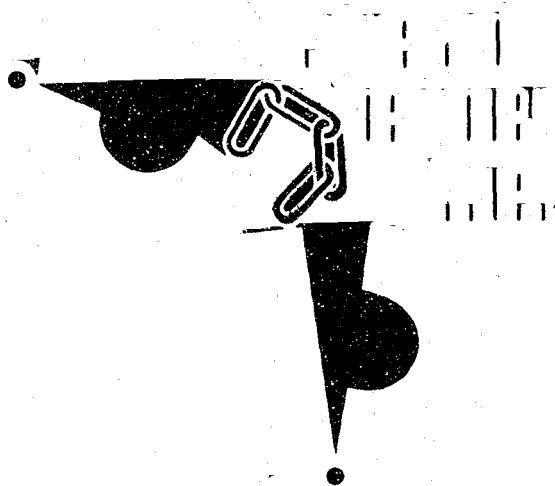
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The Functions of the Police in Modern Society

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CRIME AND DELINQUENCY ISSUES:

A Monograph Series

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THE FUNCTIONS OF THE POLICE IN MODERN SOCIETY

**A Review of Background Factors,
Current Practices,
and Possible Role Models**

by

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Foreword

This scholarly document analyzes the basic character of police work and relates it to the courts and community with which it is intricately involved. The analysis is comprehensive and insightful. Cultural and historical factors that influence police functions are considered, along with popular conceptions of police work. From these broad perspectives the analysis moves to consider the impact that police organization—i.e., the manner in which departments are structured and their position within the framework of city government, as well as their considerable independence—exerts upon the policeman's functioning. The quasi-military organization of the police, their *esprit de corps* and code of secrecy, and their capacity to use force are reviewed and woven into the analysis.

The monograph also considers the future of police work. The problems of upgrading police practice, streamlining police organization, and improving the recruitment and training of police are given specific attention. The author faces directly the knotty problem of the police's use of force and makes specific suggestions to help the police on this matter. Indeed, new models of police practice are projected.

In order to provide the author full freedom to develop the various facets of this issue, no detailed specifications or outline was set in advance for the preparation of this monograph, and no substantive changes or major editorial revisions have been made during the publication process. The views expressed are those of the author; the Center for Studies of Crime and Delinquency is pleased to make them widely available to facilitate discussion of this topic.

Saleem A. Shah, Ph.D., Chief
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I. Introduction

In his assessment of the police, Bruce Smith wrote in 1940 that, in spite of the still rather bleak picture, "the lessons of history lean to the favorable side."¹ He pointed to the fact that the then existing police forces had moved a long way from the past associated with the notorious names of Vidocq and Jonathan Wild,² and he suggested that the uninterrupted progress justifies the expectation of further change for the better. It is fair to say that this hope has been vindicated by the events of the past 30 years. American police departments of today differ by a wide margin of improvement from those Smith studied in the late 1930's. The once endemic features of wanton brutality, corruption, and sloth have been reduced to a level of sporadic incidence, and their surviving vestiges have been denounced by even generally uncritical police apologists. Indeed, police reform, once a cause espoused exclusively by spokesmen from outside the law enforcement camp, has become an internal goal, actively sought and implemented by leading police officials.

Despite these widely acknowledged advances, however, the police continue to project as bad an image today as they have in the past.³ In fact, the voices of criticism seem to have increased. The traditional critics have been joined by academic scholars and by some highly placed judges. Certain segments of American society, notably the ethnic minorities and the young people, who have only recently acquired a voice in public debate, express generally hostile attitudes toward the police. At the same time, news about rising crime rates and widely disseminated accounts about public disorders—ranging from peaceful protest to violent rebellion—contribute to the feeling that the police are not adequately prepared to face the tasks that confront them. As a result of all of this, the police problem has moved into the forefront of public attention, creating conditions in which highly consequential and

¹ Bruce Smith, *Police Systems in the United States*, New York: Harper & Row, 1960, second rev. ed., p. 8.

² For descriptions of early European police practices, see Patrick Pringle, *The Thief-Takers*, London: Museum Press, 1958 and P. J. Stead, *Vidocq*, London: Staples Press, 1958. Early American urban police is described in Roger Lane, *Policing the City: Boston 1822-1885*, Cambridge, Mass.: Harvard University Press, 1967; and in the literature cited therein.

³ J. Q. Wilson cites evidence that improvements undertaken under the leadership of America's foremost police reformer, O. W. Wilson, did not result in better public attitudes; see his "Police Morale, Reform, and Citizen Respect: The Chicago Case," in D. J. Bordua (ed.), *The Police: Six Sociological Essays*, New York: John Wiley & Sons, 1967, pp. 137-162.

long range decisions are apt to be formulated. For this reason, it is of utmost importance to bring as much clarity as possible to the ongoing debate now.

The survival of the unmitigatedly critical attitude toward the police, in the face of patent improvements, implies a concern of far greater complexity than the ordinary exchanges of denunciation and defense are likely to reveal. Surely the police are not bad in some such simple sense that those who have the power to eliminate existing shortcomings could do so if they would just set their minds to it. Nor is it reasonable to assume that all the persistent critics are merely devious or fickle. Instead, it would appear more probable that in the heat of polemics some facts and some judgments shifted out of line, that many polemic opponents argue from positions that are submerged in tacit and conflicting presuppositions, and the task of analysis and pending reform could only be advanced beyond its present impasse by first setting forth as unambiguously as possible the terms on which the police must be judged in general and in all the particulars of their practices. Without such prior specifications of the proper terms of critique, it will continue to take the form of a desultory array of animadversions. Moreover, such a critique, employing arbitrary and *ad hoc* criteria of judgment, will unavoidably alienate the police, will strengthen their defensive and distrustful posture, and will cause, at best, a patchwork of reform, the main effect of which will be to shift malpractice from one form to another.

The formulation of criteria for judging any kind of institutional practice, including the police, rather obviously calls for the solution of a logically prior problem. Clearly it is necessary that it be known *what* needs to be done before anyone can venture to say *how* it is to be done well. In the case of the police, this sets up the requirement of specifying the police role in society. Simple as this demand may seem on first glance, it presents difficulties that are more commonly avoided than addressed. Were such avoidance explicit it might do little harm; unfortunately it is often obscured by specious programmatic idealizations. Thus, we are often told that the role of the police is supposed to center around law enforcement, crime control, and peacekeeping. The principal import of such statements is not to inform, but to maintain the pretense of understanding and agreement. Because such statements of function are abstract and do not restrict the interpretations that can be given to them, they can be as easily invoked to serve the polemic purposes of those who find fault with existing practices as of those who sound the fanfare of praise of the police. Nor is it very helpful to elaborate the official formulas in finer detail as long as the elaborations remain on the

level of abstract moral, legal, or political theory. As David Hume has demonstrated long ago, all efforts at a transition from the *ought* to the *is* can be achieved speculatively only by unwarranted and arbitrary inferences,⁴ with the result that those who begin by talking amicably suddenly and unaccountably find themselves locked in bitter enmity without knowing when their seeming agreement collapsed.

The point of all this is not that programmatic idealizations are not important, but that they are important precisely to the extent that there is agreement on how they are to be interpreted in actual practice. This is not an easy matter because references to practice can easily be subverted to serve the purposes of abstract theorizing. That is, many a theoretician is fully prepared to concede that what is perceived as *in principle desirable* needs to be perceived in ways that are attuned to realities, only to go on from this concession to the formulation of subsidiary rules concerning what is *in principle practical*. For example, Joseph Goldstein argued in an immensely important and justly influential paper that the law enforcement function of the police cannot be properly understood when considered solely in terms of principles of pure legality. Far from merely applying legal maxims in a ministerial manner, police employ discretion in invoking the law. Thus, they in effect draw the outer perimeter of law enforcement, a power that is certainly not officially assigned to them. Because policemen often make decisions that are essentially "invisible" and subject to no review, especially when they decide not to make arrests, Goldstein concluded that they should be brought under the control of some subsidiary rules, compliance with which would be insured by the scrutiny of an official agency.⁵ While the proposal that discretion should be reviewable is meritorious, the hope that its scope can be curtailed by the formulation of additional norms is misguided. Contrary to the belief of many jurists, new rules do not restrict discretion but merely shift its locus.

The main reason why the abstract formulations of the police mandate cannot be brought closer to the conditions of actual practice by more detailed rulemaking, even when such more detailed rules are devised under the aegis of in-principle practicality, is that all formal rules of conduct are basically de-

⁴ David Hume, *A Treatise of Human Nature* (L. A. Selby Bigge, ed.), Oxford: Clarendon Press, 1896, Book 3, Part I, Section I.

⁵ Joseph Goldstein, "Police Discretion Not To Invoke the Criminal Process: Low Visibility Decisions in the Administration of Justice," *Yale Law Journal*, 69 (1960) 543-594; see also H. L. Packer, "Two Models of the Criminal Process," *University of Pennsylvania Law Review*, 113 (1964) 1-68; S. H. Kadish, "Legal Norm and Discretion in the Police and Sentencing Process," *Harvard Law Review*, 75 (1962) 904-931; and, W. R. LaFave, "The Police and Non-enforcement of the Law," *Wisconsin Law Review*, (1962) 104-137, 179-239.

feasible.⁶ To say that rules are defeasible does not merely admit the existence of exceptions; it means asserting the far stronger claim that the domain of presumed jurisdiction of a legal rule is essentially open ended. While there may be a core of clarity about its application, this core is always and necessarily surrounded by uncertainty. Consequently, in real life—as opposed to certain simple games—the element of mootness can never be eliminated. And since it is imponderable what either total certainty or total uncertainty might mean in rule compliance, talk about the reduction of rule ambiguity has all the earmarks of image mongering. The realization that all legal rules are defeasible need not lead to what in contemporary jurisprudence is known as rule scepticism.⁷ For as Edward Levy argued, “Legal reasoning has a logic of its own. Its structure fits it to give meaning to ambiguity and to test constantly whether the society has come to see new differences or similarities.”⁸ But the realization of the defeasibility of rules does indicate that the discernment of the function of a public agency, in our case the police, cannot be achieved by working down from broadly conceived programmatic idealizations, or, at least, that proceeding in this manner produces a quest of highly uncertain promise. No matter how far we descend on the hierarchy of more and more detailed formal instruction, there will always remain a step further down to go, and no measure of effort will ever succeed in eliminating, or even in meaningfully curtailing, the area of discretionary freedom of the agent whose duty it is to fit rules to cases. In the final analysis, we can send even the most completely instructed patrolman out on his round only if we have grounds for believing that he will know what the instructions mean when he faces a situation that appears to call for action.⁹ We cannot spare him the task of judging the correctness of the fit. And if this is so in the final analysis, we should be well advised to take account of it in the first instance as well. Accordingly, instead of attempting to divine the role of the police from programmatic idealizations, we should seek to discern this

⁶ L. G. Boonin, “Concerning the Defeasibility of Legal Rules,” *Philosophy and Phenomenological Research*, 26 (1966) 371-378.

⁷ The term “rule-scepticism” is part of the polemics of modern American jurisprudence; see F. S. Cohen, “Transcendental Nonsense and the Functional Approach,” *Columbia Law Review*, 35 (1935) 809-849; see also Jerome Frank, *Courts on Trial: Myth and Reality in American Justice*, Princeton, N.J.: Princeton University Press, 1949.

⁸ E. H. Levi, *An Introduction to Legal Reasoning*, Chicago: University of Chicago Press, 1948, p. 104.

⁹ F. J. Remington writes, “Even the most careful revision, such as those accomplished in Wisconsin, Illinois, and Minnesota, will not produce a criminal code which is capable of mechanical application to the wide variety of situations which arise. Legislatures expect that law enforcement agencies will exercise good judgment in developing an enforcement program.” at p. 362 of his “The Role of Police in a Democratic Society,” *Journal of Criminal Law, Criminology and Police Science*, 56 (1965) 361-365.

role by looking to those reality conditions and practical circumstances to which the formulas presumably apply. Naturally, we cannot afford to forget the terms of the abstractly formulated mandate. We would not know what to look for if we did. But we will keep them in mind as something to be worked back to, rather than as a point of departure. In sum, the task we have set for ourselves is to elucidate the role of the police in modern American society by reviewing the exigencies located in practical reality which give rise to police responses, *and* by attempting to relate the actual routines of response to the moral aspirations of a democratic polity.

II. Popular Conceptions About The Character Of Police Work

The abandonment of the norm-derivative approach to the definition of the role of the police in modern society immediately directs attention to a level of social reality that is unrelated to the ideal formulations. Whereas in terms of these formulations police activity derives its meaning from the objectives of upholding the law, we find that in reality certain meaning features are associated with police work that are largely independent of the objectives. That is, police work is generally viewed as having certain character traits we take for granted, and which control dealings between policemen and citizens, on both sides. Though we are lacking in adequate evidence about these matters, the perceived traits we will presently discuss are universally accepted as present and the recognition of their presence constitutes a realistic constraint on what is expected of the police and how policemen actually conduct themselves. It is important to emphasize that even while some of these ideas and attitudes are uncritically inherited from the past they are far from being totally devoid of realism. In the police literature these matters are typically treated under either euphemistic or cynical glosses. The reason for this evasion is simple, the Sunday school vocabulary we are forced to employ while talking about any occupational pursuit as dignified, serious, and necessary forces us to be either hypocritical or disillusioned, and prevents us from dealing realistically with the facts and from being candid about opinion.

Among the traits of character that are commonly perceived as associated with police work, and which thus constitute in part the social reality within which the work has to be done, the following three are of cardinal importance.

1. Police work is a tainted occupation. The origins of the stigma are buried in the distant past and while much has been said and done to erase it, these efforts have been notably unsuccessful. Medieval watchmen, recruited from among the ranks of the destitute and subject to satirical portrayals, were perceived to belong to the world of shadows they were supposed to contain.¹⁰ During the period of the absolute monarchy the

¹⁰ Werner Dankert, *Unehrliche Menschen: Die Verfehmten Berufe*, Bern: Francke Verlag, 1968.

police came to represent the underground aspects of tyranny and political repression, and they were despised and feared even by those who ostensibly benefitted from their services. No one can say how much of the old attitude lives on; some of it probably seeps into modern consciousness from the continued reading of nineteenth century romantic literature of the Victor Hugo variety. And it cannot be neglected that the mythology of the democratic polity avidly recounts the heroic combat against the police agents of the old order. But even if the police officer of today did not evoke the images of the past at all, he would still be viewed with mixed feelings, to say the least. For in modern folklore, too, he is a character who is ambivalently feared and admired, and no amount of public relations work can entirely abolish the sense that there is something of the dragon in the dragon-slayer.¹¹ Because they are posted on the perimeters of order and justice in the hope that their presence will deter the forces of darkness and chaos, because they are meant to spare the rest of the people direct confrontations with the dreadful, perverse, lurid, and dangerous, police officers are perceived to have powers and secrets no one else shares. Their interest in and competence to deal with the untoward surrounds their activities with mystery and distrust. One needs only to consider the thoughts that come to mind at the sight of policemen moving into action: here they go to do something the rest of us have no stomach for! And most people naturally experience a slight tinge of panic when approached by a policeman, a feeling against which the awareness of innocence provides no adequate protection. Indeed, the innocent in particular typically do not know what to expect and thus have added, even when unjustified, reasons for fear. On a more mundane level, the mixture of fear and fascination that the police elicit is often enriched by the addition of contempt. Depending on one's position in society, the contempt may draw on a variety of sources. To some the leading reason for disparaging police work derives from the suspicion that those who do battle against evil cannot themselves live up fully to the ideals they presumably defend. Others make the most of the circumstance that police work is a low-paying occupation, the requirements for which can be met by men who are poorly educated. And some, finally, generalize from accounts of police abuses that come to their attention to the occupation as a whole.

It is important to note that the police do very little to discourage unfavorable public attitudes. In point of fact, their sense

¹¹ G. S. McWatters wrote about the typical policeman, after many years of being one himself, "He is the outgrowth of a diseased and corrupted state of things, and is, consequently, morally diseased himself." quoted in Lane, *op. cit. supra*, Note 2 at p. 69.

of being out of favor with a large segment of the society has led them to adopt a petulant stance and turned them to courting the kinds of support which, ironically, are nothing but a blatant insult. For the movement that is known by the slogan, "Support your local police," advocates the unleashing of a force of mindless bullies to do society's dirty work. Indeed, if there is still some doubt about the popular perception of police work as a tainted occupation, it will surely be laid to rest by pointing to those who, under the pretense of taking the side of the police, imply that the institution and its personnel are uniformly capable and willing to act out the baser instincts inherent in all of us.

In sum, the taint that attaches to police work refers to the fact that policemen are viewed as the fire it takes to fight fire, that they in the natural course of their duties inflict harm, albeit deserved, and that their very existence attests that the nobler aspirations of mankind do not contain the means necessary to insure survival. But even as those necessities are accepted, those who accept them seem to prefer to have no part in acting upon them, and they enjoy the more than slightly perverse pleasure of looking down on the police who take the responsibility of doing the job.

2. Police work is not merely a tainted occupation. To draw a deliberately remote analogy, the practice of medicine also has its dirty and mysterious aspects. And characteristically, dealings with physicians also elicit a sense of trepidated fascination. But in the case of medicine, the repulsive aspects, relating to disease, pain, and death, are more than compensated by other features, none of which are present in police work. Of the compensatory features, one is of particular relevance to our concerns. No conceivable human interest could be opposed to fighting illness; in fact, it is meaningless to suppose that one could have scruples in opposing disease. But the evils the police are expected to fight are of a radically different nature. Contrary to the physician, the policeman is always opposed to some articulated or articulable human interest. To be sure, the police are, at least in principle, opposed to only reprehensible interests or to interest lacking in proper justification. But even if one were to suppose that they never err in judging legitimacy—a farfetched supposition, indeed—it would still remain the case that police work can, with very few exceptions, accomplish something *for* somebody only by proceeding *against* someone else. It does not take great subtlety of perception to realize that standing between man and man locked in conflict inevitably involves profound moral ambiguities. Admittedly, few of us are constantly mindful of the saying, "He that is without sin among you, let him cast the first stone . . .", but only the police

are explicitly required to forget it. The terms of their mandate and the circumstances of their practices do not afford them the leisure to reflect about the deeper aspects of conflicting moral claims. Not only are they required to proceed forcefully against all appearances of transgression but they are also expected to penetrate the appearance of innocence to discover craftiness hiding under its cloak. While most of us risk only the opprobrium of foolishness by being charitable or gullible, the policeman hazards violating his duty by letting generosity or respect for appearances govern his decisions.

Though it is probably true that persons who are characterologically inclined to see moral and legal problems in black and white tend to choose police work as a vocation more often than others, it is important to emphasize that the need to disregard complexity is structurally built into the occupation. Only after a suspect is arrested, or after an untoward course of events is stopped, is there time to reflect on the merits of the decision and, typically, that reflective judgment is assigned to other public officials. Though it is expected that policemen will be judicious and that experience and skill will guide them in the performance of their work, it is foolish to expect that they could always be both swift and subtle. Nor is it reasonable to demand that they prevail, where they are supposed to prevail, while hoping that they will always handle resistance gently. Since the requirement of quick and what is often euphemistically called aggressive action is difficult to reconcile with error-free performance, police work is, by its very nature, doomed to be often unjust and offensive to someone. Under the dual pressure to "be right" and to "do something," policemen are often in a position that is compromised even before they act.¹²

In sum, the fact that policemen are required to deal with matters involving subtle human conflicts and profound legal and moral questions, without being allowed to give the subtleties and profundities anywhere near the consideration they deserve, invests their activities with the character of crudeness. Accordingly, the constant reminder that officers should be wise, considerate, and just, without providing them with opportunities to exercise these virtues is little more than vacuous sermonizing.

3. The ecological distribution of police work at the level of departmentally determined concentrations of deployment, as well

¹² Erle Stanley Gardner, the prolific detective story writer, reports being troubled by the apparent need for the "dumb" cop in fiction. When he attempted to remedy this and depicted a policeman in favorable colors in one of his books, bookdealers and readers rose in protest; see his "The Need for New Concepts in the Administration of Criminal Justice," *Journal of Criminal Law, Criminology and Police Science*, 50 (1959) 20-26; see also, G. J. Falk, "The Public's Prejudice Against the Police," *American Bar Association Journal*, 50 (1965) 754-757.

as in terms of the orientations of individual police officers, reflects a whole range of public prejudices. That is, the police are more likely to be found in places where certain people live or congregate than in other parts of the city. Though this pattern of manpower allocation is ordinarily justified by references to experientially established needs for police service, it inevitably entails the consequence that some persons will receive the dubious benefit of extensive police scrutiny merely on account of their membership in those social groupings which invidious social comparisons locate at the bottom of the heap.¹³ Accordingly, it is not a paranoid distortion to say that police activity is as much directed to who a person is as to what he does.

As is well known, the preferred targets of special police concern are some ethnic and racial minorities, the poor living in urban slums, and young people in general.¹⁴ On the face of it, this kind of focusing appears to be, if not wholly unobjectionable, not without warrant. Insofar as the above-mentioned segments of society contribute disproportionately to the sum total of crime, and are more likely than others to engage in objectionable conduct, they would seem to require a higher degree of surveillance. In fact, this kind of reasoning was basic to the very creation of the police; for it was not assumed initially that the police would enforce laws in the broad sense, but that they would concentrate on the control of individual and collective tendencies towards transgression and disorder issuing from what were referred to as the "dangerous classes."¹⁵ What was once a frankly admitted bias is, however, generally disavowed in our times. That is, in and of itself, the fact that someone is young, poor, and dark-complexioned is not supposed to mean anything whatsoever to a police officer. Statistically considered, he might be said to be more likely to run afoul of the law, but individually, all things being equal, his chances of being left alone *are supposed* to be the same as those of someone who is middle aged, well-to-do, and fair-skinned. In fact, however, exactly the opposite is the case. All things being equal, the

¹³ V. W. Piersante, Chief Detective of the Detroit Police Department, has juxtaposed with remarkable perceptiveness the considerations which, on the one hand, lead to dense and suspicious surveillance of certain groups because of their disproportionate contribution to crime totals, while on the other hand, these tactics expose the preponderant majority of law-abiding members of these groups to offensive scrutiny. He stated, "In Detroit in 1964 a total of 83,135 arrests were made . . . of this 58,389 were Negroes . . . This means that 89 percent of the Negro population were never involved with the police . . ." quoted at p. 215 in Harold Norris, "Constitutional Law Enforcement Is Effective Law Enforcement," *University of Detroit Law Journal*, 42 (1965) 203-234.

¹⁴ Gilbert Geis, *Juvenile Gangs*, A Report Produced for the President's Committee on Juvenile Delinquency and Youth Crime, Washington, D.C.: U.S. Government Printing Office, June 1965; Carl Werthman and Irving Piliavin, "Gang Membership and the Police," in Bordua (ed.), *op. cit. supra*, Note 3 at pp. 56-98.

¹⁵ Allan Silver, "The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot," in Bordua (ed.), *op. cit. supra*, Note 3 at pp. 1-24.

young-poor-black and the old-rich-white doing the very same things under the very same circumstances will almost certainly not receive the same kind of treatment from policemen. In fact, it is almost inconceivable that the two characters could ever appear or do something in ways that would mean the same thing to a policeman.¹⁶ Nor is the policeman merely expressing personal or institutional prejudice by according the two characters differential treatment. Public expectations insidiously instruct him to reckon with these "factors." These facts are too well known to require detailed exposition, but their reasons and consequences deserve brief consideration.

In the first place, the police are not alone in making invidious distinctions between the two types.¹⁷ Indeed the differential treatment they accord them reflects only the distribution of esteem, credit, and desserts in society at large. Second, because of their own social origins, many policemen tend to express social prejudices more emphatically than other members of society.¹⁸ Third, policemen are not merely like everybody else, only more so; they also have special reasons for it. Because the preponderant majority of police interventions are based on mere suspicion or on merely tentative indications of risk, policemen would have to be expected to judge matters prejudicially even if they personally were entirely free of prejudice. Under present circumstances, even the most completely impartial policeman who merely takes account of probabilities, as these probabilities are known to him, will feel reasonably justified in being more suspicious of the young-poor-black than of the old-rich-white, and once his suspicions are aroused, in acting swiftly and forcefully against the

¹⁶ J. Q. Wilson writes, "The patrolman believes with considerable justification that teenagers, Negroes, and lower-income persons commit a disproportionate share of all reported crimes; being in those population categories at all makes one, statistically, more suspect than other persons; but to be in those categories and to behave unconventionally is to make oneself a prime suspect. Patrolmen believe that they would be derelict in their duty if they did not treat such persons with suspicion, routinely question them on the street, and detain them for longer questioning if a crime has occurred in the area. To the objection of some middle-class observers that this is arbitrary and discriminatory, the police are likely to answer: 'Have you ever been stopped and searched? Of course not. We can tell the difference; we have to tell the difference in order to do our job. What are you complaining about?'" at pp. 40-41 of his *Varieties of Police Behavior: The Management of Law and Order in Eight Communities*, Cambridge, Mass.: Harvard University Press, 1968.

¹⁷ Of primary significance in this respect is that the courts make the same kinds of invidious distinctions even as they follow the law; see J. E. Carlin, Jan Howard, and S. L. Messinger, "Civil Justice and the Poor," *Law and Society*, 1 (1966) 8-89, and Jacobus tenBroek (ed.), *The Law of the Poor*, San Francisco, California: Chandler Publishing Co., 1966.

¹⁸ Reference is made to the evidence that persons of working class origin are more prone than others to harbor attitudes that are favorable to politics of prejudice and authoritarianism; see S. L. Lipset, "Democracy and Working Class Authoritarianism," *American Sociological Review*, 24 (1959) 482-501; "Social Stratification and Right Wing Extremism," *British Journal of Sociology*, 10 (1959) 346-382; "Why Cops Hate Liberals—and Vice Versa," *Atlantic Monthly*, (March 1969).

former while treating the latter with reserve and deference. For as the policeman calculates risk, the greater hazard is located on the side of inaction in one case, and on the side of unwarranted action in the other.

That policemen deal differently with types of people who are thought always to be "up to something" than with people who are thought to have occasional lapses but can otherwise be relied upon to conduct their affairs legally and honorably, does not come as a surprise, especially if one considers the multiple social pressures that instruct the police not to let the unworthy get away with anything and to treat the rest of the community with consideration. But because this is the case, police work tends to have divisive effects in society. While their existence and work do not create cleavages, they do magnify them in effect.

The police view of this matter is clear and simple—too simple, perhaps. Their business is to control crime and keep the peace. If there is some connection between social and economic inequality, on the one hand, and criminality and unruliness, on the other hand, this is not their concern. The problem is not, however, whether the police have any responsibilities with regard to social injustice. The problem is that by distributing surveillance and intervention selectively they contribute to already existing tensions in society. That the police are widely assumed to be a partisan force in society is evident not only in the attitudes of people who are exposed to greater scrutiny; just as the young-poor-black expects unfavorable treatment, so the old-rich-white expects special consideration from the policeman. And when two such persons are in conflict, nothing will provoke the indignation of the "decent" citizen more quickly than giving his word the same credence as the word of some "ne'er-do-well."¹⁰

The three character traits of police work discussed in the foregoing remarks—namely, that it is a tainted occupation, that it calls for peremptory solutions for complex human problems, and that it has, in virtue of its ecological distribution, a socially divisive effect—are structural determinants. By this is meant mainly that the complex of reasons and facts they encompass are not easily amenable to change. Thus, for example, though the stigma that attaches to police work is often viewed as merely reflecting

¹⁰ Arthur Niederhoffer, a former ranking police official, writes, "The power structure and the ideology of the community, which are supported by the police, at the same time direct and set boundaries to the sphere of police action." at p. 18 of his *Behind the Shield: The Police in Urban Society*, New York: Anchor Books, 1969; Niederhoffer cites an even stronger statement to that effect from Joseph Lohman, a former sheriff of Cook County, Ill., and later Dean of the School of Criminology at the University of California at Berkeley.

the frequently low grade and bungling personnel that is currently available to the institution, there are good reasons to expect that it would continue to plague a far better prepared and a far better performing staff. For the stigma attaches not merely to the ways policemen discharge their duties, but also to what they have to deal with. Similarly, while it is probably true that moral naïveté is a character trait of persons who presently choose police work as their vocation, it is unlikely that persons of greater subtlety of perception would find it easy to exercise their sensitivity under present conditions. Finally, even though discriminatory policing is to some extent traceable to personal bigotry, it also follows the directions of public pressure, which, in turn, is not wholly devoid of factual warrant.

The discussion of the structural character traits of police work was introduced by saying that they were independent of the role definitions formulated from the perspective of the norm-derivative approach. The latter interprets the meaning and adequacy of police procedure in terms of a set of simply stipulated ideal objectives. Naturally these objectives are considered desirable; more importantly, however, the values that determine the desirability of the objectives are also used in interpreting and judging the adequacy of procedures employed to realize them. Contrary to this way of making sense of police work, the consideration of the structural character traits was meant to draw attention to the fact that there attaches a sense to police work that is not inferentially derived from ideals but is rooted in what is commonly known about it. What is known about the police is, however, not merely a matter of more or less correct information. Instead, the common lore furnishes a framework for judging and interpreting their work. In crudest form, the common lore consists of a set of presuppositions about the way things are and have to be. Thus, for instance, whatever people assume to be generally true of the police will be the thing that a particular act or event will be taken to exemplify. If it is believed that police work is crude, then within a very considerable range of relative degrees of subtlety, whatever policemen will be seen doing will be seen as crudeness.

In addition to the fact that the normative approach represents an exercise in formal, legal inference, while the structural character traits reflect an approach of informal, commonsense practicality, the two differ in yet another and perhaps more important aspect. The normative approach does not admit the possibility that the police may, in fact, not be oriented to those objectives. Contrary to this, the sense of police activity that comes to the fore

from the consideration of the character traits assigned to it by popular opinion and attitude leaves the question open.²⁰

Since we cannot rely on abstract formulations that implicitly rule out the possibility that they might be entirely wrong, or far too narrow, and since we cannot depend on a fabric of common-sense characterizations, we must turn to still other sources. Of course, we can no more forget the importance of the popularly perceived character traits than we can forget the formulas of the official mandate. To advance further in our quest for a realistic definition of the police role, we must now turn to the review of certain historical materials that will show how the police moved into the position in which they find themselves today. On the basis of this review, in addition to what was proposed thus far, we will be able to formulate an explicit definition of the role of the institution and its officials.

²⁰ The normative approach is perhaps best exemplified in Jerome Hall, "Police and Law in a Democratic Society," *Indiana Law Journal*, 2 (1953) 133-177, where it is argued that the structure of police work must be understood as decisively determined by the duty to uphold the law and every police action must be interpreted in relation to this objective. The man on the street, however, approaches police work from a different vantage point. He probably supposes that police work has something to do with law enforcement, but to him this is mainly a figure of speech which does not limit his freedom to decide what the police are really for from case to case.

III. The Cultural Background Of The Police Idea

The police, as we know it today, is a creature of English society in the second quarter of the nineteenth century.²¹ The location of origin reflects the fact that England was, at that time, further advanced along the path of development as an urban-industrial society than other states. In due course, the model was adopted everywhere else, albeit with modifications required by different traditions and different forms of political organization. In the United States the first modern police department was created by the State of New York for the city of New York, in accordance with recommendations made by a committee that was earlier sent to London to study the English model. Other American cities quickly acquired similar departments. Even though older forms of policing continue to exist, notably the office of the sheriff, and some new forms were added more recently, e.g., the Federal Bureau of Investigation, the municipal police department has been by far the most important way of doing police work in the United States since the turn of the century.

The most remarkable fact about the timing of the foundation of the modern police is that it is sequentially the last of the basic building blocks in the structure of modern executive government.²² Military conscription, tax collection, economic and fiscal planning, social service, and a host of other administrative organs antedate the police by several generations. Even public education existed in a limited form in Prussia and in France long before Sir Robert Peel marshalled through Parliament the Bill establishing the Metropolitan Police of London. This seems strange because the absolute monarchies of the seventeenth and eighteenth century had ample reasons for creating the kind of institution that would furnish them with means for the continuous and detailed surveillance of citizens. Yet they did not develop such means, but relied on inherited methods of crime control and met such peacekeeping problems as they confronted by contingently mobilized means. The postponement of the creation of the police calls for an ex-

²¹ The leading historian of the police is Charles Reith. See his *A New Study of Police History*, Edinburgh: Oliver & Boyd, 1956. A brief review of American development is contained in S. A. Chapman and T. E. St. Johnston, *The Police Heritage in England and America*, East Lansing, Mich.: Institute for Community Development and Services, Michigan State University, 1962, and in Lane, *op. cit. supra*, Note 2.

²² Ernest Barker, *The Development of Public Services in Western Europe, 1660-1930*, London: Oxford University Press, 1944.

planation and directs attention to the particular circumstances that surrounded it.²³

In the years following the Peace of Vienna (1815), English society experienced what seemed to have been an alarming escalation of rates of criminality in her cities. Especially in the 1820's, the people of London were startled by a series of extremely brutal crimes of violence.²⁴ Though the country had a history of crime waves dating back to the beginning of the eighteenth century,²⁵ and resorted to a variety of means to control them, the idea of having a police force that would function as an arm of executive government was always strongly resisted. The main reason for the resistance was the fear that the existence of such a force would tip the balance of power in favor of the executive branch of government, leading ultimately to a suppression of civil liberties. Though these fears were never wholly allayed, the advocates of the police gained the upper hand in the debate when it became clear that the inherited methods were utterly incapable of handling the seemingly exploding crime problem. Furthermore, the aftermath of the Napoleonic wars brought forth a sequence of disastrous urban riots that had to be subdued by military force at great expense of life and property. This method of peacekeeping came to be viewed as inefficient as the old forms of crime control since the use of armed repression did not seem to have any noticeable deterrent effects, despite its unrestrained brutality. Reasoning along lines of efficiency was, of course, quite persuasive to a people that deliberately cultivated a spirit of hard-headed business rationality, and it would be easy to say that the police were finally accepted, despite many objections in principle, on grounds of considerations of sheer expediency. But there were other motives at work, too. The inherited methods of crime control and peacekeeping did not only fail in attaining the desired objectives, they were also perceived as incompatible with the ethos of a civil society. The corrupt and brutal thief-catcher extorting a pound of flesh from the wretch he accused of crimes and the yeomanry massacring mobs of hungry protesters in front of St. Peter's Cathedral harked back to a dark and despised past, and offended the sensibilities of a people who were at the threshold of a period of their national history they defined as the acme of civilization.

The sentiment that could not abide the more archaic forms of repressive control of deviance and disorder was an expression of

²³ J. L. Lyman, "The Metropolitan Police Act of 1829," *Journal of Criminal Law, Criminology and Police Science*, 55 (1964) 141-154.

²⁴ Christopher Hibbert, *The Roots of Evil*, Boston, Mass.: Little, Brown & Co., 1963.

²⁵ Leon Radzinowicz, *A History of English Criminal Law*, New York: Macmillan, 1957.

cultural and ideological change initiated in the nineteenth century. It is best described as the rise of the sustained, and thus far not abandoned, aspiration of Western society to abolish violence and install peace as a stable and permanent condition of everyday life.²⁶ To be sure, the history of this aspiration is by and large a history of its failures and those who count only results may judge the avowals of nonviolence as a massive display of hypocrisy. No generation would be more justified in passing this judgment than ours, for the violence we have experienced is overwhelming by the standards of any age. Yet, there can be no doubt that during the past one-hundred-fifty years the awareness of the moral and practical necessity of peace took hold of the minds of virtually all people. The advocacy of warfare and violence did not disappear entirely, but it grew progressively less frank and it keeps losing ground to arguments that condemn it.

The yearning for peace is, of course, not a nineteenth century invention. But it happened only after the end of the Napoleonic wars that attempts were made to develop practical measures to bring its attainment within the orbit of practical possibility. More importantly perhaps, during the nineteenth century the structure of everyday life changed, especially in the cities, in ways indicating that people relied on the efficacy of the means that were available to secure freedom from violence, despite the fact that this reliance was demonstrably hazardous. Though these developments reflect the growth of humane sentiments, they derive more basically from a shift of values in which the virtues associated with material progress and assiduous enterprise gained ascendancy over the virtues of masculine prowess and combative chivalry.

Because the quest for peace has remained such a dubious enterprise, some of the efforts it inspired must be reviewed briefly. As will be shown, proper appreciation of these efforts furnishes the indispensable background for the understanding of the role of the police in modern society.²⁷

At the international level, Europe enjoyed between 1815 and 1914 a period of historically unprecedented tranquility. The system of diplomatic consultations that controlled this state of affairs did not eliminate all belligerence and it failed completely in 1914, as did its successor, the League of Nations, in 1939. Remarkably, however, the lesson nations learned from these reversals did not lead to the abandonment of efforts, but, quite the contrary, to

²⁶ A perhaps overly optimistic review of this trend is contained in Paul Reiwald, *Eroberung des Friedens*, Zürich, Europa Verlag, 1944.

²⁷ The following remarks are not intended as a "well-rounded" picture of the problem of peace and violence during the past 150 years. Instead, they deliberately accent a single trend.

endeavors to form an even more binding commitment to world-wide peacekeeping through the United Nations Organization and through a variety of other regional treaty organizations.

At the level of internal governing, two developments are of particular importance. First, compliance with the demands of political authority became, after the beginning of the nineteenth century, less and less dependent on the direct presence of officials and on threats or the exercise of physical coercion, and more and more on voluntary performances of the governed. Indeed, it is the salient characteristic of modern authority implementation that it interposes distance between those who command and those who obey. It clearly makes a great difference, for example, whether taxes are collected by armed retainers or by means of written communications of demands. And it makes an equally great difference whether the recruitment of conscripts for military service is accomplished through the presence of armed might in villages or by means of mailed notices ordering eligible persons to report to induction centers. The threat of coercion is certainly not absent in modern forms of governing but its elaborate symbolization makes it more remote. The extent to which we have become accustomed to, and take for granted, the indirect ways of authority implementation and peaceful governing is perhaps best illustrated by the fact that the notorious "knock on the door," associated with totalitarian regimes, is generally viewed as the supreme political abomination.²⁸

The second, even clearer indication of progressive avoidance of force in governing is evident in changes in the administration of justice. Up to the nineteenth century it was commonly taken for granted that the criminal process, from accusation, through inquiry and trial, to punishment, must properly involve the systematic mortification of defendants. Punishment for crimes meant death, mutilation, or physical pain. It is sufficient to point to the most obvious changes. The ordeal of inquisition has been entirely abandoned and its psychological forms are condemned. The atmosphere of the modern courtroom, with its emphasis on rationally argued proof and rebuttal—or even in its *sub rosa* dependence on plea bargaining—is profoundly inimical to the traffic of force between accused and accuser. Finally, modern punishment, with its emphasis on rehabilitation, partakes of the nature of an argument against evil. People are sent to prisons to persuade them to mend their ways, more than to suffer deprivation, at least in terms

²⁸ Indirect and symbolic forms of authority implementation can be, of course, even more oppressive in their effects than the permanent presence of the fist at the scruff of the neck. But while political power that rests only on means of violence is repugnant on its face, indirect authority contains at least the possibility of consensual governing.

of the prevailing penal philosophy.²⁹ In fact, it would seem that the criminal process of today, at least in terms of its official script, seeks to dramatize the possibility of life without violence even under conditions where the imposition of coercive sanctions is the business at hand. Again, as in the case of international affairs, it is all too easy to show that reality often belies intentions, but surely it does make a difference whether some methods are used because they are viewed as just and proper or by way of subterfuge.

Parallel to the admittedly insufficient efforts to conduct the affairs of governing in a pacific manner are changes in the manner of conducting private affairs. After ages of unquestioned presence, weapons ceased to be a part of expected male attire in the nineteenth century. Though we are certainly not a disarmed people, especially in the United States, we do not ordinarily consider swords, daggers, and guns as necessary accoutrements in our dealings with others and we require special reasons for carrying them around. The relatively late survival of armed life in the American West is conspicuous by contrast, not only with conditions in Europe, but also in the densely populated urban areas of the eastern part of the United States. Aside from such occasional relics of the past, the use of physical force has all but vanished as an acceptable means for defending one's honor, and certainly as an effective way of advancing interest or gaining honor. Indeed, the vestigial survival of regular patterns of interpersonal violence are perceived either as indications of personal immaturity or as features of "lower-class culture."³⁰ As if we were not fully satisfied with banishing the private use of force from the pale of respectability, our canons of good taste, which also originate in the nineteenth century, require us not only to avoid belligerence but "bodiliness" in general. That is, we tend to suppress, conceal, or deny matters which, through their visceralness, are related to violence. This is understandable when one considers that candor about sex, pain, and death is typically associated with styles of life in which violence is a normal part of daily existence; they are found joined in some pre-literate cultures, in our medieval past, and in "lower-class culture." Even more remarkably, the recent history of medicine reveals some of these trends. Such violent remedies as bloodletting, purging, and cauterization started disappearing from *materia medica* before the full justifi-

²⁹ Egon Bittner and A. M. Platt, "The Meaning of Punishment," *Issues in Criminology*, 2 (1966) 79-99.

³⁰ W. B. Miller, "Lower-Class Culture as a Generating Milieu of Gang Delinquency," *Journal of Social Issues*, 14 (1958) 5-19; Oscar Lewis, "The Culture of Poverty," *Scientific American*, 215 (October, 1966) 19-25.

cation for their abandonment was available, and our efforts to devise anaesthetic procedures, that is procedures that would neutralize unavoidably inflicted pain, have reached a level of complexity requiring an entire medical specialty for its proper administration.

Clearly the foregoing discussion of the pacific tendencies contained in the past century and a half contains one-sided exaggerations. We have repeatedly indicated that it would be naive to view it as an epoch of peace. Indeed, there is some question whether the several generations wanted peace above all. The times were, after all, a period of revolution of both nationalist and social nature.⁸¹ But it was not our intention to render a balanced picture of the recent past, but merely to highlight one aspect of it. Our main point is that the trend towards the achievement of peace is basically new in Western history, even as we admit that it is continuously in danger of being overwhelmed by counter-tendencies.

One last comment is necessary before concluding the discussion of the importance of the ideal of peace and nonviolence in modern civilization. It is often said that our morality is based on precepts epitomized in the teachings of the Prince of Peace and on the humane wisdom of Socratic philosophy. Whatever the influence of these inspirations might have been, it appears that our quest for peace, such as it was and is, draws mainly on other sources. In the two thousand years since their announcement, neither religious faith nor humanistic concern led to even perfunctory efforts of practical implementation. The aspiration to peace that has finally led to some realistic steps towards its attainment derives from the lackluster ethic of utilitarianism. According to its maxims we are directed to sacrifice the lesser and momentary interests of personal gratification for the benefit of the greater common good. The common good, however, is not advocated as an abstract ideal because within it is located the greater advantage of every individual. Accordingly, our desire to abolish violence is fundamentally based not on the belief that it is spiritually reprehensible, but on the realization that it is foolish. Forceful attack and the defense it provokes have an unfavorable input/output ratio; they are a waste of energy. A simple, hardheaded, business-like calculus of preference dictates that coercive force, especially of a physical nature, is at best an occasionally unavoidable evil. Jeremy Bentham, the leading prophet of this outlook, taught that even legal punishment was, in and of itself, mischie-

⁸¹ E. J. Hobsbawm entitled his book dealing with the first one-third of the period, *The Age of Revolution*, London: Weidenfeld & Nicolson, Ltd., 1962. American developments have been superbly reviewed in H. D. Graham and T. R. Gurr (eds.), *Violence in America*, New York: Signet Books, 1969; the preparation of this collection of studies was undertaken for the National Commission on the Causes and Prevention of Violence.

vous and defensible solely in such minimal forms and measures as was necessary to contain those few who could not or would not see that their advantage too was on the side of cooperation rather than conflict.³²

Though it is always hazardous to formulate estimates of historical necessity, it would seem to be exceedingly unlikely that the idea of the modern police could have arisen in any other cultural context except that described above. In any case, though some forms of policing existed in many different societies and many different time periods, none of these forms resembled our institution even remotely.

³² For a review of Bentham's teachings concerning penal law and punishment, see James Heath, *Eighteenth Century Penal Philosophy*, London: Oxford University Press, 1963, esp. pp. 219-220. The source, mainstream, and influence of Benthamite philosophy are described in Elie Halevy, *The Growth of Philosophical Radicalism*, Boston: Beacon Press, 1955.

IV. The Courts And The Police

It is of the utmost importance for the understanding of the role of the police in modern society that its relations to the courts be set forth as clearly as possible. It is no exaggeration to say that much, perhaps most, of the present confusion about the police, and a great deal of empty polemic, are due to the lack of clarity on this point. Most legal writers do not know enough about police work to understand how it might relate to what the courts do, and most authors familiar with police procedure do not have an adequate appreciation of the nature of the legal process to discern the proper connection. Having indicated everybody's lack of competence, we are compelled to confess that what will be proposed below will not be offered as a proven explanation. Instead, the following remarks are offered as a possibly correct line of reasoning, in the hope that more extensive and more expert study along the proposed lines will help in casting light on what has thus far been left to loose conjecture.

Though there still attaches a great deal of esoteric mystery to the administration of justice, not only in the minds of lay people but also among jurists, its historical development in the Western world has been a movement away from unaccountable oracular judgment to a method of operation that is in all its important aspects restricted by explicit norms deriving from substantive and procedural law.³³ Indeed, there are good reasons for arguing that the modern penal law has become mainly, perhaps exclusively, a device for rationalizing courtroom procedure, and that its proscriptions and prescriptions are not addressed to anyone but the judges.³⁴ Contrary to the Biblical Decalogue, for example, contemporary penal statutes do not forbid or command any kind of citizen conduct. Instead, they merely stipulate that some proven actions and some proven omissions authorize and enjoin legal officials to proceed against the offending person. The powers to proceed are always set at a level of a fixed legal norm, which no legal official may exceed with impunity, regardless of circum-

³³ The history of the administration of justice, even only in the West, is of course a far more complex matter than this statement allows. For a statement of the ascendancy of what he calls the "formal rationalization" of the law, see Max Weber, *On Law in Economy and Society* (Max Rheinstein, ed.), Cambridge, Mass.: Harvard University Press, 1954.

³⁴ This position is espoused by the so-called Scandinavian School of Jurisprudence, whose main representatives are Karl Olivecrona and Alf Ross. An exposition of their views is contained in Norberto Bobbio, "Law and Force," *The Monist*, 49 (1965) 321-341.

stances. Moreover, when the presumed applicability of a legal norm specifying the imposition of a penal sanction is challenged by an accused person's plea of not guilty, or some other defense or rebuttal of charges, then this challenge must receive deliberately exhaustive consideration in open court. That is, the case the government opposes to the defendant's claim of innocence must be demonstrated by a method of reasoned proof which, in principle, calls for meticulous respect of the accused person's civil rights, even when such respect will defeat an otherwise meritorious cause. The procedural norm that requires that every indictment be left open to debate in court and that facts introduced in support of it must not only be true, but also legally admissible, points to a reluctance to invoke sanctions on any but unimpeachably reasoned grounds. And reasoned justification is required not only to convict but also to acquit or to dismiss.

It is only fair to admit two objections to the above description of the ways justice is administered in our courts. In the first place, the legalization of the criminal process is in reality not as complete as these remarks suggest. One can cite many examples of jurisdictions in which the legal rights of defendants are not only not observed in fact but to which the protections do not even extend under the law. Aside from such obvious instances of departure from the rule of law in the strict sense as the military and juvenile administration of justice, one need only point to the fact that jury deliberations are not really in accordance with the spirit of legality, if only because of their secrecy.³⁵ In the second place, and more importantly, it could be said that the version of the criminal process that was outlined is a mere facade. After all, the preponderant majority of cases that come before our criminal courts do not go to trial and, therefore, never receive the benefit of careful scrutiny and legal protection. Instead, they are disposed of by means of covert plea-bargaining which is based on considerations of practical expediency rather than legality.³⁶

Though these objections are well taken, they can be set aside easily. As concerns the first, there can be no doubt that the progressive legalization of the criminal process has been the dominant trend for a long time and that this trend has accelerated in recent decades to the point where the rapidity of change bewilders even seasoned jurists. This movement might suffer an occasional setback, but the possibility of a reversal is imponder-

³⁵ Weber wrote, "The jury, as it were, thus took the place of the oracle, and indeed it resembles it inasmuch as it does not indicate rational grounds for its decisions." *Op. cit. supra*, Note 33 at p. 79; see also Patric Devlin, *Trial by Jury*, London: Methuen, University Paperbacks, 1966.

³⁶ D. J. Newman, *Conviction: The Determination of Guilt or Innocence without Trial*, Boston: Little, Brown & Co., 1966.

able without assuming a radical change in our system of government, a consideration which is beyond the scope of this analysis. With reference to the second objection, it must be said to begin with that evasions of legal restriction always have and probably always will abound in the administration of justice;³⁷ it is difficult to be so naive as not to recognize the fact and, indeed, its necessity. More important is that the scope, methods, and objectives of subterfuge are themselves determined by the official norm. No one can possibly understand the why, the what, and the what for, of the *sub rosa* bargaining between the district attorney and defense counsel without knowing what might happen in court if the case at hand went to trial. No district attorney in his right mind would offer a reduction in charges when he has conclusive and admissible evidence. And no responsible defense counsel will offer a plea of guilty in trade for a reduced charge when he knows that there is no legal case against his client. Considerations of expediency, such as the desire to save time and work, certainly play a part in the pleas bargaining, but only totally corrupt lawyers base settlements entirely on such considerations, though it must be admitted that totally corrupt lawyers are probably not quite as rare as one would hope. In general, however, the norms observable in open court reach down and govern even the processes of its evasion. In the criminal process, like in chess, the game is rarely played to the end, but it is a rare chess player who concedes defeat merely to save time. Instead, he concedes because he knows or can reasonably guess what would happen if he persisted to play to the end. And thus the rules of the end-game are valid determinants of chessplaying even though they are relatively rarely seen in action. It is for these reasons that we hold to our description of the criminal process against the objections.

Now, the flow of business of the criminal courts is virtually completely supplied by the police. According to the Common Law, judges were not obliged, nor were they entitled, to inquire how the police secured this flow of business in the first place. That is, how the policeman learned about the delict, how he apprehended the putative culprit, and how he collected evidence to support his allegations had no bearing on the subsequent trial. While no judge would allow that a defendant be compelled to testify against himself during his trial, he cared not what the police did to obtain the evidence as long as there were no compelling reasons for assuming that it might be false in substance. This rule was re-

³⁷ Egon Bittner, "The Concept of Mental Abnormality in the Administration of Justice Outside the Courtroom," in A. V. S. de Reuck and Ruth Porter (eds.), *The Mentally Abnormal Offender: A Ciba Foundation Symposium*, London: A. & J. Churchill, 1968, pp. 201-213.

versed in the United States in 1914. Since then the United States Supreme Court has issued a series of rulings requiring the police to observe certain legal restrictions in questioning, detention, and search and seizure.³⁸ To all appearances, therefore, the judges have become the custodians of the legality of police procedure, even as they are the custodian of the legality of courtroom procedure. In point of fact, however, the appearances are deceiving and nothing could be further from the truth. Our courts have no control over police work, never claimed to have such control, and it is exceedingly unlikely that they will claim such powers in the foreseeable future, all things being equal.³⁹ Indeed, the courts have, today, even less control over the police than they have over attorneys in private practice.

Since the assertion that the courts have no power to compel the police to comply with norms of legality is a strong assertion that flies in the face of widespread assumption, it deserves further documentation. Let us begin with an example. It is generally correctly taken for granted that a policeman may, on the basis of no more than intuited suspicion, stop a person in a public place (actually, he may effectively do so anywhere, but we let this point pass) and demand of this person that he identify himself and explain the nature of his business on the scene. It is also rightly assumed that the officer may place such a person under arrest if the answers he receives do not satisfy him. All this does not seem such an unreasonable power considering that evil stalks our streets under the guise of innocence, and considering that the cost of inconvenience and possible error might be a small price to pay for the prevention of a possibly much greater disaster. Yet it is remarkable nevertheless that such inquiries cannot be addressed anywhere in the entire criminal process by any official of the

³⁸ The rule that overturned common law doctrine concerning the admissibility of evidence regardless of the illegality of means by which it was obtained was first formulated in the celebrated case of *Weeks v. United States*, 232 U.S. 383 (1914). Though the decision was binding only upon Federal Courts, it was extended to all jurisdiction 47 years later in *Mapp v. Ohio*, 31 Sup. Ct. 1684 (1961). For a review of the entire field of problems concerning the admissibility of evidence, see Claude Sowle (ed.) *Police Power and Individual Freedom*, Chicago: Aldine Publishing Co., 1962. A more popular, though generally reliable, account is contained in Alan Barth, *Law Enforcement versus the Law*, New York: Collier Books, 1961.

³⁹ W. R. LaFave and F. J. Remington call judicial control of police practice a "fiction" which possibly detracts from the likelihood that policemen will do what judges expect them to do, at pp. 993-994 of their "Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions," *Michigan Law Review*, 63 (1965) 987-1012. Mr. Justice Brennan states that judges "have little or no direct authority to require police and other law enforcement agencies to comply with the rules of the game." at p. 228 of his "Judicial Supervision of Criminal Law Administration," *Crime and Delinquency*, pp. 227-234. Fred Inbau asserts without qualification that, "The courts have no right to police the police. This is an executive not a judicial function." *Journal of Criminal Law, Criminology and Police Science*, 52 (1961) 209-212. See also R. C. Donnelly, "Police Authority and Practices," *The Annals of the American Academy of Political and Social Sciences*, 339 (January, 1962) 90-110.

administration of justice without the suspect's explicit consent. And that the legal norm forbidding inquiries without consent also forbids using the suspect's refusal to give an account of himself as grounds for a decision against him. In point of fact, not even the policeman himself is permitted to insist on questioning a suspect *after* he has arrested him and *if* he intends to see him prosecuted. The "if" emphasized in the preceding sentence is of absolutely crucial importance. It signifies that in many instances of police intervention there exists the possibility, which in some instances becomes a virtual certainty, that the case at hand will become the business of prosecutors and judges. Only when and only insofar as this possibility is envisioned does the police come under the rule of some of the restrictions that bind the administration of justice. If the policeman fails to comply adequately with these restrictions then the courts will not accept the case. This and this alone will be the consequence of his failure.

To be sure, having cases dismissed in court is no small matter. Many kinds of police activity have, after all, the sole objective of setting the criminal process into motion. What is the use of staffing a robbery detail that investigates robberies and arrests robbers who are subsequently released even though guilty, merely because the constable blundered? Thus, to say that the courts have no control over the police surely could not mean that what they say and do about police activity is of no consequence. Indeed, it is rather obvious that the series of United State Supreme Court decisions concerning admissibility of evidence has influenced police practices. But there is momentous difference between influence and control. For example, it would constitute at least a small measure of control if judges issued permanent injunctions against illegal searches and seizures, in which case every proven instance of it would constitute the culpable offense of contempt of court. But judges have not done this, nor is it likely that they will do it.⁴⁰ Instead, the present arrangement between prosecutors and judges, on the one hand, and the police, on the other hand, is

⁴⁰ It has been said that the United States Supreme Court issued the rulings concerning police practices in "desperation," and that judicial control over the police cannot be expected of the courts. See H. L. Packer, "Policing the Police: Nine Men Are Not Enough," *New Republic*, 153 (September 4, 1965) 17-21; H. J. Friendly, "The Bill of Rights as a Code of Criminal Procedure," *California Law Review* 53 (1965) 929-979. W. R. LaFare cites the Chief Judge of the United States Court of Appeals for the Second District, "It is not by judicial action that the intelligence and effectiveness of local police work can be improved. It is not for the judges to define the powers of investigation and inquiry . . . In these important areas only Congress and the state legislatures can redress the balance and provide due process for all the people," at p. 569 of his "Improving Police Performance through the Exclusionary Rule—Part II: Defining the Norms and Training the Police," *Missouri Law Review*, 30 (1965) 566-610. Herman Goldstein, recognizing that neither the courts nor the legislatures can be expected to set norms for police procedure, urges that the police themselves develop binding policy guidelines, in his "Police Policy Formulation: A Proposal for Improving Police Performance," *Michigan Law Review*, 65 (1967) 1123-1146.

not unlike that between any set of independent consumers and suppliers of services. The latter are constrained to respect what the former want because this is the only way they can do business. In the open competitive market, purveyors hew closely to the demands lest they lose their source of revenue. But in the marketplace of public service there would appear to be need for another kind of coordinating mechanism.

The prevailing form of coordination between public agencies in a receiving and supplying relationship to one another is the hierarchical control of the former over the latter. For example, if the Internal Revenue Service collected taxes in some such manner that would force their return to the taxpayer, then the Secretary of the Treasury would simply order a revision of the procedure. Nothing of the sort exists between the courts and the police. Since the judge is not the policeman's superior there is nothing that prevents the latter from doing as he pleases while forwarding cases on a take it or leave it basis. Nothing, that is, except two powerful considerations that put emphasis on the court's influence in the absence of control: the police really want to make use of the powers of the courts to punish, *and* they are fearful of scandals.

Saying that the police really do want to see offenders punished probably does not do their case justice. Though it is probably true that there attaches a certain degree of punitive zealotry to what Skolnick called the working personality of policemen,⁴¹ cooperation with the courts is more than the product of occupational psychology. Most policemen do in fact conceive of their mandate as involving the law as it exists, and though they voice objections about the restrictions that this entails,⁴² they have even greater misgivings about disregarding the restrictions entirely. Their attitude is basically American. Like all of us, the police have a love-hate affair with the administration of justice; they distrust lawyers, including judges, profoundly and they have an indomitable faith in "The Law."⁴³ Thus, it is probably fairer to say that the police want to see offenders punished by the courts because they feel that this is in the public interest. With respect to this, it is interesting to note that every generation of policemen appears to accept those legal restrictions as just and practical which

⁴¹ J. H. Skolnick, *Justice without Trial: Law Enforcement in Democratic Society*, New York: John Wiley & Sons, 1967, Chap. 3.

⁴² D. J. Dalby, "Alice in a Patrol Car," *FBI Law Enforcement Bulletin*, (July, 1966) 9-27.

⁴³ H. S. Commager commented that while Americans have a cavalier disrespect of laws and abiding suspicion of lawyers, they venerate The Law; see *The American Mind: An Interpretation of American Thought and Character since the 1880's*, New Haven, Conn.: Yale University Press, 1950, pp. 19 ff.

the generation of their predecessors deemed unwarranted and destructive of police efficacy.⁴⁴

As concerns the second consideration, the fear of scandals, it is a mixed blessing. Though it is undoubtedly true that it helps in bringing police work patterns closer to legality, it also can and often does have untoward consequences because the fear of scandal gives rise to hypocrisy, secretiveness, and mendacity.

In general it is far easier to err on the side of overestimating, rather than on the side of underestimating, the influence of the courts on what the police do in their daily work routines. While it is probably true that judges exert strong influence on *some* kinds of police procedure—as in cases involving major crimes in which resolute defense is anticipated—its extent is quite limited for several reasons. First, it generally does not touch the vast domain of charges involving disorderly conduct and other minor offences. This is so because in such cases the merits of the police decision ordinarily are not questioned by either the defendants or the judges.⁴⁵ Second, because the police are often exposed to strong pressures to take some action against conditions that offend the public, they sometimes have to proceed in ways that could not be sustained on grounds of legality. Police officials are quite frank about it, referring to public opinion as one source of their authority.⁴⁶ Third, policemen in many jurisdictions pro-

⁴⁴ Police fears that Mapp, Escobedo, Miranda, etc., will destroy law enforcement effectiveness have not been borne out, according to figures made available by police departments; see Neidhoffer, *op. cit. supra*, Note 19 at p. 174. D. M. McIntire cites evidence that the rates at which confessions were used to obtain convictions after Escobedo, either increased or remained unchanged for all offenses except burglary, in his *Law Enforcement in the Metropolis*, Chicago: American Bar Foundation, 1967, p. 66, Note 58. It may take some time for the police to assimilate these facts, but they will accept them, just as they have in the past accepted that the "third degree" was not really an essential part of police work.

⁴⁵ T. R. Brooks observed correctly that there is a "rough understanding between the police and the derelict population." The arrested person accepts his fate, knowing that a plea of guilty before the magistrate will usually induce a disposition of the case he is willing to accept, at p. 32 of his "New York's Finest," *Commentary*, 40 (August, 1965) 29-36. Similarly, A. L. Stinchcombe noted that, "Hearings before a police court magistrate in these cases are generally purely formalities; it is assumed by all concerned, including the defendant, that the presumed offender is guilty. The only question that remains to be decided is how much noblesse oblige the magistrate should show." at p. 157 of his "Institutions of Privacy in the Determination of Police Administrative Practice," *American Journal of Sociology*, 69 (1963) 150-160. In the same vein, B. J. George, Jr. advises, "Please note that the judge-made exclusionary rules of evidence are of no help here. The case is never contested either in the trial court or in an appellate court, and the police conduct is never attacked." at p. 41 of his "Police Practices and the Citizen," *Police*, 10 (March-April, 1966) 38-42.

⁴⁶ W. R. LaFave writes, "Police administrators assert that 'there is a wide discrepancy between what the people expect the police to do and what the police are permitted to do under the law,' and then frankly admit that under the circumstances they choose to respond to the public demand. Thus, Superintendent Wilson of Chicago declared, 'If we follow some of our court decisions literally, the public would be demanding my removal as Superintendent of Police and—I might add—with justification.' Chief Parker of Los Angeles has taken the view that, 'it is anticipated that the police will ignore these legal limitations when the immediate public welfare appears to demand police lawlessness.' And Chief Schrotel of Cincinnati has stated the dilemma of the policeman in these terms: 'Either he abides by the prescribed rules and renders ineffective service, or he violates or circumvents the rules

ceed against some types of illegal activity—notably those involving the so-called sumptuary crimes—with deliberate neglect of rules of legal restraint. In most of these cases arrests are made without intent to prosecute and primarily for harassment purposes. By such means they hope to make plying some unsavory occupation more hazardous and less profitable.⁴⁷ Fourth, judicial influence is totally irrelevant for the immense variety of activities that have nothing to do with law enforcement or legality but is primarily oriented to easing some social strains.⁴⁸ For instance, no court has thus far presumed to inquire whether police service should be authorized and made available for helping to settle marital disputes.

In sum, the much heralded discovery that policemen are not

and performs the service required of him." at pp. 443-444 of his "Improving Police Performance through the Exclusionary Rule—Part I: Current Police and Local Court Practices," *Missouri Law Review*, 30 (1965) 391-458. (Footnotes and emphases omitted.) Herman Goldstein illustrates public pressure with the example of "residents of a community terrorized by a serious murder, by the strangling of a series of women, or by the rape of a child will urge that no stone be left unturned in the search for the offender. Such pressures are taken by individual police officers as a mandate to employ techniques which they might otherwise not employ in attempting to identify and apprehend the offender." at p. 166 of his "Administrative Problems in Controlling the Exercise of Police Authority," *Journal of Criminal Law, Criminology and Police Science*, 58 (1967) 160-172. There are, however, reasons to believe that the police may be factually mistaken in invoking the support of public demand. J. P. Clark has shown that the police generally tend to overestimate the public's desire for forceful intervention; see table 6 at p. 318 of his "Isolation of the Police: A Comparison of the British and American Situation," *Journal of Criminal Law, Criminology and Police Science*, 56 (1965) 307-319.

⁴⁷ There exists, of course, no legal justification for harassment arrests; see E. L. Barrett, Jr., "Police Practices and the Law—From Arrest to Release or Charge," *California Law Review*, 50 (1962) 11-56, and the voluminous literature cited therein. Yet, the practice is widespread. To cite but one example, in Detroit, "The police department conducts what is commonly recognized as a harassment program in dealing with gamblers and prostitutes. Under this program, individuals suspected of taking part in the gambling syndicate operations are subject to frequent street questioning and frisking. Should gambling paraphernalia be found on their person, they are usually arrested and later released. There is no prosecution in such cases, since the evidence is inadmissible." That is, "From the beginning of such procedure, the officers have no intention of taking the case into court." During a six-month period Detroit policemen made 3047 arrests for prostitution and 606 arrests for gambling; of these 75 and 24 respectively resulted in prosecution. McIntire, *op. cit. supra*, Note 44 at pp. 21, 41, and 84; see also LaFave, *op. cit. supra*, Note 47 at pp. 441ff. E. L. Barrett, Jr. speculated that the court decisions restricting the admissibility of evidence may have had the effect of encouraging harassment arrests. According to this view, policemen probably increase the number of times they arrest certain persons to compensate for the inability to prosecute them; see his, "Personal Rights, Property Rights, and the Fourth Amendment," *Supreme Court Review*, (Kurland, ed.) 1960, pp. 53-57.

⁴⁸ According to the International Association of Police Chiefs, "the percentage of police effort devoted to the traditional criminal law matters probably does not exceed ten per cent." as quoted in Niedhoffer, *op. cit. supra*, Note 10 at p. 75. According to its own Annual Report of 1963, the Los Angeles Police Department responded to more than two million service calls of which less than 200,000 involved investigations of reported crimes, as quoted by E. L. Barrett, Jr., at p. 95 of his "Criminal Justice: The Problem of Mass Production," in H. W. Jones (ed.), *The Courts, the Public, and the Law Explosion*, Englewood Cliffs, N.J.: Prentice-Hall, 1965, pp. 85-123. See also Elaine Cumming, Ian Cumming, and Laura Edell, "Policeman as Philosopher, Guide, and Friend," *Social Problems*, 12 (1965) 276-286; Michael Banton, *The Policeman in the Community*, New York: Basic Books, 1964; and Egon Bittner, "Police Discretion in Emergency Apprehension of Mentally Ill Persons," *Social Problems*, 14 (1967) 278-292.

merely ministerial officers, applying the laws as interpreted by the courts, must be considered the understatement of the decade. In point of fact, they not only exercise discretion in carrying out the mandates of the law, but they do even that much only as an incidental part of their more general responsibilities.

V. The Institutional Independence Of The Police

It is important to emphasize that the institutionalized segregation of the police from the courts is a relatively recent phenomenon and that it is particularly characteristic of English and American methods of law enforcement. To understand this situation, it is necessary to review some of its historical, doctrinal, and practical background.

Under the Common Law, the Justice of the Peace was at once the magistrate and the chief police officer in his jurisdiction.⁴⁹ Though the office of the Justice of the Peace never functioned well in urban settings, the general principle that those who busied themselves with catching criminals should work under the direction of those who judged them was carried over into municipal law enforcement without question. Accordingly, as late as the first decades of the nineteenth century, the licensing of some police operations invariably involved the elevation of the head of the agency to the post of magistracy. This was true for all those kinds of agencies of which the Bow Street Runners were the best known example.⁵⁰ Even where this model was not followed literally, as for example in the police system of the city of Boston in the first quarter of the nineteenth century, there was a tendency to restrict the activities of staff to the role of process servers for the courts.⁵¹ Moreover, the planners of the Metropolitan Police of London, though they anticipated that the officers of the force would engage in some activities that would not involve invoking the law, did not challenge the principle. Thus, the first two Superintendents of Scotland Yard were named Justices of the Peace.⁵² Since, however, the London force was created against strong opposition and operated under a cloud of suspicion that it might develop into an uncontrolled and arbitrary tyranny, the first Superintendents were divested of their powers of magistracy in 1839.⁵³ When the London model was copied elsewhere, including in the United States, it was copied as it actually functioned, that

⁴⁹ C. A. Beard, *The Office of the Justice of Peace in England in its Origin and Development*, New York: B. Franklin, 1904; J. F. Stephen, *A History of the Criminal Law of England*, London: Macmillan, 1883, vol. I., pp. 112f., 190f.

⁵⁰ Gilbert Armitage, *History of the Bow Street Runners*, London: Wishart & Co., 1932.

⁵¹ Lane, *op. cit. supra*, Note 2, at p. 154; see also G. L. Haskins, *Law and Authority in Massachusetts*, New York: Macmillan, 1960, pp. 174f.

⁵² F. W. Maitland, *Justice and Police*, London: Macmillan, 1885, p. 100.

⁵³ *Ibid.*

is, without the provision for any direct connections with the judiciary. Aside from following the model of English experience, the separation of the police from the courts in the United States was based on other reasons. From the middle of the nineteenth century to the 1930's, running the police establishment was part of the patronage system of urban politics in America. Though the lower judiciary was part of this system too, it was in the nature of the situation that strong institutional connections could not develop. As long as tenure depended on political favors, prudent office holders tended to stick to their knittings. Consequently, police chiefs and magistrates felt independently "responsible" to the city bosses.⁵⁴

Historical developments in the climate of urban politics were not the sole reason for the institutional segregation. The progressive formal legalization of the criminal process during the past one hundred years meant in the United States, among other things, that the courts took less and less part in the inquisitorial part of it.⁵⁵ This decline reflected a growing commitment to the principle of adversary proceedings. According to this doctrine, justice is best served by allowing accusation and defense a maximum amount of freedom of expression. The role of the judge became restricted to hearing the evidence presented by the opposing parties and to safeguarding the legality and decorum of the exchanges before the bench. Only after the parties rest does the judge have a chance to act, but prior to that he is not supposed to interfere in any way that might possibly have the effect of strengthening or weakening the case of either the defense or the prosecution. Since it is difficult to foresee what consequences judicial involvement might have, disciplined judges tend to act on their own motions or ask questions only in extreme circumstances to prevent gross injustice. Above all, judges attempt to avoid maintaining one-sided connections with parties before them. Now, the police are of course always a party in matters pending before the court and they are always on the side of prosecution.

⁵⁴ R. B. Fosdick, *American Police Systems*, New York: Century Co., 1920. See also Raymond Moley, *Our Criminal Courts*, New York: Minton, Balch & Co., 1930, where it is argued that the independence of American police systems is in some part traceable to the power and prestige of the sheriff in frontier communities. T. C. Esselstyn has shown that sheriffs in rural counties even today are more responsive to the weight of community sentiment than to the dictates of the law, in his "The Social Role of the County Sheriff," *Journal of Criminal Law, Criminology and Police Science*, 44 (1953) 177-183.

⁵⁵ Several states confer powers of investigation upon judicial officers who function in the manner of the French *juge d'instruction*. Lewis Mayers comments: "Even though the judicial officer who conducts the investigation does not preside at the subsequent trial of the persons accused as a result of his investigations, his investigative activities have associated him in the public mind, and perhaps, even though unconsciously, in his own mind, with the prosecution, and to that extent derogated from the complete impartiality of the judicial character which our tradition demands." in *The American Legal System*, rev. ed., New York: Harper & Row, 1964, p. 74.

Thus, if judges were to maintain any kind of direct supervisory control over them, then this would create a strangely incongruous situation. For it could be argued that if judges have real power to determine how police work should be done then they are implicitly responsible for the way it is done. Would it then still be reasonable to assume that judges will review disinterestedly the merits of cases presented by the police? Surely, there would be at least the impression created that whatever is done by a judicially controlled agency is done with implied consent and therefore immune to scrutiny. In sum, judicial control is apparently less compatible with the principles of adversary procedure than institutional segregation.⁵⁶

In addition to the historical and doctrinal reasons for police independence from the courts, there are the practical limitations resulting from the commitment of the judiciary to a pacific and rational administration of justice. In order for the criminal process to enjoy an atmosphere of calm deliberation, where everything that needs to be accomplished can be accomplished by mere talk, logical inference, and careful assessment of facts, it is necessary to expel from its purview all those exigencies that are incompatible with it. The long-range objective is to abolish these exigencies, of course, but human life being what it is, whatever is left of them can only be made to disappear by shifting them from one place to another and creating a wall between the two. It is all too easy to point to hypocrisy inherent in the arrangement; practical idealism requires one to recognize, however, that the progress from a dirty house to a clean house may require a phase in which dirt is swept under the rug.

The need for procedures that fall short of the ideal of peacefulness and rationality expected of the criminal process is all too obvious to require extensive documentation. In fact, in many cases the criminal process cannot even be set into motion without violent and intuitive action. Before a person can be tried in court he has to be arrested. To make arrests the police need the kind of discretionary freedom that is difficult to reconcile with those observances of civil rights that are guaranteed in the courtroom. Policemen must apprehend suspects, in most instances, on the basis of evidence that would not be sufficient, in and of itself, for a conviction. The fact that officers must act on the basis of surmise rather than proof is not remarkable. In fact, time permitting, they can obtain judicial authorization to proceed on just

⁵⁶ "When asked whether they would suggest to the police proper ways of acquiring evidence in the future, some judges assert that it would be unethical for them to do so unless they also 'coached' the defense." President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police*, Washington, D.C.: U.S. Government Printing Office, 1967, p. 31.

such grounds. After all, the process of meticulous forensic scrutiny has to begin somewhere and it proceeds from lesser to greater certainty.⁵⁷ Even in the civil law one who seeks to avail himself of legal remedies by entering a suit against someone else initiates the action with less than full justification and with the mere hope that his claim will be vindicated. And civil suits, too, impose inconvenience and expense on the defending party. Far more important than the authorization to abridge the freedom of citizens on the grounds of merely suspected justification, is the expectation that the police will use force to achieve their objectives. To make the point quite clear, once an officer feels justified in making an arrest he has the duty to overcome the suspect's resistance and he may not retreat in the face of risks or threats of retaliation.⁵⁸ The authorization and the obligation to use force on the basis of no more than reasonable belief that the undertaken action is justified is the exclusive monopoly of the police. No other official in any branch of civil government has this right or this duty. To say, however, that the police have a monopoly on force means that this is their unique role in society, one which, on the basis of practical considerations, neither the government nor the citizenry could presumably do without.

Thus, the institutional independence of the police from the judiciary is ultimately based on the realization that policemen are inevitably involved in activities that cannot be fully brought under the rule of law. Only a limited set of legal restrictions can be conditionally imposed on the police which, however, still do not make it impossible for the police to proceed as they see fit.⁵⁹ Judges do not review the cases in which these restrictions have been violated. They have resorted to simple dismissals even though this might possibly injure the effectiveness of crime control. The

⁵⁷ C. D. Breitel, in arguing against Jerome Hall's legalistic view, which he regards as "an unexceptional statement of what Professor Hall himself might call paper law," urges a flexible approach to police discretion which "must operate to separate the inconsequential and harmless from the consequential and harmful." at p. 429 of his "Controls in Criminal Law Enforcement," *University of Chicago Law Review*, 27 (1960) 427-435. Needless to say, it is far easier to assert the need for such an approach than to develop it.

⁵⁸ "If he [a policeman] is justified in making an arrest, he is not obliged to retreat in the face of force but may stand his ground and, if he believes that deadly force is necessary to protect himself, he may employ it." Donnelly, *op. cit. supra*, Note 39 at p. 96. See also R. J. Bowers, "Nature of the Problem of Police Brutality," *Cleveland Marshall Law Review*, 14 (1965) 601-609.

⁵⁹ For evidence that policemen often do not comply fully with exclusionary rules, see McIntire, *op. cit. supra*, Note 44 at p. 65; D. J. Black and A. J. Reiss, Jr., *Studies of Crime and Law Enforcement in Major Metropolitan Areas*, A Report Produced for the President's Commission on Law Enforcement and Administration of Justice, Washington, D.C.: U.S. Government Printing Office, Vol. II, Sec. I, p. 85; R. J. Medalie, L. Zeltz and P. Alexander, "Custodial Police Interrogation on our Nation's Capital: The Attempt to Implement Miranda," *Michigan Law Review*, 66 (1968) 1347-1422; J. Griffiths and R. E. Ayres, "A Postscript to the Miranda Project: Interrogation of Draft Protestors," *Yale Law Journal*, 77 (1967) 300-329.

reasons the courts gave for dismissals are that they see no other way of insuring police compliance with demands of legality but to teach them a lesson.⁶⁰ Nothing can explain this exceedingly subtle pedagogy except the fact that the courts are in fact powerless vis-a-vis the police establishment.⁶¹ Of course, it cannot be disregarded that judges, contrary to widely advocated views, probably do not really desire to "handcuff" the police. But insofar as this is the case, it would merely constitute a case of compatibility between the personal inclinations of certain officials with institutional constraints.⁶²

⁶⁰ That the principal purpose of the exclusionary rules is to induce a higher level of police performance (despite the famous objection of the late Mr. Justice Cardozo who saw folly in the principle that "The criminal is to go free because the constable blundered.") is frequently emphasized; see LaFave, *op. cit. supra*, Note 46 at pp. 391-396 *et passim*, and the literature cited therein.

⁶¹ Alfred Hill pointed to a paradox inherent in the situation. He writes: "The exclusionary rule benefits only the criminal, or at least only the person who is in fact incriminated by what is found or seized. If other remedies are as ineffective as is claimed, this means that innocent victims of illegal searches and seizures are now substantially without recourse." Note 17, pp. 184-185 of his "The Bill of Rights and the Supervisory Power," *Columbia Law Review*, 69 (1969) 181-215. Civil remedies are, of course, theoretically available. In practice, however, the likelihood of obtaining satisfaction is quite remote; see *Task Force Report: The Police*, *op. cit. supra*, Note 56 at p. 31; Donnelly, *op. cit. supra*, Note 39 at p. 101; Goldstein, *op. cit. supra*, Note 46 at p. 168; Bowers, *op. cit. supra*, Note 58 at p. 604.

⁶² Isidore Silver proposes that, "One possible solution to the problem of unreviewable discretion would be the integration of the police function with the prosecutorial one. If the police department were a part of the district attorney's office, presumably there would be closer supervision of police practices," at pp. 940-941 of his "The President's Crime Commission Revisited," *New York University Law Review*, 43 (1968) 916-966. This would call for radical transformation of existing police systems. More limited moves in this direction were ill-fated, resulting in a partial breakdown of cooperation between the police and prosecutorial offices; see *Task Force Report: The Police*, *op. cit. supra*, Note 56 at pp. 81-82.

VI. The Capacity To Use Force As The Core Of The Police Role

We have argued earlier that the quest for peace by peaceful means is one of the culture traits of modern civilization. This aspiration is historically unique. For example, the Roman Empire was also committed to the objectives of reducing or eliminating warfare during one period of its existence, but the method chosen to achieve the *Pax Romana* was, in the language of the poet, *debellare superbos*, i.e., to subdue the haughty by force. Contrary to this, our commitment to abolish the traffic of violence requires us to pursue the ideal by pacific means. In support of this contention we pointed to the development of an elaborate system of international diplomacy whose main objective it is to avoid war, and to those changes in internal government that resulted in the virtual elimination of all forms of violence, especially in the administration of justice. That is, the overall tendency is not merely to withdraw the basis of legitimacy for all forms of provocative violence, but even from the exercise of provoked force required to meet illegitimate attacks. Naturally this is not possible to a full extent. At least, it has not been possible thus far. Since it is impossible to deprive responsive force entirely of legitimacy, its vestiges require special forms of authorization. Our society recognizes as legitimate three very different forms of responsive force.

First, we are authorized to use force for the purpose of self-defense. Though the laws governing self-defense are far from clear, it appears that an attacked person can counterattack only after he has exhausted all other means of avoiding harm, including retreat, and that the counterattack may not exceed what is necessary to disable the assailant from carrying out his intent. These restrictions are actually enforceable because harm done in the course of self-defense does furnish grounds for criminal and tort proceedings. It becomes necessary, therefore, to show compliance with these restrictions to rebut the charges of excessive and unjustified force even in self-defense.⁶³

The second form of authorization entrusts the power to proceed coercively to some specifically deputized persons against some

⁶³ "Justification for the Use of Force in the Criminal Law," *Stanford Law Review*, 13 (1961) 666-609.

specifically named persons. Among the agents who have such highly specific powers are mental hospital attendants and prison guards. Characteristically, such persons use force in carrying out court orders; but they may use force only against named persons who are remanded to their custody and only to the extent required to implement a judicial order of confinement. Of course, like everybody else, they may also act within the provisions governing self-defense. By insisting on the high degree of limited specificity of the powers of custodial staffs, we do not mean to deny that these restrictions are often violated with impunity. The likelihood of such transgressions is enhanced by the secluded character of prisons and mental institutions, but their existence does not impair the validity of our definition.

The third way to legitimize the use of responsive force is to institute a police force. Contrary to the cases of self-defense and the limited authorization of custodial functionaries, the police authorization is essentially unrestricted. Because the expression "essentially" is often used to hedge a point, we will make fully explicit what we mean by it. There exist three formal limitations of the freedom of policemen to use force, which we must admit even though they have virtually no practical consequences. First, the police use of deadly force is limited in most jurisdictions. Though the powers of a policeman in this respect exceed those of citizens, they are limited nevertheless. For example, in some jurisdictions policemen are empowered to shoot to kill fleeing felony suspects, but not fleeing misdemeanor suspects. It is scarcely necessary to argue that, given the uncertainties involved in defining a delict under conditions of hot pursuit, this could hardly be expected to be an effective limitation.⁶⁴ Second, policemen may use force only in the performance of their duties and not to advance their own personal interest or the private interests of other persons. Though this is rather obvious, we mention it for the sake of completeness. Third, and this point too is brought up to meet possible objections, policemen may not use force maliciously or frivolously. These three restrictions, and nothing else, were meant by the use of the qualifier "essentially". Aside from

⁶⁴ "At common law, the rule appears to have been that an officer was entitled to make a reasonable mistake as to whether the victim had committed a felony, but a private person was not so entitled. Thus strict liability was created for the private arrestor, and he could not justifiably kill, if the victim had not actually committed a felony. Several modern cases have imposed this standard of strict liability even upon the officer by conditioning justification of deadly force on the victim's actually having committed a felony, and a number of states have enacted statutes which appear to adopt this strict liability. However, many jurisdictions, such as California, have homicide statutes which permit the police officer to use deadly force for the arrest of a person 'charged' with felony. It has been suggested that this requirement only indicates the necessity for reasonable belief by the officer that the victim has committed a felony." *Ibid.*, pp. 599-600.

these restrictions there exist no guidelines, no specifiable range of objectives, no limitations of any kind that instruct the policeman what he may or must do. Nor do there exist any criteria that would allow the judgment whether some forceful intervention was necessary, desirable, or proper. And finally, it is exceedingly rare that police actions involving the use of force are actually reviewed and judged by anyone at all.

In sum, the frequently heard talk about the lawful use of force by the police is practically meaningless and, because no one knows what is meant by it, so is the talk about the use of minimum force. Whatever vestigial significance attaches to the term "lawful" use of force is confined to the obvious and unnecessary rule that police officers may not commit crimes of violence. Otherwise, however, the expectation that they may and will use force is left entirely undefined. In fact, the only instructions any policeman ever receives in this respect consist of sermonizing that he should be humane and circumspect, and that he must not desist from what he has undertaken merely because its accomplishment may call for coercive means. We might add, at this point, that the entire debate about the troublesome problem of police brutality will not move beyond its present impasse, and the desire to eliminate it will remain an impotent conceit, until this point is fully grasped and unequivocally admitted. In fact, our expectation that policemen will use force, coupled by our refusals to state clearly what we mean by it (aside from sanctimonious homilies), smacks of more than a bit of perversity.

Of course, neither the police nor the public is entirely in the dark about the justifiable use of force by the officers. We had occasion to allude to the assumption that policemen may use force in making arrests. But the benefit deriving from this apparent core of relative clarity is outweighed by its potentially misleading implications. For the authorization of the police to use force is in no important sense related to their duty to apprehend criminals. Were this the case then it could be adequately considered as merely a special case of the same authorization that is entrusted to custodial personnel. It might perhaps be considered a bit more complicated, but essentially of the same nature. But the police authority to use force is radically different from that of a prison guard. Whereas the powers of the latter are incidental to his obligation to implement a legal command, the police role is far better understood by saying that their ability to arrest offenders is incidental to their authority to use force.

Many puzzling aspects of police work fall into place when one ceases to look at it as principally concerned with law enforcement

and crime control, and only incidentally and often incongruously concerned with an infinite variety of other matters. It makes much more sense to say that the police are nothing else than a mechanism for the distribution of situationally justified force in society. The latter conception is preferable to the former on three grounds. First, it accords better with the actual expectations and demands made of the police (even though it probably conflicts with what most people would say, or expect to hear, in answer to the question about the proper police function); second, it gives a better accounting of the actual allocation of police manpower and other resources; and, third, it lends unity to all kinds of police activity. These three justifications will be discussed in some detail in the following.

The American city dweller's repertoire of methods for handling problems includes one known as "calling the cops." The practice to which the idiom refers is enormously widespread. Though it is more frequent in some segments of society than in others, there are very few people who do not or would not resort to it under suitable circumstances. A few illustrations will furnish the background for an explanation of what "calling the cops" means.⁹⁵

Two patrolmen were directed to report to an address located in a fashionable district of a large city. On the scene they were greeted by the lady of the house who complained that the maid had been stealing and receiving male visitors in her quarters. She wanted the maid's belongings searched and the man removed. The patrolmen refused the first request, promising to forward the complaint to the bureau of detectives, but agreed to see what they could do about the man. After gaining entrance to the maid's room they compelled a male visitor to leave, drove him several blocks away from the house, and released him with the warning never to return.

In a tenement, patrolmen were met by a public health nurse who took them through an abysmally deteriorated apartment inhabited by four young children in the care of an elderly woman. The babysitter resisted the nurse's earlier attempts to remove the children. The patrolmen packed the children in the squad car and took them to Juvenile Hall, over the continuing protests of the elderly woman.

While cruising through the streets a team of detectives recognized a man named in a teletype received from the sheriff of an adjoining county. The suspect maintained that he was in the

⁹⁵ The illustrations are taken from field notes I have collected over the course of fourteen months of intensive field observations of police activity in two large cities. One is located in a Rocky Mountain State, the other on the West Coast. All other case vignettes used in the subsequent text of this report also come from this source.

hospital at the time the offense alleged in the communication took place, and asked the officers to verify his story over their car radio. When he continued to plead innocence he was handcuffed and taken to headquarters. Here the detectives learned that the teletype had been cancelled. Prior to his release the man was told that he could have saved himself grief had he gone along voluntarily.

In a downtown residential hotel, patrolmen found two ambulance attendants trying to persuade a man, who according to all accounts was desperately ill, to go to the hospital. After some talk, they helped the attendants in carrying the protesting patient to the ambulance and sent them off.

In a middle-class neighborhood, patrolmen found a partly disassembled car, tools, a loudly blaring radio, and five beer-drinking youths at the curb in front of a single-family home. The homeowner complained that this had been going on for several days and the men had refused to take their activities elsewhere. The patrolmen ordered the youths to pack up and leave. When one sassied them they threw him into the squad car, drove him to the precinct station, from where he was released after receiving a severe tongue lashing from the desk sergeant.

In the apartment of a quarreling couple, patrolmen were told by the wife, whose nose was bleeding, that the husband stole her purse containing money she earned. The patrolmen told the man they would "take him in," whereupon he returned the purse and they left.

What all these vignettes are meant to illustrate is that whatever the substance of the task at hand, whether it involves protection against an undesired imposition, caring for those who cannot care for themselves, attempting to solve a crime, helping to save a life, abating a nuisance, or settling an explosive dispute, police intervention means above all making use of the capacity and authority to overpower resistance to an attempted solution in the native habitat of the problem. There can be no doubt that this feature of police work is uppermost in the minds of people who solicit police aid or direct the attention of the police to problems, that persons against whom the police proceed have this feature in mind and conduct themselves accordingly, and that every conceivable police intervention projects the message that force may be, and may have to be, used to achieve a desired objective. It does not matter whether the persons who seek police help are private citizens or other government officials, nor does it matter whether the problem at hand involves some aspect of law enforcement or is totally unconnected with it.

It must be emphasized, however, that the conception of the centrality of the capacity to use force in the police role does not entail the conclusion that the ordinary occupational routines consist of the actual exercise of this capacity. It is very likely, though we lack information on this point, that the actual use of physical coercion and restraint is rare for all policemen and that many policemen are virtually never in the position of having to resort to it. What matters is that police procedure is defined by the feature that it may not be opposed in its course, and that force can be used if it is opposed. This is what the existence of the police makes available to society. Accordingly, the question, "What are policemen supposed to do?" is almost completely identical with the question, "What kinds of situations require remedies that are non-negotiably coercible?"⁶⁶

Our second justification for preferring the definition of the police role we proposed to the traditional law enforcement focus of the role requires us to review the actual police practices to see to what extent they can be subsumed under the conception we offered. To begin we can take note that law enforcement and crime control are obviously regarded as calling for remedies that are non-negotiably coercible. According to available estimates, approximately one-third of available manpower resources of the police are at any time committed to dealing with crimes and criminals. Though this may seem to be a relatively small share of the total resources of an agency ostensibly devoted to crime control, it is exceedingly unlikely that any other specific routine police activity, such as traffic regulation, crowd control, supervision of licensed establishments, settling of citizens' disputes, emergency health aids, ceremonial functions, or any other, absorb

⁶⁶ By "non-negotiably coercible" we mean that when a deputized police officer decides that force is necessary, then, within the boundaries of this situation, he is not accountable to anyone, nor is he required to brook the arguments or opposition of anyone who might object to it. We set this forth not as a legal but as a practical rule. The legal question whether citizens may oppose policemen is complicated. Apparently resisting police coercion in situations of emergency is not legitimate; see Hans Kelsen, *General Theory of Law and State*, New York: Russel & Russel, 1961, pp. 278-279, and H. A. L. Hart, *The Concept of Law*, Oxford: Clarendon Press, 1961, pp. 20-21. Common law doctrine allows that citizens may oppose "unlawful arrest," 6 *Corpus Juris Secundum*, Arrest #13, p. 613; against this, the Uniform Arrest Act, drafted by a committee of the Interstate Commission on Crime in 1939, provides in Section 5, "If a person has reasonable grounds to believe that he is being arrested by a peace officer, it is his duty to refrain from using force or any weapons in resisting arrest regardless of whether or not there is a legal basis for the arrest." S. B. Warner, "Uniform Arrest Act," *Vanderbilt Law Review*, 28 (1942) 315-347. At present, at least twelve states are governed by case law recognizing the validity of the Common Law doctrine, at least five have adopted the rule contained in the Uniform Arrest Act, and at least six have case law or statutes that give effect to the Uniform Arrest Act rule. That the trend is away from the Common Law doctrine and in the direction of the Uniform Arrest Act rule is argued in Max Huchanadel and H. W. Stege, "The Right to Resist an Unlawful Arrest: An Outdated Concept?" *Tulsa Law Journal*, 3 (1966) 40-46. I am grateful for the help I received from 35 of the 50 State Attorney General Offices from whom I sought information concerning this matter.

anywhere near as large a share of the remaining two-thirds. But this is precisely what one would expect on the basis of our definition. Given the likelihood that offenders will seek to oppose apprehension and evade punishment, it is only natural that the initial dealings with them be assigned to an agency that is capable of overcoming these obstacles. That is, the proposed definition of the role of the police as a mechanism for the distribution of non-negotiably coercive remedies entails the priority of crime control by direct inference. Beyond that, however, the definition also encompasses other types of activities, albeit at lower level of priority.

Because the idea that the police are basically a crimefighting agency has never been challenged in the past, no one has troubled to sort out the remaining priorities. Instead, the police have always been forced to justify activities that did not involve law enforcement in the direct sense by either linking them constructively to law enforcement or by defining them as nuisance demands for service. The dominance of this view, especially in the minds of policemen, has two pernicious consequences. First, it leads to a tendency to view all sorts of problems as if they involved culpable offenses and to an excessive reliance on quasi-legal methods for handling them. The widespread use of arrests without intent to prosecute exemplifies this state of affairs. These cases do not involve errors in judgment about the applicability of a penal norm but deliberate pretense resorted to because more appropriate methods of handling problems have not been developed. Second, the view that crime control is the only serious, important, and necessary part of police work has deleterious effects on the morale of those police officers in the uniformed patrol who spend most of their time with other matters. No one, especially he who takes a positive interest in his work, likes being obliged to do things day-in and day-out that are disparaged by his colleagues. Moreover, the low evaluation of these duties leads to neglecting the development of skill and knowledge that are required to discharge them properly and efficiently.

It remains to be shown that the capacity to use coercive force lends thematic unity to all police activity in the same sense in which, let us say, the capacity to cure illness lends unity to everything that is ordinarily done in the field of medical practice. While everybody agrees that the police actually engage in an enormous variety of activities, only a part of which involves law enforcement, many argue that this state of affairs does not require explanation but change. Smith, for example, argued that the imposition of duties and demands that are not related to crime control dilutes the effectiveness of the police and that the growing

trend in this direction should be curtailed and even reversed.⁶⁷ On the face of it this argument is not without merit, especially if one considers that very many of those activities that are unrelated to law enforcement involve dealing with problems that lie in the field of psychiatry, social welfare, human relations, education, and so on. Each of these fields has its own trained specialists who are respectively more competent than the police. It would seem preferable, therefore, to take all those matters that belong properly to other specialists out of the hands of the police and turn them over to those to whom they belong. Not only would this relieve some of the pressures that presently impinge on the police, but it would also result in better services.⁶⁸

Unfortunately, this view overlooks a centrally important factor. While it is true that policemen often aid sick and troubled people because physicians and social workers are unable or unwilling to take their services where they are needed, this is not the only or even the main reason for police involvement. In fact, physicians and social workers themselves quite often "call the cops." For not unlike the case of the administration of justice, on the periphery of the rationally ordered procedures of medical and social work practice lurk exigencies that call for the exercise of coercion. Since neither physicians nor social workers are authorized or equipped to use force to attain desirable objectives, the total disengagement of the police would mean allowing many a problem to move unhampered in the direction of disaster. But the non-law-enforcement activities of the police are by no means confined to matters that are wholly or even mainly within the purview of some other institutionalized remedial specialty. Many, perhaps most, consist of addressing situations in which people simply do not seem to be able to manage their own lives adequately. Nor is it to be taken for granted that these situations invariably call for the use, or the threat of the use, of force. It is enough if there is need for immediate and unquestioned intervention that must not be allowed to be defeated by possible resistance. And where there is a possibility of great harm, the intervention would appear to be justified even if the risk is, in statistical terms, quite remote. Take, for instance the presence of mentally ill persons in the community. Though it is well known that most live quiet and unobtrusive lives, they are perceived as occasionally constituting a serious hazard to themselves and others. Thus, it is not surprising that the police are always prepared to deal with these persons

⁶⁷ Smith, *op. cit. supra*, Note 1.

⁶⁸ The authors of the *Task Force Report: Police* note that little has been done to make these alternative resources available as substitutes for police intervention; *op. cit. supra*, Note 56 at p. 14.

at the slightest indication of a possible emergency. Similarly, though very few family quarrels lead to serious consequences, the fact that most homicides occur among quarreling kin leads to the preparedness to intervene at the incipient stages of problems.

In sum, the role of the police is to address all sorts of human problems when and insofar as their solutions do or may possibly require the use of force at the point of their occurrence. This lends homogeneity to such diverse procedures as catching a criminal, driving the mayor to the airport, evicting a drunken person from a bar, directing traffic, crowd control, taking care of lost children, administering medical first aid, and separating fighting relatives.

There is no exaggeration in saying that there is topical unity in this very incomplete list of lines of police work. Perhaps it is true that the common practice of assigning policemen to chauffeur mayors is based on the desire to give the appearance of thrift in the urban fisc. But note, if one wanted to make as far as possible certain that nothing would ever impede His Honor's freedom of movement, he would certainly put someone into the driver's seat of the auto who has the authority and the capacity to overcome all unforeseeable human obstacles. Similarly, it is perhaps not too farfetched to assume that desk sergeants feed ice cream to lost children because they like children. But if the treat does not achieve the purpose of keeping the youngster in the station house until his parents arrive to redeem him, the sergeant would have to resort to other means of keeping him there.

We must now attempt to pull together the several parts of the foregoing discussion in order to show how they bring into relief the main problems of adjusting police function to life in modern society, and in order to elaborate constructively certain consequences that result from the assumption of the role definitions we have proposed.

At the beginning we observed that the police appear to be burdened by an opprobrium that did not seem to lessen proportionately to the acknowledged improvements in their practices. To explain this puzzling fact we drew attention to three perceived features of the police that appear to be substantially independent of particular work methods. First, a stigma attaches to police work because of its connection with evil, crime, perversity, and disorder. Though it may not be reasonable, it is common that those who fight the dreadful end up being dreaded themselves. Second, because the police must act quickly and often on mere intuition, their interventions are lacking in those aspects of moral sophistication which only a more extended and more scrupulous consideration can afford. Hence their methods are comparatively

crude. Third, because it is commonly assumed that the risks of the kinds of breakdowns that require police action are much more heavily concentrated in the lower classes than in other segments of society, police surveillance is inherently discriminatory. That is, all things being equal, some persons feel the sting of police scrutiny merely because of their station in life. Insofar as this is felt, police work has divisive effects in society.

Next, we argued that one cannot understand how the police "found themselves" in this unenviable position without taking into consideration that one of the cultural trends of roughly the past century-and-a-half was the sustained aspiration to install peace as a stable condition of everyday life. Though no one can fail being impressed by the many ways the attainment of this ideal has been frustrated, it is possible to find some evidence of partially effective efforts. Many aspects of mundane existence in our cities have become more pacific than they have been in past epochs of history. More importantly for our purposes, in the domain of internal statecraft, the distance between those who govern and those who are governed has grown and the gap has been filled with bureaucratically symbolized communication. Where earlier compliance was secured by physical presence and armed might, it now rests mainly on peaceful persuasion and rational compliance. We found the trend toward the pacification in governing most strongly demonstrated in the administration of justice. The banishment of all forms of violence from the criminal process, as administered by the courts, has as a corollary the legalization of judicial proceedings. The latter reflects a movement away from peremptory and oracular judgment to a method in which all decisions are based on exhaustively rational grounds involving the use of explicit legal norms. Most important among those norms are the ones that limit the powers of authority and specify the rights of defendants. The legalization and pacification of the criminal process was achieved by, among other things, expelling from its purview those processes that set it into motion. Since in the initial steps, where suspicions are formed and arrests are made, force and intuition cannot be eliminated entirely, purity can be maintained by not taking notice of them. This situation is, however, paradoxical if we are to take seriously the idea that the police is a law enforcement agency in the strict sense of legality. The recognition of this paradox became unavoidable as early as in 1914, in the landmark decision of *Weeks v. U.S.* In the following decades the United States Supreme Court issued a series of rulings affecting police procedure which foster the impression that the judiciary exercises control over the police. But this impression is misleading, for the rulings do not set forth binding norms for

police work but merely provide that *if* the police propose to set the criminal process into motion, *then* they must proceed in certain legally restricted ways. These restrictions are, therefore, conditional, specifying as it were the terms of delivery and acceptance of a service and nothing more. Outside of this arrangement the judges have no direct concerns with police work and will take notice of its illegality, if it is illegal, only when offended citizens seek civil redress.

Because only a small part of the activity of the police is dedicated to law enforcement and because they deal with the majority of their problems without invoking the law, a broader definition of their role was proposed. After reviewing briefly what the public appears to expect of the police, the range of activities police actually engage in, and the theme that unifies all these activities, it was suggested that *the role of the police is best understood as a mechanism for the distribution of non-negotiably coercive force employed in accordance with the dictates of an intuitive grasp of situational exigencies.*

It is, of course, not surprising that a society committed to the establishment of peace by pacific means and to the abolishment of all forms of violence from the fabric of its social relations, at least as a matter of official morality and policy, would establish a corps of specially deputized officials endowed with the exclusive monopoly of using force contingently where limitations of foresight fail to provide alternatives. That is, given the melancholy appreciation of the fact that the total abolition of force is not attainable, the closest approximation to the ideal is to limit it as a special and exclusive trust. If it is the case, however, that the mandate of the police is organized around their capacity and authority to use force, i.e., if this is what the institution's existence makes available to society, then the evaluation of that institution's performance must focus on it. While it is quite true that policemen will have to be judged on other dimensions of competence, too—for example, the exercise of force against criminal suspects requires some knowledge about crime and criminal law—their methods as society's agents of coercion will have to be considered central to the overall judgment.

The proposed definition of the police role entails a difficult moral problem. How can we arrive at a favorable or even accepting judgment about an activity which is, in its very conception, opposed to the ethos of the polity that authorizes it? Is it not well nigh inevitable that this mandate be concealed in circumlocution? While solving puzzles of moral philosophy is beyond the scope of this analysis, we will have to address this question

in a somewhat more mundane formulation: namely, on what terms can a society dedicated to peace institutionalize the exercise of force?

It appears that in our society two answers to this question are acceptable. One defines the targets of legitimate force as enemies and the coercive advance against them as warfare. Those who wage this war are expected to be possessed by the military virtues of valor, obedience and *esprit de corps*. The enterprise as a whole is justified as a sacrificial and glorious mission in which the warrior's duty is "not to reason why." The other answer involves an altogether different imagery. The targets of force are conceived as practical objectives and their attainment a matter of practical expediency. The process involves prudence, economy, and considered judgment, from case to case. The enterprise as a whole is conceived as a public trust, the exercise of which is vested in individual practitioners who are personally responsible for their decisions and actions.

Reflection suggests that the two patterns are profoundly incompatible. Remarkably, however, our police departments have not been deterred from attempting the reconciliation of the irreconcilable. Thus, our policemen are exposed to the demand of a conflicting nature in that their actions are supposed to reflect military prowess and professional acumen.

In the following, we will review certain well-known aspects of police organization and practice in an attempt to show that the adherence to the quasi-military model by our police forces is largely a self-defeating pretense. Its sole effect is to create obstacles in the development of a professional police system. On the basis of this review we will attempt to formulate an outline of a model of the police role in modern society that is recognizably in accord with existing practices but which contains safeguards against the existence and proliferation of those aspects of police work that are generally regarded as deplorable. In other words, the proposed suggestions will be innovative only in the sense that they will accent already existing strength and excise impeding ballasts.

VII. The Police And "War On Crime"

Mr. Justice Reid of the United States Supreme Court once drew attention to the dangers inherent in the tendency to develop maxims of judgment and conduct from figures of speech. The matter of his concern was the proverbial "wall between church and state" and the confusion of logic resulting from this metaphor.⁹⁹ Needless to say, the warning fell on deaf ears because the intent of rhetoric is to appeal to associations that are established below the level of rational discourse and to evoke responses that would ordinarily not issue from sober analysis. The use of imagery in public debate is, of course, not simply a regrettable state of affairs, conflicting with a more composed attitude. In mobilizing sentiment and support for causes, an aptly chosen phrase may do the work of a thousand good reasons. Regrettable is only the total abdication of the supervisory role of rational scrutiny over the flight of the imagination which sometimes feeds on its own popular appeal.

A figure of speech that has recently gained a good deal of currency is the "war on crime." The intended import of the expression is quite clear. It is supposed to indicate that the community is seriously imperiled by forces bent on its destruction and it calls for the mounting of efforts that have claims on all available resources to defeat the peril. The rhetorical shift from "crime control" to "war on crime" signifies the transition from a routine concern to a state of emergency. We no longer face losses of one kind or another from the depredations of criminals; we are in imminent danger of losing everything! The perception of such risks does not abide patient study; as long as the envisioned doom is held up as a realistic possibility there is no need to show its impending certainty nor to estimate its likelihood with precision. It matters little that the metaphor, like many metaphors, contains a contradiction in terms. For in truth a community can no more wage war on its internal ills than an organism can "wage war" against its own constitutional weaknesses. Though it may seem paradoxical on first glance, the existence of crime in society is like the existence of organic malfunction, a normal aspect of

⁹⁹ M. DeWolfe Howe, *The Garden and the Wilderness: Religion and Government in American Constitutional History*, Chicago: University of Chicago Press, 1965, p. 1.

human life.⁷⁰ Both are properly subject to vigilant control. But the conceit that they can be ultimately vanquished, which is the implicit objective of war, involves a particularly trivial kind of utopian dreaming. Out of control malfunction and crime could possibly overcome life, but control can never succeed in more than keeping them to a level appropriate to the prevailing form of human life. But vigilance waxes and wanes; to insure that it does not fall below a level of minimally necessary tension it must be fed a diet of rhetorical illuminations.

The recognition of the positive role of rhetorical figures of speech in public life also forces the realization that their effects are not easily confined. Insofar as they involve exaggeration, they appear to sanction more than calculating advocates intend. Worse yet, they project unrealistic hopes. The expression "war on crime," not only implicitly extends the stamp of legitimacy to methods that would not be acceptable on moral and legal grounds, but it also encompasses the impossible. Professor Harold Lasswell observed long ago that under certain demands "police action . . . becomes military action, requiring for efficiency a will to ruthlessness which cannot, in fact, be mobilized in the situation."⁷¹

Lasswell's formulation, though exhaustively correct as stated, requires some elaborations to fully grasp its import. The "situation" to which he refers is never definable solely in terms of those forms of disorder and crime the police face. Instead, it always encompasses the whole range of interlocking relations to other aspects of life in which these targets of police action are located and from which they cannot be extricated. Thus, the absence of the "will to ruthlessness" is not predicated on tender and charitable sentiments towards offenders, but on devotion to the principle that dealing with them must not be allowed to affect adversely the context in which offenses are located. The price we are prepared to pay to defeat crime and disorder does not include visiting incidental suffering on innocents. Not to observe this stricture would turn crime control into a handmaiden of crime. Second, the "will to ruthlessness" involves not only attitudes toward the adversary but also the organization of the struggle against him. It is characteristic of the posture of the military establishment that it is as unsparing of its own as it is of the enemy. Its ferocity in engagement is preceded by a ferocity in preparedness, achieved by means of an unapologetically de-

⁷⁰ The argument about the "normalcy" of crime and other forms of social pathology is contained in Emile Durkheim, *The Rules of Sociological Method* Chicago: University of Chicago Press, 1938, chap. 3.

⁷¹ H. D. Lasswell, *World Politics and Personal Insecurity*, Glencoe, Ill.: Free Press, 1950, p. 228.

personalizing discipline among the ranks. Though one could conceivably organize police forces along such lines, the result would bear no resemblance to the institution as it exists. Finally, the "ruthlessness" of the military enterprise is a matter of coldly calculated expediency. It is deliberately produced and maintained with full regard to the exigencies of warfare against an alien enemy. To be sure, its maintenance involves appeals to spontaneous sentiments of manliness and patriotism but these feelings must not be allowed to escape the harness of strategy. The objectives and strategies involved in fighting off internal attacks are, however, different from those related to confronting an external foe, and while "ruthlessness" is the method of choice in the latter, it is not in the former. In sum, Lasswell is not overly sanguine about the capacity of policemen to be as unscrupulously belligerent against criminals as soldiers are against alien enemies. He only denies the structural feasibility of the approach.

Professor Allan Silver argues the same point even more forcefully in proposing that "the replacement of intermittent military intervention in a largely unpoliced society by continuous professional bureaucratic policing meant that the benefits of police organization—continual pervasive moral display and lower long term costs of official coercion for the state and the propertied classes—absolutely required the moral cooperation of civil society." He recognizes and emphasizes that the police, like the military, are instituted for purely coercive tasks. But he also makes it clear that there issue radically different organizational needs from the objectives of military victory, on the one hand, and from "the penetration and continual presence of central political authority through daily life," on the other hand.⁷² To cite one more authority, Professor Morris Janowitz pointed out that even when the tasks of policing are taken over by the military establishment it involves a reorientation of their normal posture. "The constabulary function as applied to urban violence emphasizes a fully alert force committed to a minimum resort to force and concerned with the development and maintenance of conditions for viable democratic institutions."⁷³

Though it may seem like quibbling about words whether one calls the concerns of the police with lawlessness and disorder an

⁷² Silver, *op. cit. supra*, Note 15 at pp. 12-14.

⁷³ Morris Janowitz, *Social Control of Escalated Riots*, Chicago: University of Chicago Center for Policy Studies, 1968, p. 8. For a general discussion of the concept of the military constabulary see his *The Professional Soldier: Political and Social Portrait*, New York: Free Press of Glencoe, 1960, pp. 417-440. Some armed forces appear to exist solely for constabulary purposes; a case in point is the Irish army; see J. A. Jackson, "The Irish Army and the Development of the Constabulary Concept," paper presented to the Sixth World Congress of Sociology, September 1966, mimeo.

effort to control them or war against them, the ambiguities of expression are symptomatic of deeper confusion. While most informed observers will readily agree that there is a difference between the military and the police they would also adhere to the view that the police are in some sense a quasi-military establishment. What the qualification "quasi" is supposed to mean is, however, not clear. In some countries with national police forces, notably in certain western European states, the problem is solved by maintaining parallel organizations, one with a distinctly military cast and the other free of constraints of military organization.⁷⁴ Something like this situation is also evident in the United States where some aspects of policing sometimes devolve on the National Guard. Contrary to the situation prevailing in European states, the National Guard is, however, not continually available. Consequently, American police forces have broader responsibilities than the civilian police forces of France, Spain, or Italy. In an apparent effort to meet these responsibilities, our police are more generally militarized than is the case elsewhere. This causes profound organizational problems. On the one hand, the military model does seem to furnish a form of control and supervision that helps to overcome laxness and corruption where it exists. On the other hand, the core of the police mandate is profoundly incompatible with the military posture. On balance, the military-bureaucratic organization of the police is a serious handicap.

⁷⁴ P. J. Stead, "The Police of France," *Medico-Legal Journal*, 33 (1965) 3-11.

VIII. The Quasi-Military Organization Of The Police

The conception of the police as a quasi-military institution with a war-like mission plays an important part in the structuring of police work in modern American departments. The merits of this conception have never been demonstrated or even argued explicitly. Instead, most authors who make reference to it take it for granted or are critical only of those aspects of it, especially its punitive orientation, that are subject of aspersion even in the military establishment itself.⁷⁵ The treatment the topic receives in the Task Force Report on the Police of the President's Commission on Law Enforcement and Administration of Justice is representative of this approach. The authors note that "like all military and semi-military organizations, a police agency is governed in its internal management by a large number of standard operating procedures."⁷⁶ This observation is accompanied by remarks indicating that the existence of elaborate codes governing the conduct of policemen relative to intra-departmental demands stands in stark contrast to the virtual absence of formulated directives concerning the handling of police problems in the community. The imbalance between proliferation of internal regulation and the neglect of regulations relative to procedures employed in the field leads to the inference that the existing codes must be supplemented by substantive instructions and standards in the latter area. The question whether such an expansion of regulation might not result in a code consisting of incompatible elements is not considered. Instead, it is implicitly assumed that policemen can be instructed how to deal with citizens by regulations that will not affect the existing system of internal disciplinary control.

The lack of appreciation for the possibility that the developments of professional discretionary methods for crime control and peacekeeping may conflict with the enforcement of bureaucratic-military regulations is not merely a naive oversight; more likely, it represents an instance of wishful thinking. For the mili-

⁷⁵ Recently some authors have expressed doubts about the merits of organizing the police along military lines. Wilson takes issue with Smith's assertion that the police have "disciplinary requirements of a quasi-military body." *Op. cit. supra*, Note 16 at p. 79, n. 24. Similarly, A. J. Reiss and D. J. Bordua have questioned the adequacy of the idea of the police as a military organization; see "Environment and Organization: A Perspective on the Police," in Bordua (ed.), *op. cit. supra*, Note 3, at pp. 46 ff.

⁷⁶ *Task Force Report: Police, op. cit. supra*, Note 56 at p. 16.

tary model is immensely attractive to police planners, and not without reason. In the first place, there exist some apparent analogies between the military and the police and it does not seem to be wholly unwarranted to expect methods of internal organization that work in one context to work also in the other. Both institutions are instruments of force and for both institutions the occasions for using force are unpredictably distributed. Thus, the personnel in each must be kept in a highly disciplined state of alert preparedness. The formalism that characterizes military organization, the insistence on rules and regulations, on spit and polish, on obedience to superiors, and so on, constitute a permanent rehearsal for "the real thing." What sorts of rules and regulations exist in such a setting are in some ways less important than that there be plenty of them and the personnel be continually aware that they can be harshly called to account for disobeying them.⁷⁷ Second, American police departments have been, for the greater part of their history, the football of local politics, and became tainted with sloth and corruption at least partly for this reason. Police reform was literally forced to resort to formidable means of internal discipline to dislodge undesirable attitudes and influences, and the military model seemed to serve such purposes admirably. In fact, it is no exaggeration to say that through the 1950's and 1960's the movement to "professionalize" the police concentrated almost exclusively on efforts to eliminate political and venal corruption by means of introducing traits of military discipline. And it must be acknowledged that some American police chiefs, notably the late William Parker of Los Angeles, have achieved truly remarkable results in this respect. The leading aspiration of this reform was to replace the tragicomic figure of the "flatfoot cop on the take" by cadres of personally incorruptible snappy operatives working under the command of bureaucrats-in-uniform. There is little doubt that these reforms succeeded in bringing some semblance of order into many chaotic departments and that in these departments "going by the book" acquired some real meaning.

Finally, the police adopted the military method because they could not avail themselves of any other options to secure internal discipline. For all its effectiveness, the military method is organizationally primitive. At least, the standard part of the

⁷⁷ The tendency of police departments to adopt outward military rigidities has been frequently emphasized; see *Task Force Report: Police*, loc. cit. supra, Note 56 at p. 29; J. D. Lohman and G. E. Misler, *The Police and the Community*, A Report Prepared for the President's Commission on Law Enforcement and Administration of Justice, Washington, D.C.: U.S. Government Printing Office, 1966, Vol. I, p. 152, Vol. II, p. 196; Banton reports that American police chiefs admire Scottish officers who "bore themselves well, and were smartly and uniformly dressed," op. cit. supra, Note 48 at p. 123.

method can be well enough approximated with a modicum of administrative sophistication. Moreover, since most of the men who go into police work have some military experience, they need not go to outside resources to obtain help in building a quasi-military order. This is important because a century of experience taught American police forces that outside intervention into their affairs—known as the “shake-up”—was almost always politically inspired. Because the suspicion of high-level chicanery is still very much alive, and not without reasons, the police is the only large scale institution in our society that has not benefited from advances in management science. In the absence of lateral recruitment into supervisory positions and developed technical staff skills, changes had to be achieved mainly by means of rigid enforcement of regulations of internal procedure and by emphasizing external trappings of discipline. In a situation where something had to be done, with little to do it with, this was no mean accomplishment.⁷⁸

Acknowledging that the introduction of methods of military-bureaucratic discipline was not without some justification, and conceding that it helped in eliminating certain gross inadequacies, does not mean, however, that the approach was beneficial in larger and longer range terms. Even where the cure succeeded in suppressing many of the diseases of earlier times, it brought forth obstacles of its own to the development of a model of a professional police role, if by professional role is meant that practice must involve technical skill and fiduciary trust in the practitioner's exercise of discretion. The reason for this is simple. While in early police departments there existed virtually no standards of correct procedure at all and no inducement to do well—since rewards were scant and distributed along lines of personal favoritism—one can now distinguish between good and bad officers, and engaging in what is now defined as correct conduct does carry significant rewards. But since the established standards and the rewards for good behavior relate almost entirely to matters connected with internal discipline, the judgments that are passed have virtually nothing to do with the work of the policeman in the community, with one significant exception. That is, the claims for recognition that have always been denied to the policeman are now respected, but recognition is given for doing

⁷⁸ In addition to the rigors of outward discipline, military establishments also rely on “command charisma,” a feature observed in American police departments by D. J. Bordua and A. J. Reiss: see their “Command, Control and Charisma: Reflections on Police Bureaucracy,” *American Journal of Sociology*, 72 (1966) 68-76. The term indicates a leadership principle in which subordinates are moved to obedience by a high regard for, and trust in, the person in command.

well *in* the department, not *outside* where all the real duties are located.

The maintenance of organizational stability and staff morale require that praise and reward, as well as condemnation and punishment, be distributed methodically, i.e., predictably in accordance with explicit rules. Correspondingly, it is exceedingly difficult to assign debits and credits for performances that are not regulated by rule. Because the real work of the policeman is not set forth in the regulations, it does not furnish his superior a basis for judging him.⁷⁹ At the same time, there are no strongly compelling reasons for the policeman to do well in ways that do not count in terms of official occupational criteria of value. The greater the weight placed on compliance with internal departmental regulation, the less free is the superior in censoring unregulated work practices he disapproves of, and in rewarding those he admires, for fear that he might jeopardize the loyalty of officers who do well on all scores that officially count—that is, those who present a neat appearance, who conform punctually to bureaucratic routine, who are visibly on the place of their assignment, and so on. In short, those who make life easier for the superior, who in turn is restricted to supervising just those things. In fact, the practical economy of supervisory control requires that the proliferation of intradepartmental restriction be accompanied by increases in license in areas of behavior in unregulated areas. Thus, one who is judged to be a good officer in terms of internal, military-bureaucratic codes will not even be questioned about his conduct outside of it. The message is quite plain: the development of resolutely careful work methods in the community may be nice, but it gets you nowhere!

There is one important exception to the priority of intradepartmental quasi-military discipline in the judging of the performances of policemen. Police departments have to produce visible results of their work. The most visible results are arrested persons who keep the courts busy. This demand naturally devolves on individual officers. The question about the expected contribution of individual policemen to the statistical total of crimes cleared, summonses delivered, and arrests made is a matter of heated controversy. The problem is usually addressed as to whether or not there exist quotas officers must meet. Of course, the question can always be so framed that one can answer it truthfully either way.⁸⁰ But more fundamentally it is quite clear that individual policemen must contribute to the sum total of

⁷⁹ See *Task Force Report: Police*, *op. cit. supra*, Note 56 at p. 20; Goldstein, *op. cit. supra*, Note 46 at p. 162; and Wilson, *op. cit. supra*, Note 16 at p. 16.

⁸⁰ Niederhoffer, *op. cit. supra*, Note 19 at pp. 68-69.

visible results, unless they have some special excuse, such as being assigned to a desk job. Moreover, how could any police superior under present conditions of supervision ever know whether the men assigned to the traffic division or to the vice squad are on the job at all, if they did not produce their normal share of citations or arrests?

Clearly, therefore, there is added to the occupational relevance of the military-bureaucratic discipline the demand to produce results.⁸¹ While the emphasis on stringent internal regulation, taken alone, merely discourages the elaboration of careful approaches to work tasks, it exercises in combination with production demands a truly pernicious influence on the nature of police work. There are several reasons for this but the most important is based on the following consideration. Though the explicit departmental regulations contain little more than pious sermonizing about police dealings with citizens, whether they be offenders, an unruly crowd, quarreling spouses, accident victims, or what not, it is possible that a policeman could, despite his discretionary freedom, act in some such way as to actually come into conflict with some stated rule, even though the rule is not topically relevant to the situation at hand. Since he knows that his conduct will be judged solely with respect to this point he must be attuned to it, avoiding the violation even if that involves choosing a course of action that is specifically wrong with respect to the realities of the problem. For example, it is far from unusual that officers decide whether to make an arrest or not on the basis of their desire to live within departmental regulation rather than on the merits of the case at hand. In these situations the military-bureaucratic discipline regulates procedure speciously; it does not provide that in such-and-such a situation such-and-such a course of action is indicated. On the contrary, the regulations are typically silent about such matters; but in insisting on specific ways for officers to keep their noses clean they limit the possibilities of desirable intervention and they encourage transgression. Thus, it has been reported that in the New York Police Department, known for its stringently punitive discipline, officers who violate some official rules of department while dealing with citizens simply arrest potential complainants, knowing the complaints of persons charged with crimes are given no credence. Incongruously, while in New York the Police Department is much more likely to discipline an officer for brutalizing a citizen than elsewhere, it in fact rarely gets a chance to do it. For whenever there is a situation in which it is possible that an officer could have an

⁸¹ The most illuminating and extensive discussion of pressures to produce is contained in Skolnick, *op. cit. supra*, Note 41 at pp. 164-181.

infraction entered in his record, an infraction against an explicit regulation, he will redefine it into an instance of police work that is not regulated. Thus, while citizens everywhere run the risk of receiving a beating when they anger a policeman, in New York they run the added risk of being charged with a crime they did not commit, simply because its officers must keep their records clean.⁸²

As long as there are two forms of accounting, one that is explicit and continually audited (internal discipline), and another that is devoid of rules and rarely looked into (dealings with citizens), it must be expected that keeping a positive balance in the first might encourage playing loose with the second. The likelihood of this increases proportionately to pressures to produce. Since it is not enough that policemen be obedient soldier-bureaucrats, but must, to insure favorable consideration for advancement, contribute to the arrest total, they will naturally try to meet this demand in ways that will keep them out of trouble. Thus, to secure the promotion from the uniformed patrol to the detective bureau, which is highly valued and not determined by civil service examinations, officers feel impelled to engage in actions that furnish opportunities for conspicuous display of aggressiveness. John McNamara illustrates this tactic by quoting a dramatic expression of cynicism, "If you want to get 'out of the bag' into the 'bureau' shoot somebody."⁸³ Leaving the exaggeration aside, there is little doubt that emphasis on military-bureaucratic control rewards the appearance of staying out of troubles as far as internal regulations are concerned, combined with strenuous efforts to make "good pinches," i.e., arrests that contain, or can be managed to appear to contain, elements of physical danger. Every officer knows that he will never receive a citation for avoiding a fight but only for prevailing in a fight at the risk of his own safety. Perhaps there is nothing wrong with that rule. But there is surely something wrong with a system in which the combined demands for strict compliance with departmental regulation and for vigorously productive law enforcement can be met simultaneously by displacing the onus of the operatives' own misconduct on citizens. This tends to be the

⁸² Paul Chevigny explains that New York policemen sometimes rebut allegations of brutality by maintaining that they are obviously fabrications since the complainant would have been arrested had the officer laid hands on him. Chevigny reports numerous instances of arrests following altercations with citizens which were ineptly or deviously provoked by policemen, and he comments, "Many lawyers think it a triumph for a felony to be reduced to a mere offence, but the truth is that it requires only two simple ingredients: guiltless clients and infinite patience." at p. 167 of his *Police Power: Police Abuses in New York City*, New York: Pantheon Books, 1969.

⁸³ J. H. McNamara at p. 189 of his "Uncertainties in Police Work: The Relevance of Police Recruits' Background and Training," in Bordua (ed.) *op. cit. supra*, Note 3 at pp. 163-252.

case in departments characterized by strong militaristic-bureaucratic discipline where officers do not merely transgress to make "good pinches," but make "good pinches" to conceal their transgressions.⁸⁴

No matter how elaborate and no matter how stringently enforced codes of internal regulations are, they do not impinge on all segments of police departments with equal force. By and large the highly visible uniformed patrol is exposed to far greater disciplinary pressures than personnel in the detective bureaus, which Arthur Niederhoffer aptly described as "mock bureaucracies."⁸⁵ While this situation is viewed as unavoidable, because the conduct of detectives cannot be as closely scrutinized as the conduct of patrolmen, and necessary because detectives need more freedom than patrolmen,⁸⁶ it tends to demean uniformed assignments. Because patrolmen perceive military discipline as degrading, ornery, and unjust, the only motive they have for doing well—which, of course, involves, among others, the devious practices we have just described—is to get out of the uniformed assignments.⁸⁷ Thus, the uniformed patrol suffers from a constant drain of ambitious and enterprising men, leaving it generally understaffed and, incidentally, overstaffed with men who are regarded as unsuitable for more demanding tasks. Though by no means all competent personnel take advantage of opportunities to leave the patrol for the detective bureaus, those who remain are dispirited by the conditions under which they are obliged to work and by the invidiously low level of prestige connected with their performance.⁸⁸

⁸⁴ McNamara cites the following case at p. 171, *ibid.*: "a patrolman directing traffic in the middle of an intersection . . . fired his revolver and hit an automobile whose driver had not heeded the officer's hand signals. The driver immediately pulled over to the side of the street and stopped the car. The officer realized the inappropriateness of his action and began to wonder what he might offer as an explanation to his supervisor and to the citizen. The patrolman reported that his anxiety was dissipated shortly upon finding that the driver of the car was a person convicted of a number of crimes. The reader should understand that departmental policy did not specify that any person convicted of crimes in New York City thereby became a target for police pistol practice." Nevertheless, as the officer's feeling of relief indicates, the transgression was apparently construable as an instance of aggressive crime control.

⁸⁵ Niederhoffer, *op. cit. supra*, Note 19 at p. 85.

⁸⁶ Wilson notes, however, that this view is probably mistaken. The patrolman deals with matters that are ill defined and ambiguously emergent, while detectives deal with more precisely defined crimes and only after they have been committed; *op. cit. supra*, Note 16 at pp. 8-9.

⁸⁷ "A high arrest record reinforces the cynicism that inspired it in the first place, while often establishing a policeman's reputation for initiative and efficiency. His superiors recommend him for assignment to the detective division. This route to promotion appeals to many young policemen who have little hope of passing a written competitive test for promotion, and impels many of them to adopt cynicism as a rational and functional way to advancement." Niederhoffer, *op. cit., supra*, Note 19 at pp. 76-77.

⁸⁸ "At present the principal rewards are promotion, which takes a patrolman off the street, or reassignment to a detective or specialized unit, which takes him out of order maintenance altogether; not surprisingly, patrolmen wanting more pay or status tend to do those things . . . that will earn them those rewards." Wilson, *op. cit. supra*, Note 16 at pp. 292-293.

In consequence the outwardly snappy appearance of the patrol hides a great deal of discontent, demoralization, and marginal work quality.

Another complex of mischievous consequences arising out of the military bureaucracy relates to the paradoxical fact that while this kind of discipline ordinarily strengthens command authority it has the opposite effect in police departments. This effect is insidious rather than apparent. Because police superiors do not direct the activity of officers in any important sense they are perceived as mere disciplinarians.⁸⁰ Not only are they not actually available to give help, advice, and direction in the handling of difficult work problems, but such a role cannot even be projected for them. Contrary to the army officer who is expected to lead his men into battle—even though he may never have a chance to do it—the analogously ranked police official is someone who can only do a great deal *to* his subordinates and very little *for* them. For this reason supervisory personnel are often viewed by the line personnel with distrust and even contempt.⁸⁰ It must be understood that this character of command in police departments is not due solely to its administrative incompetence. It is exceedingly rare that a ranking police officer can take positive charge of police action, and even in the cases where this is possible, his power to determine the course of action is limited to giving the most general kinds of directions.⁸¹ But like all superiors, police superiors, do depend on the good will of the subordinates, if only to protect their own employee interests within the institution. Thus, they are forced to resort to the only means available to insure a modicum of loyalty, namely, covering mistakes. The more blatantly an officer's transgression violates an explicit departmental regulation the less likely it is that his superior will be able to conceal it. Therefore, to be helpful, as they must try to be, superiors must confine themselves to whitewashing bad practices involving relatively unregulated conduct, that is, those dealings with citizens that lead up to arrests. In other words, to gain compliance with explicit regulations, where

⁸⁰ On the pervasiveness of purely punitive discipline, see McNamara, *op. cit. supra*, Note 83 at pp. 178-183. Wilson reports that regulations are so framed that they do not instruct but "give the brass plenty of rope with which to hang us." *op. cit. supra*, Note 16 at p. 279.

⁸⁰ McNamara, *op. cit. supra*, Note 83 at pp. 187-188, reports attitudes of patrolmen towards their superiors and concludes, "Regardless of their accuracy, these assertions strongly support the feeling that the 'bosses' of the department do not deserve the respect which the organization requires or demands."

⁸¹ Banton views the absence of instructions and supervision as a main characteristic distinguishing American police from their British counterpart, *op. cit. supra*, Note 48 at pp. 115-116. The absence of supervision is frequently noted; see McNamara, *op. cit. supra*, Note 83 at p. 183; and *Task Force Report: The Police*, *op. cit. supra*, Note 56 at pp. 28, 52, *et passim*.

failings could be acutely embarrassing, command must yield in unregulated or little regulated areas of practice. It is almost as if patrolmen were told, "Don't let anyone catch you sleeping on the job; if they do I'll get it in the neck and you will too. So, please, keep walking; in return I'll cover for you if you make a false arrest." Superiors, needless to say, do not speak in such terms. They probably do not even communicate the message covertly. Indeed, it is quite likely that most police officials would honestly view the suggestion with contempt. But this is the way things work out and the more a department is organized along military-bureaucratic lines the more likely it is that they will work out this way. Naturally, the situation is not conducive to the development of relations of genuine trust, respect, and loyalty.

Finally, emphasis on elaborate codes of internal regulation of a military kind tends to subvert police training, at least wherever this training is administered in departments, as is commonly the case. In the very best existing training programs instruction consists of three parts. There are some lectures concerning criminology, criminal law, human relations, mental health, etc., given by visiting social scientists and lawyers. The second part consists largely of homilies about the social importance and dignity of police work, which emphasize that the occupation makes the highest demands on integrity, wisdom, and courage. The third part, to which the bulk of instructional time is devoted, relates to the teaching of departmental regulation. Since this is the only practical part of the course of instruction, it is abundantly clear that the overall purpose of the training is to turn tyros into compliant soldier-bureaucrats rather than competent practitioners of the craft of peacekeeping and crime control.⁹² But since there exist no direct relation between knowing the regulations and maintaining the appearance of complying with them, the first thing graduates learn on their first assignment is that they must forget everything they have been taught in the academy. The immediate effect of the "reality shock" is a massive increase in the attitude of cynicism among first year policemen, not surprisingly since their introduction to the occupation was not only inadequate as far as their work duties are concerned, but also misleading.⁹³

⁹² McNamara speaks about the dilemma, "whether to emphasize training strategies aimed at the development of self-directed and autonomous personnel or to emphasize strategies aimed at developing personnel over whom the organization can readily exercise control. It appears that the second strategy is the one most often emphasized." *op. cit. supra*, Note 83 at p. 251. Niederhoffer similarly states that, "At the Academy he [the recruit] masters and simultaneously succumbs to, the web of protocol and ceremony that characterizes any quasi-military hierarchy." *op. cit. supra*, Note 19 at p. 45.

⁹³ Niederhoffer, *ibid.*, speaks about the "reality shock" and documents the rapid rise of cynicism among first year policemen; see especially p. 239.

It could be said, of course, that the argument proposed thus far merely shows that efforts to professionalize police work by means of importing traits of outward military discipline is apt to create tendencies to displace misconduct into unregulated areas because the pertinent regulations have not yet been formulated. In time, these areas too will come under the scope of the existing discipline. It is our view that it is exceedingly unlikely that this development will take place. The charting of realistic methods of peacekeeping and crime control is profoundly incompatible with the style of current regulations of internal discipline. One simply cannot bring under the same system of control rules relating to dress and bureaucratic formalities, on the one hand, and norms governing the discretionary process of handling an instance of disorderly conduct on the streets, on the other. Emphasis on the first defeats care for the other. This does not imply that all presently existing regulations must be rescinded to encourage a methodical approach to police work tasks. Quite the contrary, the majority of present expectations will probably retain value in any alternative system of control. But their relevance, mode of presentation, and enforcement will have to be made subsidiary to a system of procedure that charts professionally responsible decisionmaking under conditions of uncertainty. In simplest terms, if policemen can be induced to face problems in the community and to deal with citizens in ways that meet at once criteria of purposeful efficiency and will correspond to the expectations of the kind public trust commonly associated with the exercise of professional expertise, then there will be no need to treat them like soldier-bureaucrats. Correspondingly, as long as policemen will be treated like soldier-bureaucrats, they cannot be expected to develop professional acumen, nor value its possession.

It must be said, however, that the true professionalization of police work, in and of itself, is no weapon against sloth and corruption, no more than in the case of medicine, the ministry, law, teaching, and social work. That is, the professionalization of police work still leaves open the matter of its control. But if we are not willing to settle for having physicians who are merely honest, and who would frankly admit that in curing diseases and dealing with patients they have to rely entirely on "playing by ear," it is difficult to see why we would devote all our energies to trying to make the police honest without any concern whatever for whether or not they know, in a technical sense, how to do what they are supposed to do. Some people say it is foolish to demand technical proficiency and professional ethics where none exists. This view is certainly premature and probably wrong. We know far too little about the way police work is actually done to say with as-

surance that what we desire does not exist. What we know is that policemen have not written any scholarly tracts about it. We also know that presently good and bad work practices are not distinguishable, or, more precisely, are not distinguished. Worst of all, we have good reasons to suspect that if some men are possessed by and act with professional acumen, they might possibly find it wiser to keep it to themselves lest they will be found to be in conflict with some departmental regulation. The pending task, therefore, has less to do with putting external resources of scholarship at the disposal of the *police departments*, than with discovering those good qualities of police work that already exist in the skills of *individual practitioners*. It is not enough to discover them, however, they must be liberated and allowed to take their proper place in the scheme of police organization. By making the possession and use of such skills the controlling consideration in the distribution of rewards, we will have a beginning of a professional system for controlling police practices. The prospect of such a control is in strict competition with presently existing methods of military-bureaucratic regulation.⁹⁴

⁹⁴ The competitive nature of ideals of military discipline and methodical discretion has been noted in a survey of the Boston police department undertaken in 1934: "Too often the military aspect of organization pushes the essentially individual character of police work into the background." cited in *Task Force Report: Police*, *op. cit. supra*, Note 56 at p. 136.

IX. Esprit De Corps And The Code Of Secrecy

In addition to the style of internal regulation and control, the quasi-military character of the police is evident in the *esprit de corps* that pervades the institution. Like the methods of enforcing soldierly discipline, the *esprit de corps* has some basis in the realities of police work and is, in its own way, purposeful. Policing is a dangerous occupation and the availability of unquestioned support and loyalty is not something officers could readily do without. In the heat of action it is not possible to arrange, from case to case, for the supply of support, nor can the supply of such support be made dependent on whether the cooperating agents agree about abstract principles. The governing consideration must be that as long as "one of us" is in peril, right or wrong, he deserves help. Moreover, manly pursuits ordinarily are associated with a spirit of close knit comradeship that not only pervades personal relations but adds traits to the pursuit it does not necessarily have in and of itself. In fact, it is not unusual that some activities that are unpleasant as such are sought after if they are attended in a spirit of brotherly solidarity. Police officers often remark that one of the most cherished aspects of their occupation is the spirit of "one for all, and all for one."

To the extent that the fraternal spirit binds members of the police it also segregates them from the rest of society. It is therefore not an unmixed blessing even at first sight. But the fraternalism among policemen has come under critical scrutiny for other reasons as well. The late Chief William Parker considered it to be a major obstacle against police reform and he did everything in his power to break it up in the Los Angeles Police Department.⁹⁵ Naturally, Chief Parker was not opposed to the laudable practice of rushing to one another's aid; in fact he demanded that much of his subordinates in any case. Instead, his opposition was based on the realization that just as one can always count on the fact that personnel will close ranks and present a united front against outside critics, so one must also expect that similar tactics will be employed inside of the department. That is, functional parts of

⁹⁵ Chief Parker said, perhaps too optimistically, "One thing we have done is to break down a false sense of fraternal obligation. If there is even the beginning of a dereliction on the part of an officer, we hear about it from others within the department." *The Police*, An Interview by Donald McDonald with William H. Parker, Santa Barbara: Center for the Study of Democratic Institutions, 1962, pp. 10-11.

departments close ranks in dealing with each other, creating obstacles against integration of work, and subordinates close ranks against their superiors, preventing effective control. Thus, what appears on first glance as a uniform *esprit de corps* functions mainly as an infinite variety of contingently collusive arrangements that always bind the entire personnel against outsiders but also solidify a plethora of internal schisms and conspiracies.⁹⁶

Despite the fact that the fraternal loyalty of the police is not what it appears to be to the naive beholder who thinks the "cops are one great happy family," it remains a fact that officers must work with men they can trust. This is so not only because it helps in making performance look better than it actually was, one man being always ready to attest to the excellence of his associate, but also because of the manifold dangerous uncertainties that inhere in the occupation. But the kind of trusting relations with one another policemen seem to require on a continuing basis are easily met by pervasive silence. Teams of partners do not talk about each other in the presence of nonteam members, line personnel do not talk about their peers in the presence of ranking officers and, of course, no members of the department talk about anything remotely connected with police work with any outsiders. Obviously the rule of silence is not uniform throughout these levels. Thus, matters that could never be mentioned to outsiders can be topics of shoptalk among peers. But this reflects only gradations of secretiveness. In a larger sense police departments accommodate a colossally complicated network of secret sharing, combined with systematic information denial.

The principal characteristic of this network of relations is that while secret sharing creates a state of mutual dependency and a semblance of lateral organization of cooperation on various levels of the institution, this result is held to a minimum by the overriding rule that no one tells anybody else more than he absolutely has to. In consequence, solidarity is based mainly on, and limited to the perception of, some external risk to a unit, regardless whether this risk is located outside or inside the institution. Beyond that, every man and every part of the force is on its own. The lack of cooperation between independent police organizations in the United States is well recognized,⁹⁷ and the

⁹⁶ Concerning disunity, jealousies, and recriminations in police departments, see *Task Force Report: Police op. cit. supra*, Note 56 at p. 53. McNamara remarks that the "cohesiveness is not only related to difficulties associated with handling citizens or police problems but also extends to the difficulties associated with a patrolman's relations with other officers, particularly his superiors." *op. cit. supra*, Note 83 at p. 246.

⁹⁷ The fragmentation of American police systems could scarcely be expected to yield other results; see A. C. Breckenridge, "The Constitutional Basis for Cooperative Crime Control," *Journal of Criminal Law, Criminology and Police Science*, 39 (1949) 565-583. The actual extent of uncooperativeness is something of a "well-guarded secret."

bad relations between Federal and local police agencies have reached a state of near notoriety. The hostility and information denial between bureaus and details of departments is occasionally admitted. But that every individual officer has important information that he does not share with anyone is virtually never mentioned in the literature. Yet this is a central fact of police work and every officer learns about it in the first year of his practice. By this we do not mean that individual officers have information which if revealed would compromise someone. Instead, we mean substantive factual information about crime, people, social areas, conditions, etc., which are of use in getting the work of policing done. That his brother officer might need access to such information for a specific purpose, or that he might benefit from having access to it in general, is his problem; he may receive informational help as a favor, but he has no claim on it.

The fact that all police officers are in some sense individual entrepreneurs while they are also dependent on one another gives their fraternal unity a particular cast. While all types of such solidarity are at the peak of their strength in confrontations with outsiders, that of the police is *only* outward oriented. Beyond that the solidarity does not lead to effective lateral cooperation between departments, between parts of departments, and between individual officers above the level of two-partner teams. Indeed, it appears that the most seasoned policemen who approach their work in the most craftsman-like manner are most often acting as if they were independent practitioners who merely credit the department with the products of their work and who merely use their membership in the police force as the basis of their activity. For examples, several detectives assigned to the fraud detail in a large West Coast city police department each had his separate files. Not only was the exclusive access to these files guaranteed by a tacit respect for privacy, but what they contained would probably not have been of much use to anyone but the men who collected them. They were meant to be a non-shareable resource, and their correct employment was impossible without the knowledge the detective kept in his head. Moreover, every detective had his private sources of information in the community who kept him abreast of new fraudulent practices and about the life and activities of known swindlers. These informants are under instructions not to speak to other policemen and it is considered to be a breach of professional ethic for one officer to trespass on another officer's informational domain.⁹⁸ Similarly, patrolmen as-

⁹⁸ Niederhoffer understates the case in saying, "It is also true that ambitious detectives strive to build up a *private* circle of informants." *op. cit. supra*, Note 19 at p. 84. The fact is that no detective can even begin to solve cases without it. Wertman and Piliavin write

signed to stable beats are known to possess an enormous amount of factual information about their areas and about the people living in them, but they do not communicate this information to one another. Even the patrolmen who work the same streets do not share information. For example, one officer observed patrolling a skidrow area in a large Rocky Mountain city kept a card file of transients passing through his territory in the back room of a local bar. The supervising sergeant knew about it but made it clear that he would not dream of demanding access to it. His explanation was that "if you want a man to do a good job you have to let him do it in his own way."

It is important to emphasize that the pervasive information denial, which seems to make a mockery of the fraternal spirit, is not based solely on capricious secretiveness or on fear of disclosure of potentially embarrassing facts, though both of these factors are probably relevant to some extent. It appears that effective peacekeeping and crime control require the maintenance of personal ties with persons active in, or living on the fringes of, illegal activities. Since these ties involve an intricate exchange of secrets for favors they can be easily jeopardized by being open to others. Only the long-range symbiotic dependency between a policeman and his informer furnishes the security the latter craves. The informant has no reason to think that a third policeman who does not depend on him for a steady flow of information will have his interest at heart, and thus he will refuse to cooperate. If he has reasons to believe that his identity has been betrayed by the officer he once trusted, he will probably refuse to cooperate with him too. In addition to the fact that sources tend to dry up when they are not secretly cultivated, officers have understandably proprietary interest in exclusive access to them. Having a good informer is a substantial asset to an enterprising policeman. In the competitive struggle for advancement in the department it would be foolish for an officer not to maximize the advantage that accrues from exclusive access to information, especially since the development of a trusting source sometimes involves a good deal of work.

This method of working is generally accepted by policemen as a routine part of their occupation and those who depend on it close ranks to defend it against others in the department whose interests are opposed to it. Thus, for example, intelligence units in police departments are frequently isolated and distrusted. The

about officers assigned to juvenile details, "Although the officer may consult *his* files on populations of suspects and offenders located during previous investigations, these files are used largely as memory aids. Most of this information is in his head." *op. cit. supra*, Note 15 at p. 69.

one kind of intelligence that is not available to such units is the information from those community resources individual officers use in their work. Typically, the detectives assigned to intelligence units must develop their own contacts, and they avoid seeking the cooperation of other personnel out of fear that this would antagonize them. One important consequence of this state of affairs is that even the most advanced among our police departments are not anywhere near the objective of developing adequate information storage and retrieval systems. Even if the present efforts to make use of modern electronic technology would succeed in coding existing information, this would not encompass the knowledge that is currently neither shared nor recorded. But this information is incomparably more important in getting the practical tasks of police work done than all the materials contained in the now obligatory narrative reports. Talks with detectives assigned to intelligence units make it quite clear that the information denial from which they now suffer is not exclusively, nor even mainly, based on considerations of career expediency seen from the vantage point of officers who wish to protect their advantage. The interest of these units is to insure that this information is made use of wherever it might be useful and they would be willing to make every provision to protect the advantage of the officer who would supply it by calling him into cases where his help is desired. The real obstacle is a fraternal understanding among those who have information not to cooperate. That is, the uniformed patrol as a whole, and the various bureaus, are opposed to having any of their members hobnobbing with detectives from the intelligence unit in accordance with the most general maxim of brotherly obligation to keep things one knows to himself.⁹⁰

It is part of the pathological influence of the military bureaucratic approach to the "professionalization" of the police that it actually strengthens tendencies towards the combination of occupational individualism and defensive fraternal solidarity even though it is opposed to it in principle. The proliferation of formal regulation and the singleminded care that is given to their enforcement—even if only in appearance—creates a flow of communication that moves almost exclusively downwards through the chain of command. Though most of this communication does not actually relate to the realities of police work, or relates to it only in the most superficial way, it floods, so to speak, all the channels to capacity. Despite the fact that police departments depend almost entirely on the perceptiveness and judgment of

⁹⁰ Remarkably, the President's Commission on Law Enforcement and Administration of Justice did not recognize this point even though it devoted considerable attention to the problems of police intelligence.

their individual members to get the work of policing done, despite the fact that citizens who solicit police intervention always deal with individual officers whose decisions about the merits of the case are final,¹⁰⁰ there is virtually no feedback to the institution beyond the kind of record keeping that barely serves statistical purposes. Even if personnel would not have reasons of their own to deny the department vital information, the system would continue to encourage it because it contains no routinely open channels for return communication. This is not to say that those in command positions would not like to know what their subordinates know. Quite the contrary, they decry secretiveness. But they don't seem to realize that they cannot expect an upward flow of communications of any kind from the soldier-bureaucrat-policeman who is conditioned to respond to the incessant voice of regulation with "Yes, Sir!" and who will inevitably reply to even the well meant question, "What do you think?" with an obligatory "Whatever you say, sir!"

Even the military method of debriefing of field personnel would be a substantial improvement over the existing state of affairs. By means of this device departments would be in a position of gathering at least a modicum of intelligence about conditions in specific territories and in specific problem areas. Optimally, police departments should institute the practice of regular staff conferences in place of the present largely meaningless roll call at which officers stand in military formation listening to the order of the day. Under present conditions such conferences are not feasible, nor are they likely to be productive of results. But this is in no way due to the nature of police work as such, but merely to the definition of the policeman's role as a small cog in a large quasi-military machine. Some people might say that the idea of "burly" policemen having staff conferences at every change of the watch in the precinct house is absurd, presumably because they are by the nature of their background, especially their low education and inarticulateness, not prepared for it. This view is almost certainly mistaken. Whenever police officers are furnished an opportunity to discuss their work problems around a conference table, they generally display a thoughtful approach that amazes outsiders. Naturally not all policemen contribute to discussions nor do all benefit from them. But in this respect they are

¹⁰⁰ K. C. Davis writes about the police, "No other federal, state, or local agency, as far as I know, delegates so much power to subordinates. No other agency, so far as I know, does so little supervising of vital policy determination which directly involves justice and injustice to individuals." *Discretionary Justice: A Preliminary Inquiry*, Baton Rouge, La.: Louisiana University Press, 1969, p. 88. Davis should have added that there is no room for supervision of, and interest in, policy determinations in a system that is permanently flooded with petty military and bureaucratic regulations.

not very different from teachers, some of whom might also not attend faculty meetings without much loss.¹⁰¹

People with high educational attainment often have a remarkably naive opinion of what can be expected of persons who did not attend college, and they never cease to marvel when they discover that such people are informed and resolute. There is perhaps no better example of this experience than what happened in this respect in many psychiatric hospitals. The initial impulse to have low-level psychiatric personnel, i.e., attendants and practical nurses, attend staff conferences was to try to improve their performance by association with their betters. It was soon learned, however, that such persons, whose educational attainment is often below that of policemen, were not only fully competent participants in discussions but their contribution to conferences went far beyond what was expected. There is one more reason why the view that policemen could not benefit from ways of exchanging information and coordinating activity that are characteristic of the higher professions must be a travesty. For if it is in fact true that they are so crude as not to be able to discuss their work profitably, then surely they should not be entrusted with responsibilities that involve making decisions that literally involve the very existence of a great many people. Strangely, however, many of the same people who hold that police work is of the nature of a semi-skilled occupation and ought to be organized accordingly, have absolutely no scruples in giving policemen powers that can save or destroy their own lives.

It is ironic that duties that arise out of a sense of fraternal obligation should be divisive in their effects. The duties to which we refer are, of course, to spring to the aid of one's fellow officer in case of an external attack, combined with the enjoinder not to stick one's nose into his business. It is difficult to see how relations between policemen can be anything but superficial and uneasy. For they have very little control over one another, contrary to what is commonly the case among work associates. Once accepted into his community, a policeman can be as different from the rest as he desires. The only rule he must observe scrupulously is not to go against his kind. Naturally, certain similarities of attitude develop from similarities of circumstance and from the common interest in opposing outside critics. Within these limits, however, reciprocal tolerance is virtually unlimited. And they do tolerate the worst of their kind in their midst without a murmur

¹⁰¹ Dr. Harry A. Willmer, of the Langley Porter Neuropsychiatric Institute in San Francisco, conducted and videotaped problem centered conferences involving patrolmen. Most viewers of these tapes expressed astonishment at the thoughtfulness and articulateness of the participants.

of protest. Thus, Isidore Silver can say with full justification, "Police secrecy and suspicion even in 'professionalized forces' preclude 'ratting' on those violent and sadistic officers held in revulsion by their votaries."¹⁰²

Our critique of the military-bureaucratic form of internal regulation and of the particular kind of fraternal spirit was mainly directed to show that they are specious forms of organization of police departments. The former does not in any serious sense govern what policemen do in their work and the latter does not bring forth true understanding and cooperation among officers. Indeed, they not only create a mere semblance of order and cohesion that is actually unconnected with the real concerns of peace keeping and crime control, but they are a positive impediment to the development of methodical approaches to it. It is no exaggeration to say that whatever good and responsible work some policemen do, they do despite the handicaps created by the department of which they are members. How little the existing forms of regulation mean is perhaps best highlighted by considering what the practices of medicine and nursing would be like if they were patterned solely by those bodies of bureaucratic rules that facilitate the operations of hospitals, i.e., by rules concerning duty assignments, dress, punctuality, routine paper work, hierarchy, etc., while such matters as recognizing symptoms of illness, choosing and administering remedial treatment, and the whole rest of substantive concerns with the health and illness of patients were left entirely to the personal wisdom, integrity, and compassion of practitioners without being determined in any other way. If a body of medical and nursing skills did not exist, would anyone seriously expect that it could be extrapolated from hospital regulations? Would anyone believe that if such skill and knowledge existed in only a vestigial and largely unformulated form that they could flower under conditions where compliance with bureaucratic regulation was given unqualified priority over everything else? Could anyone hope that careful approaches to problems will develop where staff feel encouraged to attempt as many dramatic feats as possible without regard to substantive merit? Naturally the answer to these questions is a resounding no, and there can be no disagreement on the point that though hospitals must be well regulated, their regulation is necessarily subordinated to the craft of healing.

¹⁰² Silver, *op. cit. supra*, Note 62 at p. 932. Silver also cites support from a statement by W. A. Westley that the few sadists, who seem isolated, and who arouse fear and revulsion among their associates, are safe because it is exceedingly difficult to mobilize support against them. My own observations confirm this. It seems that the only aspersions one officer can honorably cast upon another is that the latter breached the code of silent fraternity. See also J. Q. Wilson, "The Police and their Problems: A Theory." *Public Policy*, (C. J. Friedrich and S. Harris, eds.) Vol. XII, 1963, 189-216, at pp. 207 ff.

It could be said that the analogy is contrived because while we already have an elaborate and highly sophisticated craft of healing, there does not exist an even remotely similar craft of policing. This view, while true as far as it goes, is profoundly misleading. Healing was a professional craft long before a single element of its modern knowledge and technique was in existence. Though academies of medicine existed for centuries, most practitioners acquired whatever little knowledge they possessed through an apprenticeship system of training. And, of course, the requirement that licensed nursing be based on a background of academic training is of most recent origin. That is, the healing arts became professions not because they possessed a firmly formulated body of information and technique but because they cultivated the development of methodically informed craftsmanship. It was on this basis that they became emancipated from magic and came to operate on the foundation of a secular social trust.

No one knows, of course, how to set the development of a profession into motion, and therefore no one should presume to talk about the professionalization of the police in any but the most tentative terms. With this reservation in mind, some problems of development can be explored in the hope that they might lead to movement in the desired direction. In this undertaking it is useful, to some extent, to dwell on analogies with existing professions, provided that it be kept in mind that conditions that accompanied their birth no longer exist, and provided that full recognition be given to the substantive differences of tasks.

In the following we will discuss the formation of the professional police role under four general headings: first, the personal accreditation of police practitioners; second, the relationship of policing to scholarship; third, recruitment and professional training; and fourth, several specific topics of police practice. It must be emphasized that this discussion is not offered as exhaustive of the problem; in fact, it is not only incomplete, but to an extent desultory. These are simply some things that can be said now with some justification. If this discussion will be proven wrong in every point, but will have given rise to discussion, then the purpose for which it is offered will have been achieved. Should some of the things proposed be found acceptable, that much the better.

X. Accreditation Of Police Skill

The mandate of policing is assigned to police organizations as corporate entities and not to particular staff members. Specific duties of individual officers are, therefore, wholly derivative and determined by internal schemes of division of labor. While this kind of work organization is characteristic of all corporate structures, the police differ from others in one important aspect. Because all personnel enter their respective police departments with identical qualifications—more precisely, because differences of background do not receive official recognition in recruitment—the work distribution is largely arbitrary. That is, all members of police departments are eligible for all assignments at the outset of their careers and most remain in this status throughout their careers. Of course, some allocations of personnel to positions are stabilized. The hierarchy of command position, which can be attained through a system of civil service examinations is the most important way of fixing a differentiation of responsibility on a permanent basis. However, since the duties of sergeants, lieutenants, and captains are not clearly delineated, it is often merely a matter of departmental politics whether a position will be occupied by a man in one rank or another. Only in the uniformed patrol have command positions been routinized to some extent, but even here practice often conflicts with policy. In any case, the idea that underlies the hierarchical differentiation of command is that the best among equals move to levels of greater responsibility, with practically no regard for specific competence requirements either of substantive or managerial nature. Consequently it is not unusual that an officer who has commanded the traffic division will be shifted to assume command of, let us say, the juvenile detail. A modicum of technical specialization tends to develop through assignments to detective bureaus, assignments which are generally not governed by civil service rules, and men with several years of service in some crime control area will ordinarily not be called upon to do work outside their fields of activity. Moreover, seniority in terms of years of service tends to give some men an informal moral right to expect that their choice of work assignments will be given favorable consideration in the overall division of labor. These are, however, merely exceptions to the more general rule that being a policeman is basic-

ally an undifferentiated employment status, as many officers learn to their grief in the not infrequent department "shake-ups," if they do not already know it.

All members of police departments, without regard to rank or assignments, benefit from a certain occupational franchise. That is, by virtue of simply being a policeman one is officially licensed to undertake actions from which other citizens are barred. But this franchise is strictly derivative of actual employment. Contrary to the case of the social worker, teacher, or nurse, a policeman out of employment is merely an ex-policeman. In fact, the projection of a career in police work means virtually always spending one's working life in a single department. Though it happens occasionally that men occupying intermediate ranks in large departments will be lured away to head smaller departments, the occupation is generally characterized by the absence of opportunities for lateral movement among organizations. Thus, police officers are, in a sense, captives of departments and must restrict their career planning and social life to opportunities that are available locally. Consequently, aspirations to advancement cannot be oriented merely to objective features of good work in the occupation but must necessarily contain a more heavy admixture of regard for interpersonal relations with one's peers and superiors than is the case in occupations that have a marketable value outside the present employment situation. Thus, because in police work "what you know" unavoidably matters far less than "whom you know" than elsewhere, the realization of aspirations involves recourse to a ramified network of empire building, collusive arrangements, and informal politicking.¹⁰³

Because the preponderant majority of policemen are in an undifferentiated employment status in terms of their official job classification and in terms of informal realities, and because there exists no open employment market for their occupational skill and experience, departments find it easy to order officers to do anything at all that according to the lights of the command needs to be done or will help to keep the system going. Thus, for example, when departments need mechanics, record clerks, messengers, laboratory technicians, ambulance drivers, switchboard operators, etc., they often assign officers to these jobs. Moreover, being assigned to the uniformed patrol might mean being ordered, in the course of a single day, to direct traffic, to investigate a reported crime, to transport a prisoner, to chaperone a teen-age affair, to pacify a group of boisterous conventioners, to do some

¹⁰³ New York patrolmen believe that advancement in the department can be secured through the good offices of a "rabbi," i.e., a senior officer who is favorably disposed to the patrolman on a personal basis; see McNamara, *op. cit. supra*, Note 83 at p. 189.

clerical work in the station house, to escort a foreign dignitary, and more. While this gives police departments a great deal of organizational flexibility and, incidentally, makes the lives of those in command so easy as to make understandable why they do not need to possess managerial skills, it clearly conveys that men who can be ordered to do whatever comes up will not be expected to be good at anything in particular.

As a consequence of this situation it remains possible to define the role of the policeman at the level of the meanest task associated with his work. After all, it can always be said that a performance that can be replaced by a traffic light—something often mentioned by patrolmen with bitter humor—or driving a locked van full of drunks, does not require elaborate preparation and scarcely deserves a high level of recognition. But the same men who do this non-skilled or semi-skilled work are also empowered to coerce citizens to obey their orders, are obligated to make decisions that can ruin a person's life, and are expected to help in keeping families intact and peaceful. Now, it is clearly vain and hopeless to claim professional status for such an occupation, especially when its more serious and more consequential parts are far less visible than its simple parts.

One reason why the more serious aspects of police work suffer from low visibility is that they center around the lives of people whose voice is either not heard or does not count on the forum of public opinion. It is exceedingly rare that policemen make decisions that have a direct and lasting effect on the circumstances of existence of members of the middle and upper classes. This segment of society experiences police presence mainly in the form of traffic control and similar low level service. But for the rest of the community—the poor, the powerless, the ghetto, the slum dwellers, the devious, the deviant, and the criminals—the policeman is a figure of awesome power and importance. What he does or fails to do literally shapes their destiny on a day to day basis. In this area of society an officer is continually in the position to save, let destruction take its course, or to destroy, and thus his role is at least as important as that of the physician, lawyer, or social worker. The only way one could possibly deny validity to this estimate of the importance and seriousness of police work is to take the view that whatever is done for or against the wretched is by definition unimportant and therefore not deserving of serious concern.¹⁰⁴ But this view is clearly inconsistent with

¹⁰⁴ This view is associated with archaic forms of control of vagabondage. See Alexandre Vexliard, "La Disparition du Vagabondage comme Fleau Social Universelle" *Revue de l'Institut de Sociologie* (1963) 53-79; and A. H. Sherry, "Vagrants, Rogues and Vagabonds—Old Concepts in Need of Revision," *California Law Review*, 48 (1960) 557-573.

the ethos of a civil polity. Surely even the most bigoted opinion will allow that dealings with skid-row derelicts, drug addicts, spouses at each other's throats, juvenile delinquents, and even hardened criminals, constitute a demanding and complex concern, and that, therefore, these tasks should be attended with motives and a degree of sophistication commonly associated with professional vocations. In the light of such considerations the professionalization of police work is a non-deferrable necessity and every alternative to it is nothing short of the betrayal of democratic ideals.

To elevate peace keeping and crime control to the level of a professional vocation, indeed to create a favorable condition for this development, it would appear absolutely unavoidable that those who are assigned to such duties be freed of all tasks that are not connected with it, or only incidentally connected with it. It is inconceivable, or at least exceedingly unlikely, that this freeing could be attained within the framework of the present employment situation and organizational structure. That is, the present franchise that functions through membership of the force will have to be augmented by personal certifications of competent personnel. Certified or licensed policemen should not be required, nor are they likely to be willing, to do anything but policing. By the same token, they, and they alone, should be empowered, in accordance with the definition of the police role proposed earlier, to "exercise non-negotiably coercive force against citizens in the light of situational exigencies." The endless variety of routines that are currently part of police work, but which in the ordinary course of events do not require the competence mentioned in the definition, must be assigned to other kinds of staffs. It is after all most unlikely that the mayor's travels will be significantly impeded by protesting citizens and, accordingly, it is difficult to justify making a licensed policeman his chauffeur to insure the freedom of movement he needs. To free licensed policemen to do police work the departments must cease to be miniature military establishments, in which the soldiers can be expected to do whatever needs doing, and they have to begin to be like every other corporate enterprise. They will have to develop, just as schools, hospitals, airlines, the post office, etc., had to develop, a large variety of supportive services of a managerial, technical, clerical, skilled, and unskilled nature. Of course, management may have to be recruited in part from among licensed policemen, not unlike the case in schools and hospitals where it involves educators and physicians respectively, in addition to professional managerial personnel.

The way of attaining the objective of limiting the duties of

policemen to policing is by making the license to engage in the activity analogous to the certification of teachers. In education the license to teach is granted to the person, and while the duty to provide an educational program is vested in school systems, the mandate is discharged by competing for, and employing the services of, individually competent teachers. Like policemen, teachers function in corporate settings and are to some extent under bureaucratic regulation. But it is understood that what they do in classrooms, that is what they do specifically *qua* teachers, is mainly determined by the skill and knowledge they are certified to possess. And, of course, they are substantially free of duties that have nothing to do with teaching. Naturally complete freedom from bureaucratic regulation and incidental duties cannot be attained in practice. Even physicians are often obliged to engage in, or desist from, certain practices merely to comply with some hospital regulation. The point always involves the location of emphasis.

In the long run the issuing of police credentials, like the issuing of teaching credentials, must become the function of professional schools. But the beginning of the certification does not need to await the development of such schools. Large police departments could very well begin right now to function as selective licensing institutions in the manner in which large hospitals have in the past, and do even to some extent now function as licensing institutions for registered nurses.

The beginning of licensing will undoubtedly create troublesome problems and perhaps even dangerous tensions. Since large departments should begin the process, before professional schools will take over, and since they differ greatly, the procedure that might be appropriate in Los Angeles will not work in Chicago or New York. In any case, it is more than likely that the greater danger is on the side of being too hesitant about it than on the side of making mistakes. One way in which departments could set the licensing procedure into motion would be to adopt the distinctions of relative competence recommended in the Report of the President's Commission on Law Enforcement and Administration of Justice.¹⁰⁵ Though this recommendation does not intend the creation of personally certified professional policemen because it is far too closely attuned to administrative needs of existing police systems, it could, precisely for this reason, serve as a transitional phase in the transformation from soldier-bureaucrat to professional.

¹⁰⁵ See, *Task Force Report: The Police*, *op. cit. supra*, Note 56 at pp. 122ff. The recommendation as it stands does little more than sanction distinctions that already are made informally in some departments, between detectives, patrolmen, and cadets.

XI. The Relations Of Police Work To Scientific Scholarship

It is often said that the *sine qua non* of a modern profession is that it be founded on a body of technical, scholarly knowledge.¹⁰⁶ That is, the public trust in the efficacy of professional practices is based in part on the assumption that what a practitioner decides to do is related to information contained in books and taught in classrooms. Such knowledge is arcane, at least in the sense that it is not accessible to lay people, its acquisition involves protracted and assiduous study, and its validity is determined by scientific criteria, rather than by standards of common sense reasonableness.

In our times the connection between this kind of arcane information and professional practice is justified entirely on the basis of secular and pragmatic considerations. But it is a matter of some importance that the tie between professional knowing and professional doing antedates this understanding of its significance. At their beginnings, the great professions of healing and teaching were founded on sacred knowledge and their procedures were closely related to religious ritual and priestly functions. Thus, their intellectual, or more properly perhaps, spiritual character is not a modern invention. Instead, they have from the time of their outset been, so to speak, inspired vocations. But modern physicians and modern teachers have become what they are today only after they turned into an exhaustively secular "priesthood." The conversion of these professions from their archaic to their contemporary form involved a complete emancipation from the sources of their origin. The turn to secular-scientific scholarship, in lieu of earlier recourse to divination and revelation, was in large measure due to the fact that the former is superior to the latter in the attainment of worldly purposes. But the archaic sense of the connection between arcane knowledge and professional practice did not disappear entirely. Science merely took the place of sacred knowledge. For this to be possible it is necessary to claim more on behalf of science than can be actually justified. Thus, though everyone knows that as a merely technical re-

¹⁰⁶ H. M. Volmer & D L. Mills (eds.) *Professionalization*, Englewood Cliffs, N.J.: Prentice-Hall, 1966.

source available scientific information is often not adequate to handle many specific problems, its use is nevertheless attended by the hopeful belief that somehow, in yet unknown ways, science cannot fail. Consequently, to claim for some professional procedure that it is scientific constitutes an ambiguous claim, or, at least, as ambiguous a claim as to invoke divine sanction in its favor. In this framework the belief in the connection between scientific truth and professional practice can remain intact even though specific justifications are often lacking and for the rest only of passing merit. In sum, the professionalization of modern medicine and teaching involved the severance of ties with their beginning, i.e., the transfer from sacred to secular knowledge, and a hefty dose of faith in the ultimate value of scientific scholarship.

Not all the modern professions trace their origins to associations with religious wisdom and priestly functions, however, and hence not all begin with arcane knowledge. Engineering, for example, springs from the other end of the sacred-secular spectrum. It was from the outset geared to the mundane objectives of converting forms of work from lower to higher input-output ratios, and to changing matter from worthless to valued forms. The practitioners of this craft remained shop craftsmen roughly up to the end of the last century. Despite notable achievement the craft did not attain professional status until it became emancipated from exclusive concerns with situational work problems and from apprenticeship methods of training and turned to bookish knowledge and to academic instruction.¹⁰⁷ Similarly, social work arose out of humanitarian and political motives. But its helping functions remained a lay pursuit until it became dissociated from these inspirations and went on to basing its practices on a body of information and precepts that at least aspire to recognition as scientific.

In an earlier section of this report we have criticized at length the quasi-military character of modern American police forces. We can now put this critique in yet another perspective. In some inchoate sense all police forces trace their origin to the role of men of arms, as is, indeed, still reflected in the term gendarme. Certainly this is the guiding sense of the occupational self-conception of many policemen. Now, in abandoning this conception, and the

¹⁰⁷ Professionalization of engineering is a fascinating story; see, B. M. Fisher, *Industrial Education: American Ideals and Institutions*, Madison, Wisc.: University of Wisconsin Press, 1967, pp. 60-71, where at p. 62, F. A. Walker, who took over the presidency of MIT in 1875, is quoted as having stated, "We assert that the disinterestedness of study does not depend on the immediate usefulness or uselessness of the subject matter, but upon the spirit with which the student takes up and pursues his work. If there be zeal in investigation, if there be delight in discovery, if there be fidelity to truth as it is discerned, nothing more can be asked by the educator of highest aims."

entire framework of militaristic associations that come with it, the police would move along the path of development of all the professions which received recognition only after severing connections with their respective sources of origin and gained new public trust and legitimacy on the basis of association with secular scientific scholarship.

The transformation of the conception of policing from the model of the man of arms to the model of the trained professional, whose training stands in some relationship to scientific scholarship, naturally involves the mobilization of specifically delineated programs of study and instruction. The development of such programs requires decisions of what should be studied and what should be taught. But the consideration of these questions can go on indefinitely. The only way out of this situation is to form some institutions that can assume at least provisional jurisdiction over the solution of these problems. Drawing on analogies with the existing professions, such institutions are the post graduate professional schools.

It may seem preposterous to suggest the formation of post-graduate professional schools of police work—graduation from which will ultimately be a condition of employment for all licensed policemen—at a time when most of those who practice the occupation have no more than a high school education. Worse yet, it may seem cynical to suggest that such schools be formed prior to the time the field of study can be defined or even adumbrated. But if these objections are taken at their face value then none of the existing professional schools could have been founded in the first place, and some might lose their right to existence even today. The presumption that the research programs and curricula of the existing schools have unexceptionally well founded relevance to professional practice is simply a presumption.¹⁰⁸ A good deal of what physicians, lawyers, teachers, social workers, etc., study in their respective institutions is of no sensible use and is either simply forgotten or abandoned because it is dated before the hard won knowledge can be applied. Moreover, in some professions, such as engineering or social work, practitioners without

¹⁰⁸ Schools of medicine are a possible exception in this respect. Law schools were certainly not founded to answer needs of professional practice; W. F. Murphy and C. Pritchett report about admission standards to legal practice that, as late as 1953, "Only twenty states demanded a law degree; three required merely a high-school education and two set no minimal standards whatever." *Courts, Judges, and Politics: An Introduction to the Judicial Process*, New York: Random House, 1961, p. 125. It is also a well known fact that law schools have a long history of struggles in attempting to bring curricula into some sort of functional relationship with practice; see Erwin Griswold, *Law and Lawyers in the United States*. Cambridge, Mass.: Harvard University Press, 1964. The problems of defining the field of academic study and its relevance to practice are even more acute in schools of education and in schools of social work.

educational credentials still abound and the possession of a degree is not yet an enforceable condition of employment. None of this, however, alters the fact that professional schools in these occupations function as legitimizing institutions of the professional status of the occupations as a whole.

Though it is not true of all professional schools, in some it matters less that they have a well defined field of study and a well justified program of instruction than that they be the foci of scholarly pursuits oriented to some field practice. As far as the students of these schools are concerned it is less important that they learn a body of specific facts and specific techniques, than that they acquire a complex of generalized methods and approaches to facts and problem solving. Preferably professional education should be as rich in substance as medicine and engineering are. But in the absence of knowledge of such richness and complexity, the education is valuable even if it merely imparts studiousness and the habits of inquisitively dispassionate reasoning. Above all, however, the importance of professional schools resides in that they constitute links between occupations and scientific scholarship. It is difficult to overestimate the practical and symbolic significance of this fact. For better or for worse, in our society occupations progress in efficiency, sophistication, importance and dignity proportionately to the strength of the connections they maintain with academic scholarship.

It is important to emphasize that the transformation of meaning to which we refer—from gendarme to professional policemen—cannot be accomplished by merely infusing police work with some fruits of scientific research or by requiring policemen to secure academic degrees within the existing programs of instruction. Thus, for example, the various existing programs of instruction for policemen offered in association with college departments of social science will almost certainly not produce the desired result. Such programs are valuable only as temporary expedients and because they might help some persons who are active in the police establishment to acquire the stature and the interest to lay the foundations for independent policework-education. But even this much is perhaps too much to expect. For in the existing programs the students are taught by academicians and left to their own resources to establish the connection between what they learn and what they must do. Often such instruction causes resentment rather than enlightenment. Furthermore, student-policemen are the recipients of watered-down wisdom because instructors tend to assume that men who joined the police are probably not very desirous of learning. The depressing effect of this assumption is augmented by the belief instructors and stu-

dents share that taking courses will make but a slight and uncertain impact on the student's standing in the police department. Finally, the existing programs are generally designed to service existing police systems. Though they are greatly superior to what is offered in departmental police academies, they turn out men who are neither prepared nor equipped to oppose the soldier-bureaucrat role that awaits them.

It is clearly not for lawyers, sociologists, or psychologists to develop an intellectually credible version of what police work should be like. This must be left to scholarly policemen, just as the analogous task is left to scholarly physicians, social workers, or engineers. Of course, lawyers, sociologists, and psychologists will retain a role in the professional police work curriculum; but it will be an auxiliary role of the kind that chemists, physiologists, and psychologists now have in medical schools. For the main reason for having professional schools of police work is to make a home for police work-study. It must be their own home, or the enterprise will be dispirited and doomed to failure. The development of a fully reasoned meaning of the police role in society, that might give rise to a range of rationally methodical work procedures, must be worked out from within the occupation, it cannot be imparted to it by outsiders.¹⁰⁹ Outsiders can help in this task, but they cannot take it over. The main reason for this is not that outsiders are not adequately informed but that supplying knowledge from external sources would leave police work intellectually inert. The main purpose of having professional schools of police work (and it is not a matter of great importance whether they be of a postgraduate nature as was argued above and as is the case for Schools of Social Work, or of an undergraduate nature as is the case for Schools of Engineering) is not to produce educated policemen but to make *specific education*, and the range of meaning associated with it, part of the conception of the occupation.¹¹⁰ This can only be achieved by independent degree granting institutions functioning within the framework of

¹⁰⁹ Thus, for example, the definition of the role of police in modern society offered in the foregoing remarks, even if it appeals to social scientists, will be of no practical value unless the practitioners recognize it, and elaborate it further, as the leading maxim of their methods.

¹¹⁰ The leading example of how unimportant "mere" education can be, as opposed to specific professional education, is diplomacy. It appears that even though most members of the foreign service have academic credentials, they are scandalously unprepared for their assignments. Smith Simpson writes, "Diplomacy and foreign policy, like the law involve justice and order. Like medicine, they involve people's lives, and on a very large scale. Diplomacy, therefore, should demand the most thorough, the most grueling professional preparation. Yet the State Department moseys along, requiring no more than was required fifty or sixty years ago. It takes the position that any adult, aged twenty-one, can make a good diplomatic officer if he has but personality, character, a high IQ and a smattering of a liberal arts education." in his *Anatomy of the State Department*, Boston: Houghton Mifflin Co., 1967, p. 10.

existing universities, in the maintenance of which the practicing profession will have a realistic interest.

It takes little imagination to anticipate the formidable difficulties that will attend the formation of a connection between police work and scientific scholarship by means of independently functioning professional schools. The universities will undoubtedly balk at having such schools in their midst, as they have in the past opposed the establishment of other such schools. Even after a foothold is gained the relations will remain strained, as they are generally between academicians and professionals. But all this is a relatively minor difficulty. Professional police schools can buy their way into the university as was done by others who brought financial endowments with them. That this is possible may be sad, but it is true. No matter how painful it is to admit it, the modern university is no longer a bastion of pure learning; the ivory tower is merely its *inner sanctum*. A more serious difficulty is created by the need to staff the schools with faculties drawn from within the occupation. Though the number of persons who are capable of taking such positions is not great, it is quite probable that there are more of them than is generally known. The only possible solution of this problem is for some groups of policemen with respectable credentials to get together, work out some program jointly with some interested scholars and lawyers, and approach a university with a request for acceptance. In this way, schools will be created as viable prospects for them emerge. But the greatest problem of all is to mobilize, in the existing police establishment, the conviction that the development proposed here is absolutely necessary and will not abide any delays. Since we do not propose to run out of solutions in this study, and because the proposed solution requires a background argument, we will deal with it in the next section.

XII. Recruitment And Education

Though we have argued in all seriousness that the licensing of professional policemen and the establishment of professional police schools are non-deferrable projects, they are clearly of a long-range nature. Even if the proposals were to be accepted, it will take years for them to gain momentum. But changes could be instituted in existing methods of police training and recruitment that would enhance this development immeasurably. They also are meritorious without regard for this consideration. Indeed, virtually all we will propose has been recommended as desirable by the President's Commission on Law Enforcement and Administration of Justice; we merely wish to put a new cast on these matters.

In simplest terms: it must be made clear as unambiguously as possible that education does matter in police work. This demand has a certain obvious meaning which we do not and indeed could not possibly intend. We do not propose that education be made to matter in the sense that what is taught be specifically relevant to practice. Naturally this would be highly desirable; but because very little knowledge exists that could conceivably serve this purpose, the limitation would merely show that study does not really matter. Instead, we merely propose that the need for protracted and assiduous study be firmly associated with the occupation of policing. The main objective of the recommendation is to abolish permanently the idea that is all too prevalent in our society that if one does not want to take the trouble of becoming something worthwhile, he can always become a cop. Of the many ways in which the relevance of education can be asserted in practice, the following four appear to be feasible without placing an unduly heavy tax on available resources.

First, the possession of a regular college degree should be made a minimum prerequisite for employment as a policeman. This standard will be later changed as professional schools begin to turn out graduates. The main argument that is ordinarily marshalled against recruiting at the college level is that police departments find it difficult to fill vacancies even through recruiting at lower educational levels. The argument has a certain surface cogency, but is faulty on several counts. For one thing, by recruiting at the level of the high-school diploma, police departments in effect lower their standards from year to year. While it must cer-

tainly not be assumed that all those young people who decide not to go to college are necessarily lacking in intelligence or aspirations, it is only reasonable to expect that as progressively larger percentages of high school graduates do continue their education, the remaining pool of eligibles will decline in average quality. Thus, it should not come as a surprise that many police departments find it impossible to accept more than a ridiculously small fraction of applicants.¹¹¹ Next, the fact that an occupation recruits at the high-school level and cannot find sufficient numbers of eligible applicants does not, in and of itself, compel the conclusion that it would do worse by recruiting at the college level. In fact, it makes a good deal of sense to suppose that, given the rather attractive remuneration—in comparison with teaching or social work—many a young man with a college degree does not choose to become a policeman *because* his diploma is not required.¹¹² Furthermore, many occupations suffer from personnel shortages, but they do not meet this problem by taking in whoever they can get. For example, registered nurses are in even shorter supply than policemen and they are paid considerably less, but the entrance requirements have been increased. The shortages are coped with by purging nursing of menial tasks that require no professional competence, and employing attendants for this purpose. We have pointed to the desirability of an analogous development in police work while discussing the problem of licensing. Naturally, college graduates do not relish the prospect of being station clerks or animated street signs, but policemen should not have to do this kind of work anyway; it must be granted, though, that many who do it now should probably continue doing it, without, however, being empowered to do real police work. Finally, and perhaps most importantly, an occupation that cannot find sufficient numbers of candidates of adequate background and quality, and yields to the compulsion to take what it can get, obviously veers into a course of decline. There is no use in having policemen if they are not the ones we need.

Though it may be unkind, it is difficult to suppress the suspicion that the high-school level of entrance into the police is retained not for any realistic reasons, but because those who set the standards, those who do the recruiting, and those who run the

¹¹¹ See, *Task Force Report: The Police*, *op. cit. supra*, Note 56, where at p. 134 it is stated, "In 1961, only 22.3 percent of applicants for positions in 368 police departments were accepted. The applicant success rate in many departments is far lower. For example, in 1965, only 2.8 percent of the candidates for the Los Angeles Police Department were eventually accepted into the force. In 1966, only 29 of 3,033 applicants were hired by the Dallas Police Department."

¹¹² *Ibid.*, at p. 133, "Departments that have college requirements, such as the Multnomah County Sheriff's Department, have reported that the elevation of standards has enhanced, not hindered, recruiting efforts."

police departments, do not wish to be educationally outranked by their subordinates and risk all sorts of disciplinary problems on that account.

Second, in-service training should be extended to at least two years. Of course, this also will change with the advent of the professional schools. In the meantime it is simply silly to quibble whether police training should last six or twelve weeks. In either case the recruit learns nothing about police work and acquires the firm conviction that he doesn't need to know anything about it. In place of this, recruits should be exposed to regular four semesters of half-time college work, involving textbooks, exams, grades, and all the other accouterments of academic study. According to calculations made by college students who have to work while they go to school, this should leave approximately six hours daily for work assignments, without undue stress. During the first semester, the work assignment should involve tasks that do not involve contacts with citizens, while the remaining three semesters of class work would be accompanied by supervised practice. During vacations, the recruits would of course be available on a full-time basis to the department. Since, according to the International Association of Police Chiefs, some departments can now afford as much as 20 weeks of full-time training, what we propose does not seem to put excessive pressure on manpower resources.¹¹³ But it would convey the clear message that becoming a policeman involves protracted study. It is rather obvious that there will be no great problems in devising a course curriculum, since class work will be mainly broadly *educational* in such areas as law, sociology, psychology, accompanied by some more technical courses, such as criminalistics. The *training* aspect will be left entirely to supervised practice. Needless to say the student will remain in a probationary status during the four semesters, without any powers of a licensed policeman, and aware that the grades he receives and the evaluations his supervisors make will have a bearing on his career.

Third, all presently employed personnel should be required to pass, at a pace of one course per semester, the curriculum offered for recruits, or to take an analogous course curriculum at a college. Licensure of present staff should be made conditional on this requirement. Since people in other occupations often have to go to school on their own time to keep up with changes in their occupation, there are no reasons why one could not expect the

¹¹³ *Ibid.*, at p. 138. The recruit training of the Los Angeles County Sheriff's Department consisted of 820 hours in 1966. According to time allocations we have proposed, departments would "lose" only 780 hours, on the basis of six-hour work days during the 78 weeks four semesters take up. Though for the students the six hours will be a learning experience, the departments will actually receive almost all the benefits they now expect of tyro policemen.

same of policemen. In any case, those who do not desire to avail themselves of this opportunity should be assured of continued employment in some capacity other than the licensed policeman. It must be admitted, however, that this requirement is probably not enforceable without making some exception on the basis of considerations of rank and age.

Fourth, successful study should be rewarded by increases in pay and career advancement. It is scarcely necessary to argue the merits of this recommendation. There are few people who will undertake the ardors of study for the love of learning alone, and if they feel that love they typically do not join any profession.

Though it was mentioned before, a point deserves repeated emphasis: the insistence on study and education, expressed in this section, was not meant to be technically specific. All they will learn will not make the students any better policemen in a practical sense. But they will be different kinds of policemen both through selection and through the educational experience. For example, to have an understanding of law will enable them at least to seek a rational understanding of the recent court decisions.¹¹⁴ In particular, making the college degree a requirement for admission to police work should not be misunderstood: four years of a liberal arts education of any kind will not prepare a young man for police work. And it would be absolutely pernicious to encourage the belief, either in the minds of the new recruits or of existing personnel, that a B.A. in sociology or psychology equips a person to do peace keeping or crime control. Quite the contrary, until the time that the professional schools will get into a full swing of operation, the college graduates will have to learn the craft of policing from the old hands. What the recruitment of college graduates will accomplish, however, is to impel the occupation in the direction of becoming a social mechanism functioning at the level of complexity, sophistication, and responsibility commensurate with the gravity of the problems it is meant to meet. Such an impulse can be expected of college graduates not because they are invariably more idealistic or more resolute than their high school counterparts, but because they will find it in their own selfish interest. College graduates will naturally tend to resist mechanical discipline and work assignments that are below the level of their qualifications; they will naturally demand opportunities for advanced training and explore new possibilities of

¹¹⁴ D. J. Dalby, a severe critic of the Supreme Court decisions restricting police practice, has urged that policemen should receive legal training beyond what is now given; he said, "An officer so unfamiliar with the law that he cannot understand its requirements will lose heart; he will quit trying," at p. 8 of his "New Concepts in Criminal Law," *FBI Law Enforcement Bulletin*, (August 1964) 1-9.

practice in place of the tired old routines; and they will demand recognition of their professional status over and above whatever recognition accrues from having employment ties with a police department. But this kind of militancy would, in effect, make the implementation of desired reforms a self-implementing process, simply because the ordinary career aspirations of college graduates are in line with them. Above all, college graduates will accept the idea of professional police schools with enthusiasm, will provide the cadres of students and teachers and, last but not least, will make the idea of professional police schools acceptable to the university.

Of course there will be problems in making education matter in police work. Not the least of them will be the resistance of old personnel. But this can be overcome, in part by making certain that the institution of the new requirements will not jeopardize the employment security and income of present staff. Administrative devices like "grandfather clauses" have this effect. Beyond that it will be necessary to convince present personnel that making a college degree a condition of licensed police work cannot but help the status of the occupation as a whole, benefiting even those who do not have it.

XIII. Some Elements Of Methodical Police Work

The role components of policing discussed in the preceding sections are all of a formal nature. That is, neither the restriction of occupational duties to serious police work, and its licensing as a marketable occupation, nor the severance of ties with military origins and alignment with academic scholarship, nor the institution of the emphasis on educational requirements, specify what a policeman must know and what he must be able to do, in substantive terms. It was merely proposed that the introduction of these formal role components will further the development of a disciplined and explicit body of knowledge and technical skill, and that without introducing them such a development is not likely to take place. But it is possible to go beyond that to the tracing of fragmentary outlines of substantive knowledge and technique, albeit merely in a tentative manner and mainly for purposes of further exploration.

In the following remarks, we will attempt to sketch several elements or aspects of what appears to be professional, purposeful, and responsible police work. It is important to emphasize that, in accordance with our earlier expressed view, the substance of police professionalism must issue mainly from police practice and police experience; none of the points discussed is based on purely invented desiderata. Indeed, the following features of police work are not being presented as necessary and proper in the same sense as the formal role components discussed in the foregoing three sections. Instead, they are presented because there seems to attach to them a sense of rationality and methodicalness. What commends them is not that they are right but that they are based on reason, rather than on feeling, and in this sense professional. All of the following topics are based on observations of police practice and on extended conversations with policemen of all ranks and all kinds of assignments. That is, the to-be-described knowledge and methods are already in use. But what will be said is merely descriptive of some policemen and not of others. The possession of this information and skill, and its use, are optional in police work under present conditions. They are usually perceived as elements of a personal style of work and they are neither urged upon others nor recognized as superior to alternatives. In fact, even the officers of whom what we will

have to say is descriptive typically do not undertake to advocate the propriety and usefulness of their own ways, nor do they express disapproval of alternative ways. They recognize that in the present system they can have their own peace only by leaving everybody else in peace, even if this goes against their better judgment.

The Use of Area Knowledge

As is well known, there are two schools of thought concerning the organization of activities of the uniformed patrol. One emphasizes the need for familiarity with the area that is patrolled and frequent contact with people, and the other a high degree of motorized mobility. Both sides agree that both objectives are desirable. In general, however, arguments favoring mobility have the advantage, and the overall tendency in most departments is to put as many members of the patrol as possible into radio-monitored vehicles, where they can be readily reached and quickly dispatched to troublespots. Continuous connection with dispatchers requires that officers do not leave their cars except to handle assigned incidents. It is readily granted that this reduces contacts with citizens, makes surveillance more cursory, and attenuates the officers' opportunities to become familiar with the areas they patrol. But it is felt that this is not an excessive sacrifice to achieve the ability to respond rapidly to distant needs for services and a high mobilization potential in general.¹¹⁵ It is possible, however, that this felt preference is due to an inadequate appreciation of the importance of area knowledge in police work.

For rather obvious reasons, the effectiveness of both control and help is greatly enhanced when specific situational factors can be taken into account. To be sure, it is always possible to cite some needs that can be met by universalistic approaches in which the helping and controlling agents can act, or at least can pretend to act, "according to the book," regardless of circumstances. More generally, however, the neglect of situational realities produces the impact of inconsiderateness as far as the subjects of the interventions are concerned, which in itself impairs the effectiveness of the agent.¹¹⁶ Beyond that, and all policemen will agree on this

¹¹⁵ See the arguments contained in *Task Force Report: The Police*, op. cit. supra, Note 56 at pp. 54ff. and 190. The prevailing American view is that the foot patrol is useful but too costly. This opinion is not sustained by the results of experimental studies conducted in England, which show that the presence of a patrolman on the beat results in very substantial reduction in the incidence of indictable offenses; see Ben Whitaker, *The Police*, Baltimore: Penguin Books, 1964, p. 33.

¹¹⁶ Frank Elmes points to the seemingly trivial mistakes English policemen sometimes make—such as calling "a 'Sir' type 'mate' and a 'mate' type 'Sir'"—which are sources of non-trivial consequences, at p. 519 of "The Police: 1954-1963," *Criminal Law Review*, (July, 1964) 505-528.

point, methods that *simply* follow universalistic rules are also ordinarily ill considered. Thus, very often one hears officers explaining that while some procedure is *normally* indicated, in "this particular situation" the norm must be suspended in favor of certain particular considerations. Since this kind of explanation is exceedingly frequent, it seems quite clear that what is referred to as *the* norm is merely a formalized paradigm of action, that "departures" from it are not exceptions or evasions, and that the proper application of the norm always involves attuning it to circumstantial factors.¹¹⁷ To give circumstantial factors their correct weight in decision making it is necessary that they be intelligently appraised. That is, patrolmen must be able to draw on background information to be able to discern what particular constellations of facts and factors mean. In the case of the carefully deliberate policeman—by which is meant a man who organizes his activities with a view towards long-range peace keeping and crime control objectives in the area of his patrol, knowing that what he does from case to case can create more or less calculable advantages or liabilities for himself in the future—the background information consists of an enormously detailed factual knowledge.¹¹⁸ When one accompanies such a man in his patrol duties, he can hear countless variations of stories like, "This is Jack S. He used to own a Dime Store, but for the past ten years he has been working for the T Company. His marriage has been on the rocks ever since his daughter got married. He owns several old automobiles and he quarrels with his neighbors on account of taking up all the curbside parking. He and his wife spend a couple of evenings a week in the X Bar. But when I see him there alone, I know that more likely than not he will get dead drunk and I will have to take him home. We once had him up on receiving stolen property, with one of his cars, but they let him go," and so on. Ordinarily such stories are told with minute precision, mentioning specific names, places, and dates, and they are told in great profusion. That is, many people are known in considerable detail. In addition to this, patrolmen know the shops, stores, warehouses, restaurants, hotels, schools, playgrounds, and all other public places in such a way that they can recognize at a glance whether what is going on in them is within the range of normalcy.

¹¹⁷ As a point of methodological interest, it may be mentioned that researchers who study police activities are almost always given legalistic explanation by policemen. But careful probing reveals, as Nathan Goldman observed, that, "their interpretation and enforcement of the law cannot be considered in any way as constant" in his *The Differential Selection of Juvenile Offenders for Court Appearance*, New York: National Council on Crime and Delinquency, 1963, p. 97.

¹¹⁸ Egon Bittner, "The Police on Skid Row: A Study of Peace Keeping," *American Sociological Review*, 32 (1967) 699-715.

No matter how rich such factual knowledge of an area and its residents is, however, it can never encompass more than a fraction of reality. Many places have not been visited and most persons are not recognized. Thus it appears that though interest is directed to the accumulation of factually descriptive information, as opposed to the desire to achieve a theoretically abstract understanding, the ulterior objective is to be generally knowledgeable rather than merely being factually informed. That is, patrolmen seek to be sufficiently enlightened to be able to connect the yet unknown with the known through extrapolation and analogy. By this method they are always in the position to reduce the open and unrestricted variety of interpretative possibilities that baffles outsiders to a far more restricted range. They always have, as it were, something to go on. Thus, the factual area knowledge, far from being merely a desultory array of data, functions as a powerful scheme of interpretation. It partakes of the nature of a good ethnographic grasp in that it employs typifications without sacrificing interest in and respect for individual variation. Every person and every event is always seen as a particular instance of a class, i.e., neither merely unique nor merely a type.

In calling the patrolman's area knowledge ethnographic we intend to indicate that it is methodical in ways quite akin to the knowledge of sociologists and social anthropologists.¹¹⁰ Social scientists, of course, engage in participant observation field work for limited periods of time and for the purpose of writing scholarly work about it, while the policeman acquires his knowledge on an indefinitely continuing basis for practical purposes. Moreover, since policemen ordinarily do not write books, they feel no compulsion to formulate their methods explicitly. Thus, many of those who are obviously methodical in their orientation and practice tend to say that what they do "comes naturally when you like working with people." This view is not entirely mistaken. Many people could probably never become either good ethnographers or area-knowledgeable patrolmen. But it is established that the competence of those who want to be ethnographers can be vastly increased by study and guided experience. There is every reason to suppose that this could also be true of area knowledge in police work. But under present conditions every patrolman is left to his own devices in mobilizing and using this resource.

There is a particular reason why the cultivation of area knowledge in existing police departments is left entirely to the initia-

¹¹⁰ The patrolman's information gathering contains certain elements of the type of inquiry described in B. G. Glaser and A. L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research*, Chicago: Aldine Publishing Co., 1967, without, of course, leading to theory formulation.

tive of individual officers, and is treated as a non-communicable style of work. It does not possess any recognizable high value as far as departments as a whole are concerned. The drunk whom the patrolman escorts home, knowing who he is and where he lives, will be neither the victim nor the perpetrator of an assault. How should one measure credit for the prevention of relatively rare and unforeseeable contingencies? Moreover, area knowledge helps "only" the officer who uses it. Though knowledgeable patrolmen could be "the eyes and ears" of their departments, in fact they are not. This is due to the pervasive information denial and the absence of upward communication channels which we described earlier as characteristic of military-bureaucratic police systems. Of course, no one objects when individual policemen do well on their own and many high police officials applaud it, but only if it doesn't involve any special costs.

Technical Concerns

Closely associated with area knowledge is a range of types of information about, and approaches to, problems that are typically associated with specialization in police work. It is important to emphasize that while this complex of knowledge, technique, and attitude is presently observable almost exclusively among officers assigned to specific crime control fields, there is no necessary connection between the two.

Perhaps it is best to explain what is meant by technical concern through an illustration. An officer whose duties are limited to dealing, let us say, with shoplifting will tend to develop knowledge about it of the kind that can be found in the book by Mary Owen Cameron.¹²⁰ That is, he will know the varieties of techniques associated with the crime, the types of persons who engage in it, and the opportunities that exist for it in the community. Beyond that, however, he will seek to be continually appraised of changes in the population of shoplifters operating in his jurisdiction by keeping tabs on roving gangs of shoplifters who move from city to city and by investigating the ever-changing patterns of association between shoplifting and other kinds of illegal activities, such as prostitution or the sale of stolen goods. Finally, he will be observant of innovations in merchandizing with a view to whether or not they lend themselves to theft. In a manner of speaking, his interest is not unlike that of the "professional" criminal and his attitude is business-like. While the activity of some daring criminal causes indignation in everybody else, it pre-

¹²⁰ M. O. Cameron, *The Booster and the Snitch: Department Store Shoplifting*, New York: The Free Press, 1964.

sents a technical challenge to the policeman to whom we refer. But contrary to the sleuth celebrated in detective fiction, our man does not concentrate on a particular case by carefully assembling the plot of an individual crime. Instead, he focuses on a crime problem in general and he is moved by the desire to achieve maximum control over it. He may be occasionally zealous in his work, but he guards against letting his pursuits develop into a vendetta.¹²¹ He is apt to feel that "you can't let things get to you if you don't want to end up with a bleeding ulcer." He knows that criminals are not nice people and he expects neither politeness nor candor from them. He also knows that they will try to elude him and outwit him, and he prepares to meet these difficulties rather than relying on a strenuous chase or a head-on clash.

Such officers, whose description we have already idealized for purposes of emphasis, are certainly not above losing their patience and striking out in anger. But contrary to the crusaders against crime who act mainly on impulse, they consider impulsive action sometimes excusable, occasionally even useful to put the fear of God into someone, but generally inferior to calculated and informed procedure. That is, for them the preference for wits over brawn is a matter of principle, which, once accepted, becomes a fixed habit in decision making.

In crime control technical concerns are of direct and readily understandable importance. The more an officer knows about shoplifting the more likely he will be to solve such crimes by arresting offenders. But the attitude of dispassionate interest that is naturally associated with technical concerns is perhaps more important than the resulting volume of arrests. The point is simply this: in an occupation that is directed principally to dealing with things that stir up feelings of hatred, indignation, contempt, and fear in most people, it is doubly important to bring such feelings under control. A policeman who acts merely in ways everybody else would act naturally forfeits the claim to practicing a specialized occupation of any kind, let alone a profession. For in this case it is not he, as a person, who is employed by society, but merely the deeper and more visceral levels of his psyche; it is scarcely possible to imagine a more degrading status, no matter what the objectives behind it.

A policeman who hits a verbally abusive suspect and turns to

¹²¹ J. H. Skolnick and J. R. Woodworth describe a case of conflict between two officers assigned to the "morals detail." One of the officers zealously treats all persons accused of statutory rape as serious sex offenders. The other avoids treating young men whom he recognizes as being merely amorous Lotharios in this way, explaining, "Not that I care if he has to register; but I hate to clutter up our file of pictures with these non-sex-criminal guys" at p. 115 of their "Bureaucracy, Information, and Social Control," in Bordua (ed.), *op. cit. supra*, Note 8.

an outside observer to ask, "Wouldn't you have done the same thing?" might well get the answer, "Yes, but *you* shouldn't!" The assertion, "*you* shouldn't," though it might be fundamentally determined by legal and moral considerations, cannot be argued exclusively, or even principally, on these grounds. People always tell others to be ethical and high-minded! To draw an analogy, physicians refrain from sexually exploiting access to their patients' bodies not so much because it is immoral but more because eroticism wreaks havoc with sobriety needed for good judgment. Similarly, the interdiction, "You shouldn't act impulsively," directed to a policeman must be related to practical occupational interests. That is, it must finally rest on the realization that in any kind of purposeful work, impulsive action is inefficient, uncontrollable, and obstructive of the attainment of the worker's own interest. It might be a source of emotional gratification but it defeats every kind of other purpose the agent might have in mind. It submits the impulsive person to the control of anyone who has a mind to provoke him and it makes the impulsive person to that extent unfree. Only the resolutely calculating approach, i.e., a technical concern, leaves the options in the hand of the agent. A detective sergeant with twenty-two years of work experience in one of the great American police departments put this view into words upon which it is difficult to improve: "In all these years as a cop I was always up to my ass in things that would turn your stomach and make your blood boil. But to me they don't mean anything but work. I might have lost my patience more often than I should have, but I am not proud of it. I have learned a long time ago that in this racket it is always better to be smart than to do things in ways that make you feel good at the moment. A lot of guys don't know that, and when they get to be forty years old and no longer feel like wrestling in the gutter with everybody who calls them a dirty son-of-a-bitch, they figure there is nothing left for them to do."

XIV. Coping With Resistance And The Use Of Force

The control over compliance with normative expectations is a diffuse social function most of which is embedded in the everyday network of interpersonal transactions. Within this network even the lowliest member of his community has the capacity to create conditions that will in effect compel others to live up to standards. Such powers are, however, always limited. Among the limitations, the most important is that we cannot compel compliance, even when it is recognizably due, by recourse to illegitimate means. For example, we are not permitted to collect a debt with force. In other societies and in earlier times this method was unobjectionable, but in our society and in our times he who "takes the law into his own hands" commits a culpable offense, even though his claim might be just. In place of the freedom of self-help we have devised an exceedingly cumbersome and time-consuming method of dealing with transgressions and omissions, known as the administration of justice. For most purposes this method works, if not well, at least well enough. Thus, if I desire to prevent my neighbor's dog from tearing up my flower bushes, I can go to court to obtain some satisfaction for past damages and an injunction against future trespasses. But if the neighbor sickens his dog on me and threatens to do it again, then I can scarcely be expected to wait for the wheels of justice to turn. Instead, I will do what every American would, namely, "Call the cops!"

What are the duties of the police in a case of this nature? Let us explore the incident further to discover the answer. Two policemen drive up approximately one-half hour after my call for help and while walking up to my house they observe the dog in my neighbor's yard. I explain that I have been bitten by the animal, which has been a nuisance for quite some time, and that I am fearful that I might be bitten again. I know that I cannot prove that the neighbor sickened the dog on me but our city has a leash ordinance that clearly has been violated and therefore I want the owner arrested and the dog confiscated. After all, the animal could be rabid and should be checked. The patrolmen, who kept asking many questions while I was reciting my tale, find the suggestion that they arrest the neighbor too strong. People are not ordinarily arrested for violating city ordinances; besides, since the violation could certainly be no more than a misdemeanor, they lack the power to make an arrest as they did not witness the offense. But

they agree that the dog should probably be quarantined and they will see what can be done about it. Before taking leave they suggest that the bite should be treated and they offer to make arrangements for transportation to a medical aid station. After I turn down their offer they proceed to my neighbor's house. On the way one of the officers goes to the car to call the dispatcher, requesting that the city animal pound send someone to pick up the animal. Then there follows a prolonged conversation during which my neighbor manages to explain that he is a taxpayer and law abiding citizen, whose dog has never bitten anyone, and who has the misfortune of living next door to a troublemaker. Well, say the officers, whatever the case might be, the dog will have to be quarantined. Over his dead body, replies the dog owner. At this moment the van from the animal pound arrives and the driver joins the group. No matter what is said, however, my neighbor will not yield; he becomes more and more acrimonious as he is being told that his pet will have to go and that he himself could be arrested for interfering with an officer in the performance of his duty.

As it happens a sociologist was doing research about the police in the city and he arranged to accompany the sergeant supervising the patrol watch of which our officers were members. They heard the initial assignment over the radio and after attending first to some other incident they decided to drop in on the case. They arrived at the moment when the officers were about to arrest the man. The sergeant received a quick briefing from one of the officers, after which he walked up to the door of the house, which was blocked by my neighbor. He introduced himself by rank, name, and station and continued by remarking that he caught a glance at the dog through the fence and thought he was a clean and healthy looking animal, could he see him, please. The sergeant and my neighbor walked through the house into the yard where they talked about pets for a while. The sergeant took the dog off the chain and, while fondling him, remarked that it would be a lot cheaper to have the animal checked at the city pound than by a private veterinarian. There is no reason to worry about the dog, he added, because he will personally sign the receipt which will make it clear that the dog is in his custody while being examined. My neighbor did not protest when the sergeant handed the dog to the pound attendant.¹²²

¹²² I beg forgiveness for switching roles for the sake of narrative fluency. Naturally, I was the sociologist. The story is actually the composite of two observed cases. In the first case I accompanied the team of officers and the offending animal was surrendered after the officers asked the owner to accompany them to the station. The rest of the story, after the entry of the sergeant, happened as stated, except that I am not quite certain that the officers "were about to arrest the man."

The case was cited at such length because it contains several elements that pervade routine police peace keeping. First, there is a complainant with a real grievance who in calling the police hopes, openly or secretly, to invite doom upon his adversary. Though it can be argued in such cases that the complaint is of a civil rather than criminal nature and, thus, strictly speaking, not within police jurisdiction, there is often the risk that what is merely a private quarrel among citizens could escalate into violence. Thus it cannot be left unattended. Second, the officers who handled the case were competent. They recognized that the situation involved bad blood among neighbors. They also knew the law and took the trouble of explaining the limitations of their powers to the complainant. Third, the officers made a serious effort to gain compliance with their decision by means of persuasion. Since the person upon whom they were intent to impose their will was uncooperative and truculent, they limited themselves to formal explanations of the reasons for their decision and to warnings about the possible consequences of continued resistance. Fourth, having failed in arguing their case they were prepared to use force to bring the case to a conclusion. Though they were probably hesitant to lay their hands on the man who opposed them, considering the nature of the case, they knew not what else they could do but arrest him. Fifth, the mere resolution not to use force, though an important asset in peace keeping, is not enough. The peaceful disassembly of resistance through the means of formal explanation and warning is sufficient in some cases; in other cases other means have to be used. The sergeant employed an apparently efficient two-step technique. To begin, he broached the troublesome topic in an unprejudiced manner. That is, he attempted to structure the conversation about the dog in ways that did not presuppose the complaint as the occasion for it. What the two men talked about in the yard could have been an ordinary conversation any two men could have had anywhere at any time. Thus the impact of the irritant was mitigated. Next, after the conversation had gained some integrity and sensibility of its own, he introduced the need for confining the dog not by asserting what needed to be done but by commenting about the options that were presumably available to the person whose compliance he sought to monitor. With this, the subject's interests move away from the alternatives of either continuing to resist or submitting to orders, to choosing between a private veterinarian or a public animal pound. The effectiveness of this tactic does not depend on whether the proposed options are realistically available. It is possible to offer alternatives of which

all but one are quite absurd. For this too makes compliance with the necessary option appear to be based on reasoned choice, rather than mere submission.¹²³ Sixth, had the sergeant's method failed, and the man continued to resist, force would have been used to overcome his resistance.

The possibility of using force entered the case at the moment the officers decided to become involved in it, and it remained present all along the course of its development. The likelihood that force would be used was at all time commensurate with the skill of the officers. But it would be a mistake to think that techniques of avoiding the use of physical coercion are confined to methods of verbal persuasion. Quite often it is necessary first to create conditions in which this is possible. One important feature of the illustration is that the case was confined. Though some neighbors observed the ongoing by peeking through curtains, there was no risk of them meddling in the incident. Another example will explain this risk and how it can be handled in some instances. An officer was dispatched to investigate a complaint from a merchant in a downtown business section. Upon arriving he found two longhaired young men in an ugly confrontation with a small crowd. The complainant stated that the "hippies" were pestering people by attempting to pass handbills and by soliciting money. The patrolman made a perfunctory attempt to disperse the crowd, which was not possible in the heavy pedestrian traffic, and moved the two young men into the store of the complainant. Inside, he asked for a copy of the handbill, talked about its contents, about the freedom of speech and about rights to do what the Salvation Army does. After this amiable colloquy, he informed them that he could not let them go back into the street, for their own protection. But, he offered, they might be free of jeopardy in a nearby park where people are given to airing their views freely. After the men left, the patrolman explained that the most important "trick" in police work is not to make people obey but to make it possible for them to obey. Few people do not mind losing face and therefore it is exceedingly difficult to solve any problem in an open environment. Thus, the first choice of a patrolman confronting an incident is to isolate it from onlookers. Whenever this is at all possible it should not be neglected.

The technique of isolation naturally brings to mind a caveat. While it is a powerful resource in the hands of a policeman seeking to abate a peace-keeping problem with a minimum resort to coercion, it can also set the stage for the most flagrant abuses.

¹²³ The value of offering alternatives to persons whose compliance is monitored by policemen is discussed by McNamara, *op. cit. supra*, Note 83 at p. 173.

The most hideous and perverse police transgressions occur in sheltered backrooms. But this circumstance merely highlights the dilemma inherent in all kinds of professional practice. Whatever increases the powers of purposeful intercession on the part of the remedial agent also appears to increase opportunities for corruption. Thus, the technique of isolation should be endorsed with caution and with a view to adding safeguards to it that would eliminate even the appearance of possible deviousness.

Aside from the abuses isolation is capable of sheltering, the tactic is of limited usefulness because it cannot always be achieved. Indeed, officers often fail in their attempts to isolate an incident precisely because the person or persons involved in it fear police abuses. We will now present a case of this nature. But before proceeding to it we must acknowledge that in most such instances most policemen tend to act with little consideration. That is, their actions are more likely than not apt to be both inconsiderate and ill-considered. But for purposes of exposition we will discuss a case in which the officers did attempt to proceed with methodical purposefulness, at least at the level of the officers handling the dog complaint mentioned earlier.¹²⁴

Two patrolmen cruising in a Negro district were flagged down by a citizen and directed to an altercation in a nearby bar. On the scene they found a small crowd, some members of which were locked in a bitter quarrel. While one officer addressed two men, the other turned to an agitated woman who appeared to be the star of the event. The woman disregarded the officer's attention and attempted to push through to the two men conversing with his partner. At this, the patrolman pinned her arm behind her back, turned her around forcefully, and pushed her into the crowd blocking the exit. This produced shouts of protest from several people, who demanded to know why the woman was being pushed around. There is no need to describe the incident further. It led to several arrests, made with the aid of additional policemen summoned by the bartender, who realized that the incident was slipping out of control.

The feature of the case we wish to highlight has been called "alter-casting."¹²⁵ It consists of doing something that has the effect of shifting the participation of people from one kind of interest to another. In this case the officer's act of pushing the

¹²⁴ Black and Reiss point out that policemen are far more likely to encounter nonisolable incidents, involving crowds of onlookers, in Negro areas than in any other parts of the city, *op. cit. supra*, Note 59 at p. 23.

¹²⁵ The term "alter-casting" was suggested by E. A. Weinstein in a paper read at the American Sociological Association Meetings, Washington, D.C., 1962, as quoted by McNamara, *op. cit. supra*, Note 88 at p. 169.

woman recast the participation of some persons from the role of spectators to the role of partisans of the victim. It is no exaggeration to say that in peace keeping where isolation cannot be achieved, alter-casting is the leading risk and the major obstacle to purposeful abatement of troubles. It appears that as long as people have access to a situation, they can be controlled only by assimilating their interest to the intended solution. This is an enormously difficult task, requiring the utmost of relational sophistication and almost heroic composure. Since such virtuosity cannot be demanded as an element of average skill, the prevention of alter-casting must draw on other resources, namely, area knowledge. It is characteristic of patrolmen with good area knowledge that they not only know many people in the area they patrol but that they are also known to many people. Thus, their interventions usually have the character of episodes in an ongoing relationship in which some roles are at least partly fixed. Consequently the officer can always count on a modicum of prior understanding between himself and the people. This background makes him better equipped to prevent the inadvertent mobilization of sentiments against himself.

All the cases we have discussed thus far involve citizen-solicited police intervention. That is, the situation is defined, at least in part, by the knowledge that someone has "called the cops." Though this accounts for the bulk of peace keeping interventions,¹²⁶ patrolmen also find cause to intervene in the course of normal surveillance. Virtually all such "on-sight" actions occur in blighted areas of the city and they ordinarily involve clearing the streets or other public places. Again, it must be mentioned that very many of these interventions are, in fact, ill-conceived, impulsive, and mainly harassment-oriented. Indeed, it appears that all police departments employ some officers who like to harass people solely on the basis of their own gratuitous fascination with power and tend to assign these officers disproportionately to districts populated by alienated and powerless people. Not satisfied with spontaneous opportunities to meet the slightest challenge, they are not above provoking tests of strength, the outcome of which is, of course, a foregone conclusion.¹²⁷ Leaving these indefensible practices aside, however, there are some situations in which the order to "break it up and move on" is reasonably justi-

¹²⁶ Black and Reiss report that 86 percent of police interventions are directed either by radio dispatches (81 percent) or by on-the-street requests of citizens (5 percent), *op. cit. supra*, Note 59 at p. 17.

¹²⁷ Reports about such incidents are frequent. But no one can say how many officers are involved in them. Most researchers who have studied the police tend to agree that their number is quite small. My own experience leads me to think that they are probably not more numerous than cruel teachers.

fied.¹²⁸ In such situations all the tactics of peace keeping mentioned are obviously indicated. The most important among them is to leave the persons who must be moved some semblance of freedom of option. For example, a patrolman ordered a group of lounging youths to vacate a street corner. They grumbled and moved on at an expressively slow pace. The patrolman explained, "I don't like sass any better than anyone else; but when I tell kids like that to break it up and they don't sass me I get worried." What would he have done had they not complied? He would have told them that he will be back in fifteen minutes; that should give them enough time to figure out why they didn't want to stay there in the first place. But, suppose they had not moved, what then? Well, they had their chance and if they don't go now some of them will have to be taken in. That is, here too procedure is continually informed by the awareness that it may come to having to use force and it is geared to obviating this necessity.¹²⁹

It is possible, certainly not unthinkable, that at some future time policemen may be able to compel the desired outcome of any problem without ever resorting to physical force. But it appears that in the existing structure of communal life in our society such force is not wholly avoidable. This being the case, not only its avoidance, but its employment must be methodically normalized.

It is, or should be, a source of embarrassment to everybody who undertakes to talk about police practice that he has virtually nothing to say about the exercise of physical coercion. Only the use of firearms is somewhat regulated. Policemen usually receive some instruction on how to use firearms and many departments require regular marksmanship practice. All this is of slight importance, however, because in the United States the pistol is not mainly a tool but an emblem the symbolic value of which draws on history and myth. Thus, the discussion about the role of fire-

¹²⁸ The legal justification of orders to "move on" is another matter. The police have, according to common law doctrine and many statutes, the authority to compel the peaceful dispersal of assemblies in incipient stages of disorder; see, Hall, *op. cit. supra*, Note 20 at pp. 147ff. But authorities are divided on the question whether refusal to obey police orders to "move on" constitutes disorderly conduct; see J. V. Henry, "Breach of Peace and Disorderly Conduct Laws: Void for Vagueness?" *Howard Law Journal*, 12 (1966) 318-331, at p. 321ff. The District of Columbia has an ordinance making refusal to comply with an order to "move on" a misdemeanor, but 90 percent of persons who are arrested on this account are discharged by the courts "for lack of prosecutorial merit"; see *On the Metropolitan Police Department, A Report of the President's Commission on Crime in the District of Columbia*, Washington, D.C.: U.S. Government Printing Office, 1966, at pp. 67, 94; see also Jim Thompson, "Police Controls over Citizen Use of the Public Streets," *Journal of Criminal Law, Criminology and Police Science*, 49 (1959) 562-569.

¹²⁹ Illuminating accounts of police interaction with young people on the streets of blighted areas of the city are contained in Wertman and Piliavin, *op. cit. supra*, Note 15, and Irving Piliavin and Scott Briar, "Police Encounters with Juveniles," *American Journal of Sociology*, 70 (1964) 206-214.

arms cannot refer only to practical need or use.¹³⁰ Ultimately, the armed policeman in America is a reflection of popular interest in arms and of the symbolic significance the gesture of the drawn gun has retained in folklore, games, fiction, and reality. A disarmed policeman might well be a stylistically incongruous figure to many people, despite the fact that in practical terms it is more than likely—we lack data about it—that the preponderant majority of officers have in years of service either never used their guns or used them so rarely that the number of cases in which use was instrumental in solving a problem could not possibly have a significant effect on the cumulative outcome of crime control and peace keeping. Leaving the ineffable attitudes towards firearms aside, however, police concern with them contains one glaring omission. While in the administration of justice every effort is made to keep defendants alive and healthy so that they can stand trial and fully suffer the punishment they will be sentenced to suffer if found guilty, the police do not seem to be constrained by this consideration. Contrary to what is reported about other countries, marksmanship training in the United States does not emphasize the duty of, and skills in, avoiding the infliction of fatal injury.¹³¹ It is beside the point to say that as long as policemen are required to shoot one must expect some deaths. What matters is that marksmanship could be, but is not, taught and rated to develop skills in hitting non-vital areas of the human body.

Accepting the use of firearms as a normal part of police practice still leaves open the need for systematic evaluations. Thus, it could be said that all things being equal, policemen who kill, or policemen who resort to the use of firearms more often than is normal for their assignment, ought to have their credentials reviewed. Very many departments already have such review procedures and in some an officer who causes death is suspended from duty pending the outcome of an investigation. Unfortunately, the effectiveness of such scrutiny is reduced by the fact that the peers of the officer whose action is questioned invariably rally to his support, and superiors who fear just this response are half-hearted in their efforts to avoid jeopardizing the morale of their subordinates.

The use of force not involving firearms is almost entirely unchartered. There exists some vestigial lore about the comparative

¹³⁰ It should be borne in mind, however, that while an average of four policemen are killed annually in New York City in the line of duty, only one policeman is killed, on the average, every four years in the city of London, Whitaker, *op. cit. supra*, Note 115 at p. 24.

¹³¹ George Berkley, "How the Police Work: In Western Europe and in the U.S.," *New Republic*, (August 12, 1969) 15-18.

merits of short versus long batons, about the application of handcuffs, and about the relative value of skill in boxing, wrestling, and judo. Withal, the exercise of physical coercion is remarkably devoid of models, precepts, or rules. Perhaps the main reason why this area has been left unregulated—and to recognize that it is even a little regulated involves recognizing the few existing pieties about the use of “minimum necessary force” as having the import of regulation—is the belief that he who risks life and limb ought not to be unduly restricted. There are other reasons, most of which are related to an exacerbated sense of masculine pride and soldierly prowess according to which insults and attacks must be met in kind, in the hope that fear will inspire respect, and in ignorance of the fact that it causes only hatred. In any case, whatever defenses one might raise on behalf of a “gutsy” response to challenge, they could not possibly have anything to do with workmanship, and at best make it excusable that an officer, being only human, may occasionally lose his patience, abandon resolute purposefulness, and strike out in anger.¹⁸²

The normalization of the exercise of physical force involves two relatively distinct problems. One has to do with the decision to resort to it and the other with techniques of application. It is important to recognize that the moment of application is not always a matter of choice. At times, it is the attacking offender who makes the decision for the policeman. While it may be reasonable to expect that officers will take certain risks it is absurd to expect that they should risk certain injury. Second, the process of skilled preventive persuasion is limited by time considerations that derive in part from situational exigencies and in part from the temporal structure of police work. For example, most peace-keeping problems in public places have a potential for proliferation and require quick solutions. Thus, the last resort may have to follow the outset with little delay. In situations where these pressures do not exist it still remains necessary to solve problems within some economy of time allocations. Finally, the question when force should be applied may depend on whether post-

¹⁸² The fact that the police often resort to violence in response to what they perceive as disrespectful defiance of authority is widely recognized; see W. A. Westley, “Violence and the Police,” *American Journal of Sociology*, 59 (1953) 34-41; W. R. LaFave, *Arrest: The Decision To Take a Suspect Into Custody*, Boston: Little, Brown & Co., 1966, pp. 146f; and McIntire, *op. cit. supra*, Note 44, at p. 61. By the same token, members of juvenile gangs tend to define officers who do not respond forcefully to provocation as “chicken,” but they exempt juvenile officers from this judgment. It appears that the juvenile officer’s business-like approach obviates the need for force without a decline in effectiveness; see Wertham and Pillavin, *op. cit. supra*, Note 15 at pp. 66, 94. O. W. Wilson mentioned rather superfluously that there is “no law against making a policeman angry,” in his *Police Administration*, New York: McGraw-Hill, 1968; but “fighting words” directed against a policeman “have been held not within the first and fourteenth amendments’ protection.” Henry *op. cit. supra*, Note 128 at p. 322.

ponement might not contribute to the development of conditions that will require greater force. Thus, it is common practice to put handcuffs on all felony suspects to prevent attack or flight. In consequence it is quite likely that more persons are handcuffed than is necessary, but it is equally probable that this procedure reduces the number of those who might otherwise be clubbed or shot. Within the limits of these considerations, the decision to use force must follow exhausting all alternatives.

The only observation that can be made with some warrant about techniques of using force is this: Some policemen have developed ways of restraining certain persons, notably, the mentally ill and women, that result in a minimum of pain and injury. They do this, even though they occasionally encounter formidable resistance, because they do not define such cases as contests. At present the choice of these methods is based mainly on feelings of compassion or chivalry. But there are no reasons why these techniques of achieving restraint could not be adopted to all situations on the basis of their technical superiority to ordinary brawling. It is also possible that much could be gained through adaptations of ancient oriental techniques of defeating attack or resistance.

In the past, and in some places even now, policemen often used physical force as part of so-called "curbstone justice." That is, physical punishment was administered by policemen in lieu of the remedies of the penal code. Today force is generally associated with making arrests. This does not mean that policemen now use force only to arrest persons suspected of having committed crimes, but only that when they use force they also make arrests; that not all of these arrested persons go to trial is another matter with which we will deal presently. One important exception to this rule is found in the handling of large-scale civil disorders. To compel the compliance of a mass of people, policemen often simply inflict pain. Leaving aside questions of moral, legal, and political justification, there can be little doubt that existing police forces are, without exception, most scandalously inefficient by thus handling the problem. To arrive at this judgment one need not draw on the accounts of outside critics; the police stand condemned by their own accounts. In the urban upheavals of the recent past they have acted almost invariably in utter confusion, with prodigious waste of manpower and energy, and with no other apparent purpose in mind than to visit punishment on the people they sought to subdue. This response has become so predictable that the provocation of police frenzy was developed into a stand-

ard tactic of revolutionary groups.¹³³ The purpose of this tactic is quite apparent to everyone but the police; namely, by entrapping the police into actions that are repugnant to a large segment of the community, radical groups gain sympathies and support they could not otherwise receive. That this situation has reached the point of near absurdity is evident in the fact that the administrations of our colleges and universities are in effect not in the position to avail themselves of police help. They must suffer the impositions of small groups of belligerents because they know that police action against, let us say, a sit-in demonstration, far from solving the problem at hand, would aggravate it by throwing the support of the neutral and moderate majority to the rebels.¹³⁴

Many observers believe that the gross inadequacy of the police in handling civil disorders is due primarily to the fact that their political attitudes and opinions are opposed to the causes of these protests. Thus, they act not as deputized officials of the state but as representatives of one political faction of society opposing another. Insofar as this view is correct it constitutes a fully adequate reason for not involving the police in the handling of this problem. It is, of course, not possible to isolate the police entirely from politics, but carrying the isolation as far as possible is surely part of the democratic creed. Thus it would seem that any time a simple breach of the peace acquires the character of factional strife, the function of the police should be taken over by some other peacekeeping force—perhaps the National Guard. Aside from the need to isolate the police from political involvements, there is another reason why they should not be required—or allowed—to handle mass upheavals. Such phenomena are best handled by methods of a military constabulary consisting of highly disciplined troops. But the police are a military institution only in the most superficial aspects of their organization. Their daily work involves processes of individualistic discretionary action and they are not accustomed to being led in these activities. Nor are

¹³³ James Ridgeway, "The Cops and the Kids," in Walt Anderson (ed.), *The Age of Protest*, Pacific Palisades, Calif.: Goodyear Publishing Co., 1969, pp. 174-180.

¹³⁴ Stinchcombe argues that because American police forces lack the military character of, for example, the Spanish *Guardia Civil*, they lack the capability of handling militant, politically inspired mass upheavals, *op. cit. supra*, Note 45 at p. 158. The actual performance of American police forces in such situations is described in the *Report of the National Advisory Commission on Civil Disorders*, New York: Bantam Books, 1968, pp. 299-322. To meet the newly arisen need to control street disorders some police departments have organized highly mobile "tactical squads." In Philadelphia such a unit has not only engendered the hostility of citizens but also is viewed with disfavor within the Police Department. Lohman and Misner quote a "high-ranking police officer" as referring to the unit in these terms: "They are a skull-cracking division . . . The Department would be much better off (sic!) without this unit and I wish that these men could be reassigned and transferred back to the District station under the command of each captain," *op. cit. supra*, Note 77, Vol. II, at p. 46.

the ranking officers of the police accustomed to leading their men. To make the police more capable than they presently are in handling civil strife one would have to increase their military discipline and turn them from quasi-soldiers into real soldiers, which is, as we have proposed, inimical to the professionalization of police work.

In sum, the fundamental maxim of the methodical exercise of coercion by the police is that, just as society as a whole attempted to restrict the legitimate use of force by creating a special institution, so, in turn, resorting to it in police practice must be restricted to an unavoidable minimum. Above all, force must not be used for any other purpose except to effect restraint. This objective can be attained only by making the use of coercion a technical element of professional peace keeping and crime control. To return to an earlier analogy once more, policemen must acquire the attitude of physicians who take pride in employing all available means to avoid surgery, and who, when surgery is unavoidable, take pride in making the smallest possible incision. With this assumption of what is proper and necessary, the policeman who has a history of heroic exploits against "cop-haters" and "resisters" will not be ambivalently admired by his peers—ambivalently because most policemen see through the sham of his heroics but cannot afford to disparage it in the existing system of fraternal obligation and reward distribution. He will be viewed as an occupational failure, someone who cannot do his work without continually getting into trouble.

XV. Arrest And Detention

No other aspects of police practice have received more scholarly attention in the recent past than the procedures and decisions connected with invoking the law. The principal result of these inquiries was the discovery that policemen have, in effect, a greater degree of discretionary freedom in proceeding against offenders than any other public official. This is so because an officer's decision not to make an arrest is not a matter of record, contrary to the decision of the prosecutor not to prosecute, and the decision of the judge to dismiss or to acquit. The condition creates something of a legal paradox because, according to the discovered facts, the policeman who is in terms of the official hierarchy of power, competence, and dignity, on the lowest rung of the administration of justice, actually determines the "outer perimeter of law enforcement," and thus actually determines what the business of his betters will be.¹³⁵ The vexation increases when one realizes that this situation is not the result of simple misunderstandings or evasions, which could be remedied by direct corrective measures, but is deeply rooted in the nature of the law itself. For example, the penal codes of many states contain provisions that make gambling a culpable offense. Yet, according to prevailing interpretations, these statutes, though they were drafted in ways allowing no exception, were directed only against some forms of gambling. Since writing this interest into the law would have created loopholes permitting the activity the control of which was desired to elude prosecution, it becomes necessary to rely on the good judgment of the arresting policeman to put the legislative intent into effect.¹³⁶ Thus, when a policeman comes upon a gathering of citizens engaged in a game of chance, it is his duty to consider first whether this is an instance of what the legislators had in mind before he makes an arrest. Accordingly, all the courts can consider in the realm of gambling offenses is what the police have found, according to their understanding, to be suitable for their concerns.

The problem does not end, however, with the duty of the police to discern tacit legislative intent implied in a large number of

¹³⁵ Goldstein, *op. cit. supra*, Note 5 at p. 543f.

¹³⁶ Concerning "Noninvocation [of the law] because the legislature may not desire enforcement as to the conduct in the ordinary case," see LaFave, *op. cit. supra*, Note 5 at pp. 188ff.

the provisions of the penal codes. Associated with it is another difficulty of at least equal seriousness. Since the reasons the officer has to invoke the law selectively are implied, rather than explicit, there is no way of ascertaining whether his reasons are in accord with legislative intent. For example, a group of youths tossing coins on the sidewalk can be arrested and charged with gambling even though the legislature supposedly did not intend to bar such games. In such cases the decision to invoke the law could be based on the officer's desire to get at these people because they are troublesome in some other ways. Perhaps they are known panderers, but evidence cannot be secured to charge them with pandering. The point is, laws, the enforcement of which is meant to be discretionary, do not impinge only on a specifically intended area of application. Instead, they become all-purpose control devices.¹³⁷ As long as even a moderately sizable inventory of such laws is available, any policeman worth his salt ought to be able to arrest almost anyone on formally defensible grounds, with relatively little effort. Naturally, this condition creates favorable conditions for the expression of personal prejudice and for the advancement of corrupt interest. But even if no policeman ever invoked the discretionary law outside the scope of its intended application with any but reputable purposes in mind, a condition in which most people appear to have a license to transgress that can be denied to some by no more than an officer's fiat must obviously trouble the legal mind. Panderers should be arrested for pandering. If they can be arrested for merely pitching pennies, then everybody who merely pitches pennies should be arrested. It is one thing to say that the legislature implicitly exempted friendly games from prosecution and quite another to say that they exempted only some friendly games and not others and it is for the policeman to decide which ones they meant.

The main reason why policemen do not follow a simple rule of impartiality in the enforcement of laws is that their conception of the import of law differs from that which lawyers entertain. To be sure, these two conceptions have an area of overlap encompassing all major crimes that are universally proscribed. Here,

¹³⁷ Herman Goldstein writes, "Broadly-stated laws are, after all, one of the lesser concerns of the police. Most attention of law-enforcement officers in recent years has focused upon legal provisions which are too narrow. The average police official is not very concerned about having the authority to enforce adultery statutes and not having the manpower or the community support necessary to do so. He is much more concerned because of his inability to attack organized crime effectively. And there may be an occasion upon which he can use an obscure or otherwise unenforced law to launch an oblique attack against a situation or activity which he feels warrants action on his part. His attitude is often that the law should be left on the books; it may come in handy sometime. Why impose self-limitations on police authority beyond those established by the legislature?" at p. 40 of his "Dealing with Crime: Can All Laws Be Enforced?" *Current*, 46 (February, 1964) 33-42.

for policemen and lawyers alike the rule is that whatsoever transgresses will be arrested for that reason and that reason alone. Outside of this area policemen follow the explicit or implicit instructions of the law only occasionally. That is, people who are thought to have committed a robbery are arrested for that reason, but people who are arrested and charged with begging are rarely so treated because they were caught begging and virtually never for that reason alone. To put it bluntly, in discretionary law enforcement involving minor offenses, policemen use existing law largely as a pretext for making arrests. This makes it specious to inquire whether arrest practices conform with the law; in most cases they do, without, however, the law being the determining factor for making the arrest. Because persons who in the judgment of the police should be detained must be charged with something the law recognizes as valid grounds for detention, many arrests have the outward aspects of adhering to principles of legality. In point of fact, however, the real reasons for invoking the law are wholly independent of the law that is being invoked.¹³⁸ The point to be emphasized is not that this procedure is illegal, though it often enough is, but that it has nothing to do with considerations of legality. The earlier mentioned panderers were really gambling, but the reason why they were arrested was that they were panderers, a fact that is not legally recognizable in the charge lodged against them. Is this procedure justifiable? It certainly cannot be easily impugned, for there is no question about the fact that the charged offense has taken place. But the practice has some remarkable consequences. For instance, the suspension of vagrancy statutes need not in any way affect the rates of persons who were earlier arrested under these provisions. They are simply charged with some other kind of offense. Similarly, it could not possibly matter less that the New York State "Stop and Frisk" law is surrounded by rules that are supposed to govern its application.¹³⁹ It is impossible to imagine a situation in which a patrolman could not cite these rules to justify invoking the law, whatever the real reasons were that motivated him. This puts lawmakers in a curious position. They are not unlike the engineer who develops a screwdriver that is marvelously designed for a specific purpose only to find that people use it

¹³⁸ For an account of how patrolmen avail themselves of whatever laws exist to make life on skid row somewhat more bearable than it would otherwise be, by temporarily removing perilous persons, but also persons in peril, see, Bittner *op. cit. supra*, Note 118.

¹³⁹ *Task Force Report: Police*, *op. cit. supra*, Note 56 at pp. 38-41. J. A. Ronayne, "The Right To Investigate and New York's 'Stop and Frisk' Law," *Fordham Law Review*, 33 (1964) 211-238; S. L. Sindell, "Stop and Frisk: Police Protection or Police State," *Intramural Law Review-New York University School of Law*, 21 (1966) 180-190.

to open cans, to knock holes into walls, to chastise children, to spread mayonnaise, and to do all sorts of other things that need doing, occasionally even to tighten a screw.

While for the lawyer police detention is justifiable only as a first link in a chain of legal processes,¹⁴⁰ for the policeman it is, in the large majority of cases, merely a practical device, the legal aspects of which are a pure outward formality about which he has little if any care. He might wish that the people he arrests would receive harsher treatment in the courts than they do, but knowing that this will not come to pass, that, indeed, a large number of people whom he arrests will either not be prosecuted at all or discharged if prosecuted, does not stop him from making arrests. This is so because in all cases but those involving major crimes, arrests are remedies with an immediate import, they are attuned to situational exigencies, they are not preliminary to punishment but punishment in themselves. Thus, even when a trial follows such arrests it "becomes not the determiner of guilt or innocence but a procedure for release of the accused from punishment previously meted out."¹⁴¹

Throwing people into jail for periods of time ranging anywhere from a few hours to a few days, without any intention of prosecuting them, is probably the oldest police routine in existence. No one knows the true extent to which this practice exists today, whether it is on the increase or the decline. Some jurisdictions seem to have succeeded, or nearly succeeded, in abolishing it and in them all arrestees are presented to magistrates. But we also have data indicating that in some cities more than 95 percent of all persons detained because of allegation of prostitution or gambling are simply released from custody after a day or two.¹⁴² The larger picture of how many people are in police jails across the country on any particular night, who they are, and why they are there cannot be estimated in even terms of a rough guess.

What we do know, however, is that it has been argued for a long time that policemen need the power to place some persons

¹⁴⁰ The law appears to allow a genuine error. If it is learned that an arrest was a mistake, the suspect can be released without having been presented before a magistrate. This raises the question of how freely policemen may err. Barrett urged that, "Police departments should be measured and compared not only in terms of 'arrests' and 'clearances' and 'convictions,' but also in terms of their effectiveness in reducing the incidence of arrests and the amount of police custody. Police departments should boast of their ability to reduce the percentage of persons arrested who are released without charge." *op. cit. supra*, Note 47 at p. 50.

¹⁴¹ C. D. Robinson, "Alternatives to Arrest of Lesser Offenders," *Crime and Delinquency*, (January, 1965) 8-21, at p. 9.

¹⁴² See the figures quoted *supra*, Note 47.

in temporary detention.¹⁴³ For example, the so called "Golden Rule" directs the overnight detention of inebriates for their own protection.¹⁴⁴ It is very likely that the net cast to catch the drunk also takes in persons who are simply sick, feeble, disoriented, and without a place to stay. And there are some persons who are jailed for short periods on the request of their relatives who, however, do not wish to go so far as instituting prosecution.¹⁴⁵ Finally, large numbers of persons, such as known prostitutes, gamblers, and con-artists, are detained temporarily for the sole purpose of inducing them to be less brazen and to impede their illegal activities, i.e., as part of a harassment program.¹⁴⁶

Clearly the powers of the police to abridge the freedom of citizens temporarily is not simply a legal problem and, therefore, not solvable by increasing the volume and specificity of legal regulation. Only on the police blotter or in the court record does it appear that detained persons were detained because they engaged in some specific illegal activity. For some this reflects reality well enough. But from the vantage point of police interest and in consideration of the real reasons that determined the decision to take someone into custody, the vast majority of detained persons appear to have been perceived as diffusely troublesome, inappropriate in their manner, vaguely dangerous, dissolute, disruptive, or in various other ways a bane.¹⁴⁷ The presently pre-

¹⁴³ Even Hall, the most uncompromising advocate of the principle of legality, writes, "When we consider that the vast majority of persons subjected to illegal imprisonment are vagrants, drunkards, and derelicts, we realize that the police conduct serves as a crude prophylaxis and as a minor benefit to the arrestees, in providing a night's lodgings and time to become sober." *op. cit. supra*, Note 20 at p. 156.

¹⁴⁴ The term "golden rule" refers to the practice of overnight detention of derelicts in city jails. The practice was once advocated as part of an urban reform movement. See R. H. Bremner, "The Civic Revival in Ohio: Police, Penal and Parole Policies in Cleveland and Toledo," *American Journal of Economics and Sociology*, 14 (1955) 387-398.

¹⁴⁵ In these cases arrests are ordinarily made only when the offending person also fails in being as obsequious towards the intervening officer as the latter expects. At other times, officers bring the quarreling parties to a "hearing" at the police station; see R. L. Parnas, "Police Response to Domestic Disturbance," *Wisconsin Law Review*, (1967) 914-960.

¹⁴⁶ A high-ranking police official stated, "I don't know of any official endorsement of the program, but I am sure that on more than one occasion it has happened, because we could not have continued this practice over these many years without at least the tacit approval of the courts. There would have been something done by this time to eliminate the practice. In combating prostitution, particularly, this must be done." The same officer gave the following illustration for the necessity of the program, "Our patrol finds two women . . . They are prostitutes. Yet, there has been no offense committed by them in the presence of the officers. They make the arrest to get them off the street. These particular women are not only prostitutes but are decoys for the 'Murphy Game.' Persons who come in contact with them have been murdered. As a general rule, in fact almost invariably, these women are out there at two o'clock when the saloons close, and the prospective customers have a lot of liquor in them. Now what should we do under those circumstances?" McIntire, *op. cit. supra*, Note 44 at p. 85.

¹⁴⁷ This problem has an obverse facet that deserves mention. Just as police often arrest persons on specious grounds, they often do not arrest others who should, according to principles of legality, be charged with crimes. When this policy, which exists everywhere, was once officially proclaimed (in England), it resulted in the dismissal of the candid police

vailing opinion of most knowledgeable legal students of police practice is that discretionary law enforcement should be brought into closer accord with legal norms.¹⁴⁸ But it is virtually certain that this approach, by itself, will produce no more than a specious kind of correctness. It is, after all, inconceivable that an officer could not find some label in any code to justify detention,¹⁴⁹ and the more comprehensive the code, the more likely that he will be devious about it. In the last analysis, it will remain the officer's judgment that must be evaluated when he makes an arrest; and because judgment is inherently difficult to control we must see to it that we have officers whom we can trust not only because they are personally honest but also because they are expert.

Many of the practices encompassed by the discretionary freedom policemen enjoy are revolting, but the pressures to do something about it should not lead to fruitless efforts. Moreover, for the moment at least, it is certainly profoundly regrettable but not altogether repugnant that a man who is so lacking in self-control as to risk squandering his weekly earning on drink, depriving his family of its livelihood, be kept in jail for a short period. Nor is it inhuman of an officer to arrest a skid-row derelict for no other reason than to spare him from the risks of exposure or assault. It is easy to say that other kinds of services should be made available to serve such needs. In fact, very little movement in this direction is discernible. And there are good reasons for saying that making other resources available will become a viable prospect only if and when the police will establish continuous co-operative relations with medicine, psychiatry, and social work. At present, these relations could scarcely be worse.¹⁵⁰ Policemen are generally hostile and distrustful toward physicians and welfare workers, and the latter make no attempt to conceal their often less than well founded feelings of superiority. This condition will not change until the policeman achieves the status that is in a real sense co-equal to that of other remedial agents, that is, until he actually becomes, and will be recognized as, a licensed pro-

official; W. N. Osborough, "Immunity for the English Supermarket Shoplifter?" *American Journal of Comparative Law*, 13 (1964) 291-299. Osborough quotes Lord Morris of Borth-y-Gest with reference to this way of exculpating offenders: "The fact that prosecutions have been, and doubtless will continue to be, infrequent demonstrates that the law is the hand-maiden of reason." *ibid.*, p. 297.

¹⁴⁸ See the literature cited *supra*, Note 5.

¹⁴⁹ See Lohman and Misner, *op. cit. supra*, Note 77 at Vol. II, p. 169; J. E. Carlin and Jan Howard, "Legal Representation and Class Justice," *UCLA Law Review*, 12 (1965) 381-437, at p. 394; Bittner, *op. cit. supra*, Note 118 at p. 710.

¹⁵⁰ See Clark, *op. cit. supra*, Note 46. The isolation of the police is also in some measure due to their exacerbated sensitivity to criticism; see Whitaker, *op. cit. supra*, Note 115 at pp. 135 f; and Niederhoffer, *op. cit. supra*, Note 19 at p. 13, where the police fear of criticism is referred to as "the principle of equilibrium," presumably to emphasize its great significance.

fessional. Though this will not answer the question whether panderers should be arrested because they violated gambling laws, nor whether prostitutes should be jailed for purposes of harassment, it will at least create conditions in which such questions can be addressed jointly by all concerned agents and discussed without aspersions and acrimony.

In sum, police recourse to temporarily abridging the freedom of citizens deserves recognition as a practical peace-keeping method that has only in its most outward aspects the character of a legal action. Though it is often resorted to for inadequate or deplorable reasons, it is not wholly without justification. In its seemingly justified form the procedure involves a good deal of knowledge and considerate judgment.¹⁵¹ Like the use of physical force, temporary detention is a measure of last resort, and no policeman who is methodical in his work uses it in any other way.

¹⁵¹ Bittner, *op. cit. supra*, 118 at pp. 709f., contains a lengthy description detailing the complex consideration that leads up to making an arrest in which the formal charge was a mere outward label, hiding, rather than revealing the real reasons.

XVI. Community Relations

One of the most vigorously advocated new developments in the field of policecraft is known under the heading of "Community Relations." The endeavors thus designated deserve consideration at two relatively distinct levels of analysis. First, in terms of their proximal causes and objectives and, second, as possibly part of an incipient shift in the overall orientation of all systems of remedial social control functioning in modern society.

Like most other recent accretions to police work, community relations activities take the form of a special assignment. Accordingly, departments have created Community Relations Units or appointed Community Relations Officers, whose task it is to achieve and maintain an ongoing exchange of views between the police and all segments of society, *especially* those groups whose aggrievement and disadvantage expresses itself in the waves of demonstrations of discontent that have been sweeping our cities in this decade.¹⁵² Though one could probably not show that every effort in this direction has been mounted only after some specific incident of civil strife, there can be no doubt that the undertaking as a whole has been reactive in the sense that it followed external pressure rather than the spontaneous appreciation of the need. There is no strong argument against the police to be built on this observation. After all, they were not the only ones to learn the hard way, nor were they the last ones. But the emergency nature of the timing gave rise to serious difficulties. In the first place, the response to outside conditions came to be viewed by many policemen as a coerced concession to rebellion. These men, who view themselves as custodians of the official order, consider it deplorable to enter any kind of negotiations with parties that dared to challenge this order. Second, because of the haste in which community relations work was undertaken the units were carelessly staffed and they suffered from a great deal of personnel turnover. This strengthened the argument of those who felt that

¹⁵² The desire of the police to open consultative contacts with ethnic minorities and lower class groups is part of a larger drive in this direction. Mayor A. J. Cervantes of St. Louis explained it in these terms: "We have found out that ghetto neighborhoods cannot be operated on from the outside alone. The people within them should have a voice, and our experience has shown that it is often a voice that speaks with good sense, since the practical aspects of the needs of the ghetto people are so much clearer to the people there than they are to anyone else." As quoted in the *Report of the National Advisory Commission on Civil Disorders*, op. cit. *supra*, Note 134 at p. 287.

the whole thing was unworkable in the first place. Finally, even though the units received broadly formulated mandates, it has not been made clear what sort of activities they should engage in.¹⁵³ Under the combined pressure of these difficulties, and under the pressure to do something, the work of the units tended to follow one or the other of the following two models.

The simpler of the two options consists of implementing a public relations program along lines of least resistance. To transcend the limitations of past public relations efforts which consisted mainly of furnishing speakers on invitation, the Community Relations Units proceeded to organize committees of citizens in various parts of cities, which were supposed to function as market places for the exchange of ideas. Organizationally, the resulting set-up is not unlike the PTA in being closely attuned to the needs of the existing system. But it actually never came to function even as well as the PTA. The shortcoming of the approach has been stated in these terms: "The formalized program is impressive on paper but in action we found a serious communication blockage. It is difficult to clearly determine the reasons for this blockage but certainly the defensive attitude of the police is a contributing factor and has inhibited the productivity of the district committees. Additionally, selection of committee members is based on those whom the police consider 'responsible' and our discussion of this issue with top police commanders brought forth a feeling that those people were responsible if they 'agreed' with police thinking. This line of thought is a major stumbling block toward community involvement in the program."¹⁵⁴ It must, of course, not be assumed that responsible citizens in the above sense are wholly unrepresentative of community sentiments, but in view of the fact that the program was primarily oriented to those groups with whom relations were strained, the outcome scarcely qualifies as a success. It merely displays the availability of already existing support and it leaves all existing misunderstandings and animosities intact. Indeed, alienated groups tend to view such activities as further evidence of the refusal of the police to hear their grievances and as an underhanded ploy that forces them further into estrangement from the "establishment."

The more ambitious alternative is for Community Relations Units to reach to the grassroots of discontent. While this does lead to the establishment of genuinely trusting relations between some

¹⁵³ See, *Task Force Report: The Police*, op. cit. supra, Note 56 at pp. 149-163.

¹⁵⁴ *A National Survey of Police and Community Relations*, a report prepared by the National Center on Police and Community Relations, School of Police Administration and Public Safety, Michigan State University, East Lansing, Michigan, for the President's Commission on Law Enforcement and Administration of Justice, Washington, D.C.: U.S. Government Printing Office, 1967, at p. 72.

policemen and some leaders of alienated groups, it results, where it succeeds, in the isolation of the effort within the police department. Officers who manage to establish viable and reciprocally understanding ties with people living in ghettos, skid rows, and tenderloin districts are often viewed by their colleagues as having joined "the opposition,"¹⁵⁵ or, somewhat more sanely, as being engaged in an activity that has nothing to do with police work and should be left to social workers. Thus, while the first approach fails because it leaves out those groups to which the program is primarily directed, the second fails because it leaves out the police department.

Neither of the two programs should be judged a total failure, however, and there is at least a chance that the second may learn to cope with internal resistance as it learns to overcome external opposition. In a situation where success is hard to come by, every small gain counts. But realism requires the recognition that the gap community relations work was intended to bridge still exists. At best, a few lines of communication have been strung across it. Whether they will avail when they are truly needed is highly uncertain. Surely the effort must be strengthened as far as possible under conditions of abated stress, and in this respect the recommendations of the President's Commission on Law Enforcement and Administration of Justice are highly meritorious. In this it is of utmost importance that the perimeter of police interest be as all encompassing as possible. Some groups may remain permanently beyond reach, but as the endeavor contains no room for hurt feelings or indignation, there can be no end to trying. In particular, and this is far more serious risk to the enterprise than is allowed, those men in the Community Relations Units who are strongly impressed by the grievances against their institution must not yield to the temptation to give up on the police.

But police community relations work can be conceived as having an import that goes beyond its function of, so to speak, helping to "keep the lid on." Leaving the public-relations-type programs entirely out of consideration, let us first take note that the activities do not constitute a social service in the ordinary sense. Though it often takes the form of finding jobs for persons with police records who cannot obtain employment otherwise, or of organizing recreational facilities for youth who might otherwise turn to delinquency, there are merely instrumentalities to reach an ulterior objective. That is, on the surface it is always some individual or group of individuals whose descent into misery or transgres-

¹⁵⁵ In one department a unit of this nature is referred to by some officers as the "Com-mie Unit."

sion is intercepted. The real targets of the interventions are, however, networks of social relations. More than changing persons, it is the changing of alignments among persons, and between parts of society, that is the aim of community relations work. This involves a profound reorientation in the direction of police interest. According to inherited conceptions of remedial control, risks to the social order are always found in individuals and the preferred way of handling the problems they create is to do something for them or against them. The police are not unique in focusing on individuals; the whole spectrum of preventive and remedial control in our society is principally person-oriented. Every problem always turns to something being the matter with someone in particular. Thus, physicians and psychiatrists combat diseases in patients, and lawyers and social workers aid clients, and policemen deal with delinquents and derelicts. But recently a new and not yet well formulated interest has come to the fore—of which we take police community relations work to be a part—which directs its interests less to the sick, the incompetent, and the deviant as individuals, and more to conditions of existence, to the social fabric, and to cultural change. Though this interest draws support from scholarly sources, mainly social science research, and is in this sense well founded, it has been, thus far, an uncertain quest.¹⁵⁶ Because the critique of the social order is a matter of political concern and because professionals seek to remain aloof of politics, they have not found any fully acceptable ways of dealing with what they discern to be the ills of society. Nor are there any easy solutions of this dilemma in sight. The main direct result of the new interest has been that the person who creates difficulties, or who is failing, is perceived as presenting a far more complex problem than when he was considered as an isolated case. Thus, for example, from the vantage points of this new interest, a diabetic patient is no longer viewed as merely a case of a diseased pancreas, but someone with inherited dietary habits, occupying a role in a network of reciprocal obligations, encumbered by certain culturally set prejudices about health and illness, and commanding limited resources for his care, all of which becomes a part of the picture and plays a role in setting a course of remedies. In short, the changes were not earthshaking and have been largely confined to making care more careful. This is, by and large, what is meant by social medicine, social psychiatry,

¹⁵⁶ The formulation of the new interest is most advanced in psychiatry where a specialty known as Social Psychiatry has developed; its drift is described in Egon Bittner, "The Structure of Psychiatric Influence, *Mental Hygiene*, 5 (1968) 423-430.

and is what Judge Allen appears to have in mind when he calls for the "socialization" of the administration of criminal justice.¹⁵⁷

In sum, the interest in situations, in circumstances, in background, in relatedness, or broadly speaking, in the sociocultural—as opposed to concern for individual and isolated cases—has not led to radical changes in professional practice; instead, it functioned mainly as a general educative influence.

It does not seem too far fetched to suppose that police community relations work might be the vehicle for such broadening educational experiences. The men assigned to the units could retain the specific role assigned to them in the administrative scheme of things. In addition to this, however, all recruits could have a protracted period of supervised practice in the field at an early point in their training. This experience contains opportunities for learning three lessons that cannot be taught adequately in formal courses of instruction. The first concerns the dynamics of community organization. The second has to do with deviance as a cultural rather than an individual phenomenon.¹⁵⁸ The third pertains to the effects of policy on the lives of the people to whom it applies. Of these the last is by far the most important because it affords the policeman the opportunity to look at the effects of his own activity. In the professionalization of the police it is, of course, of decisive significance that the practitioner gain a firm understanding of the product of his interventions. In the past policemen have disavowed such concerns under the pretense that they merely enforce the law and that it is not their business to decide whether this is good or bad in the long run. But we know that this is a misconception; that they, in fact, have an enormous degree of freedom in setting peace-keeping and law-enforcement policies. Thus they cannot be allowed to evade the question raised long ago by social scientists about the extent to which defining someone officially as a deviant has the effect of solidifying his deviant identity and of contributing to the proliferation of deviance in society.¹⁵⁹ Unfortunately such questions are deeply embedded in long standing ideological conflict. But avoiding them for this reason is also an evasive tactic. For if knowledge and clarity is the hallmark of the professional, then obscurantism cannot be permitted any defense at all.

¹⁵⁷ F. A. Allen, "The Borderland of the Criminal Law: Problems of 'Socializing' Criminal Justice," *Social Service Review*, 32 (1958) 107-119.

¹⁵⁸ The study of deviance as a cultural phenomenon is perhaps best exemplified in the papers collected in H. S. Becker (ed.), *The Other Side*, New York: The Free Press, 1964. It is rather obvious that policemen doing community relations work are in a uniquely advantageous position to engage in such studies.

¹⁵⁹ E. M. Lemert, *Social Pathology*, New York: McGraw-Hill, 1951, see also, R. D. Schwartz and J. H. Skolnick, "Two Studies of Legal Stigma," *Social Problems*, 10 (1962) 134-142.

XVII. Conclusion

The Psalmist spoke truly for all times when he said, "except the Lord keep the city, the watchman waketh but in vain."¹⁶⁰ One of the greatest risks in all attempts to define the role of the police in society is to overestimate their significance. They are surely not the "thin blue line" that saves us from being inundated by depredation and chaos. Order and safety depend primarily on other factors and, in real peril, they could not be saved even if half of us took to policing the other half. In fact, it has been said that, "one might reasonably maintain that society would not go to pieces even if the state should exercise no coercion whatever."¹⁶¹ This opinion is probably as misleading in its implications as are the truculent and imperious voices which say that unless we let the police have their way they will refuse to play ball and leave us facing destruction. A more pragmatic view is forced to acknowledge that the availability of the police does make life safer and more orderly than it would be otherwise, but it refuses to accept that we are at their mercy.

The approach that avoids apocalyptic visions is called upon to give a practical interpretation to the belief that the police are of one cloth with the society they service. Certainly it does not compel the conclusion that whatever exists, exists for adequate reasons. The test of time, which a conservative view is apt to emphasize, is a tricky standard. It sometimes protects arrangements that have lasted merely because fear or neglect have prevented scrutiny. There is little doubt that many aspects of the modern police are just such survivals.

At an earlier time, when most of the people were illiterate or barely literate, when physicians knew less about diseases than a modern practical nurse, when lawyers barely knew how to use a few forms and were considered educated if they had a cursory acquaintance with Blackstone, policemen with a background of eight years of school were adequately prepared for the job. In any case, the definition of their tasks virtually never brought them into contact with people who were superior to them in any important respect. But all this has changed in the past two generations, and the police, by hewing to old standings, is falling back

¹⁶⁰ Psalm 127:1

¹⁶¹ Eugene Ehrlich, *Fundamental Principles of the Sociology of Law*, Cambridge, Mass.: Harvard University Press, 1936, p. 71.

from year to year, increasingly becoming a field of opportunities for those who can do no better than join the simpler service occupations.

The failure of the police to keep up with the general upgrading of all occupations is augmented by the fact that, whereas at one time a certain degree of crudeness was acceptable, it can no longer be tolerated. In the first place, the policeman of the past had fewer matters to attend to. Under conditions where the vast majority of those official regulations of conduct we now take for granted were unheard of, keeping the peace and enforcing the law were relatively simple matters. This does not mean that social controls did not function, but only that they typically did not involve police interventions. Those problems that were beyond the scope of informal remedies and self-help, i.e., the problems that did require police attention, were ordinarily quite clear-cut and required no great subtleties of perception. Precisely the opposite is the case today. For a variety of reasons the number of problems people no longer feel competent to attend to themselves has multiplied enormously. Moreover, under conditions of anonymity prevailing in urban life, order in public life can be maintained only by formal means of control. Thus, while it once may have been sufficient if an officer knew the difference between a corpse and a live body, he must now, owing to the fact that he is inevitably involved in handling vast arrays of all sorts of human problems, be knowledgeable and judicious about virtually everything. In any case, crudeness on his part becomes quickly apparent, and it frustrates both him and the one who depends on his service.

In addition to the earlier grossness of the police task, the admissibility of crude police work in the past was connected with the then prevailing view that people on whom police attention centered deserved no better handling. Nothing the police could conceivably do to them would appreciably worsen their lot. People who were fair and considerate did not attract police interest, and those who did could not lay claim to being dealt with fairly and considerately. Nor did "those people" seem to object to the treatment they received; at least, the voice of their objections was not heard, let alone acknowledged. But this too is a thing of the past. Today policemen direct, control, and discipline persons from all walks of life, and crudeness on their part places them in a position of significant disadvantage. To be sure, crudeness can yet prevail but only at a cost sober judgment would find intolerable. Fear may prevent me from protesting the traffic patrolman's vulgarity but it will not inspire my trust in him as a public official. Nor will my feeling change by knowing that his manner was "provoked" by

what he took to be uncooperativeness on my part. Waiters, psychiatrists, cab drivers, and teachers know that the handling of uncooperativeness is a necessary part of their occupational skill and it is not too much to expect the same of policemen. But it is not good manners that I expect. Instead, I should like, in my dealings with policemen, to be able to perceive them as qualified to do the serious and important work I know they have to do. To be sure, politeness does not indicate this, but the man who does not know that he should avoid offending me, or who works up more feeling than he can safely contain, is surely not the one to be trusted with anything more demanding than some simple service routine. But the sensitivity of the likes of me is the least important argument against police crudeness. Far louder than our voice sounds the voice of those who have until recently suffered the impositions of crudeness in silence. Here crudeness is not a simple mistake but specifically subversive. A policeman who appreciates the likely consequences of an approach that will cause resentment and indulges in it nevertheless contributes to what he is paid to prevent. It will not do to say that in police work the causing of resentment is often unavoidable. Precisely for that reason it must be avoided wherever possible.

It is sometimes said that the police must adopt as their work ethic the belief that no man's claim to dignity and civil rights is smaller than any other man's claim, and that neither age nor social status, nor race, nor even deviant conduct diminishes entitlement to decent treatment. Though this certainly appears desirable, it is possible that it matters less than the simple empirical fact that in degrading others they must stoop to the level of the degraded.

While civility and humaneness are desirable qualities in any person, and their possession may be indispensable for competent police work, they do not suffice. The opposite of the crude policeman is not one imbued with civic virtues and possessed of a polite manner; instead, he is the informed, deliberating, and technically efficient professional who knows that he must operate within the limits set by a moral and legal trust.

It has been urged in this study that the only way open toward the professionalization of the police leads through institutions of higher learning, more specifically, through professional schools of police work. This was urged not because academic scholarship has now much to offer that will make police work more methodical than it is but because in our society the university has become the sole home of every form of research, study, and exercise of critical reason. No occupation can hope to achieve dignity, seriousness, and importance that does not go this route. Of course, an

occupation that has roots in the university can no longer encompass menial duties. But this will merely remove the incongruity of requiring that men who have the power and the duty to make decisions that affect permanently the welfare, prosperity, even the very existence of citizens, do work that can be safely entrusted to unskilled labor.

The public trust that authorizes and restricts police practices can be simply stated. A society committed to the achievement of peace by pacific means has created an institution with the monopoly to employ non-negotiably coercive force in situations where its use is unavoidably necessary. Procedures that go against the ideal may perhaps be excused occasionally, but they can never be defended. Above all, force may not be used for any other purpose but to effect restraint. To use it to teach someone a lesson is not only a violation of trust; it is also silly, for there are scarcely any other two things that are as completely opposed as violence and teaching.

It has been said that the creation of a highly trained, elite police force magnifies the danger of tyranny.¹⁶² This warning must not be taken lightly. It should be entered on the list of warnings against the other possible tyrannies of psychiatrists, engineers, and social workers.¹⁶³ The simple fact is that we have become dependent on the availability of these professionals and we continually expect them to improve their methods, and thus become more powerful. Every power to do good is also a power to do harm and everything that can save life can also destroy it. This is the paradox of technique—the better it is perfected, the more neutral it becomes, and the more readily it is available for both good and evil. But in the last analysis this is not a peculiarly modern phenomenon. One of the greatest and one of the oldest themes of humanistic reflection concerns the tragic puzzle that men who seek to do right sometimes do wrong. Thus, having begun this section by invoking the Psalmist, it might perhaps be fitting to close it with an ancient Pythagorean prayer:¹⁶⁴

*King Zeus, grant us good whether prayed for or unsought by us;
But that which we ask amiss, do thou avert.*

¹⁶² See Clark, *op. cit. supra*, Note 46 at p. 308; Donnelly, *op. cit. supra*, Note 39 at p. 110; and Hall, *op. cit. supra*, Note 20 at p. 176.

¹⁶³ Silver writes with reference to a suggestion made by the President's Commission on Law Enforcement and Administration of Justice that the policeman of the future may well be a member of a team including social workers, psychiatrists, and doctors acting as an intake screening unit for all kinds of antisocial and disturbing behavior: "This is a frightening description of a 'Brave New World' ruled by professional *Wunderkinder* pulling 'antisocial' or 'disturbed' people off the street with, we can only hope, some kind of warrant." *op. cit. supra*, Note 62 at p. 940.

¹⁶⁴ *The Dialogues of Plato* (transl. by B. Jowett), New York: Random House, 1937, vol. II, p. 798.

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