

The Application of Discretionary Authority for Police Order Maintenance Functions

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The reform era of policing during the early and mid-twentieth century was characterized by a crime-fighting approach to law enforcement and an increased focus on professionalism through enhanced officer education and training. Only within the past three decades have the police in the United States begun to place increasing emphasis upon order maintenance policing function to maintaining public order amid the complexities of modern American society. In performing order maintenance functions, the police have a high degree of interaction with the public encounter a wide array of activities which do not conform to the exact letter of the law. Accordingly, order maintenance policing situations often require that an officer to use their professional judgment to determine the appropriate manner of resolving a given situation in a way that conforms to the expectations of society rather than the letter of the law (Bronitt & Stenning, 2011). For this reason, it is imperative that police officers be provided with the training necessary to ensure that they possess the requisite knowledge of criminal procedures to effectively apply discretionary enforcement authority during the performance of their routine duties. Yet despite the successful manner that a given incident may be resolved, some critics contend that the ambiguous nature of order maintenance policing provides officers with too much discretionary authority in determining how to intervene and best resolve a given situation. This contention is supported by research studies which identify that order maintenance policing enforcement efforts often result in the police exceeding their authority by restricting public activities which are not clear violations of the law (Howell, 2009; Lombardo & Lough, 2007; Muniz, 2012; Taylor, 2006; Xu, 2005). Accordingly, this research activity consists of the following question: Does the use of discretionary enforcement authority by police officers in American society provide a more viable alternative than enforcing the strict letter of the law?

Literature Review

Governance of and by the people embodies the basic precepts of equality, justice, and liberty that are fundamental to the broad concept of democracy (Emerson, 2012). Integral to the idea of a democratic society is the establishment of laws necessary to protect the rights of all individuals and maintain public order. As a matter of course, members of society must be willing to obey the rule of law as well as accept that the government is legitimately empowered with enforcement authority to constrain individual behaviors and maintain order within American society (Georgantzis & Contogeorgis, 2012). For this reason, police administrators must provide officers with requisite policy guidance and training necessary to make effective discretionary decisions in a wide array of complex situations (Kelling, 1999). However, in any situation, the decision of a police officer to adhere strictly to the rule of law or use their professional judgment within the bounds of criminal procedure to determine the best course of action is influenced by three primary factors: the actions of the offender during the encounter; organizational culture and policies; and social norms (Gaines & Kappeler, 2003).

Defining Police Discretion

Police historians have noted that every level of police work from investigation to arrest and prosecution involves a choice on the part of an individual officer (Finnane, 1990). However, research indicates that it is the order maintenance policing functions in many situations in which an officer in the field had to make unsupervised decisions regarding the manner in which particular offenses are or are not enforced (Burke, 2013; Lowe, 2011). In broad terms, the concept of police discretion involves the vague and often convoluted decision of an officer to enforce the spirit of the law rather than the letter of the law. More precisely, the concept of discretion recognizes that an officer may assess the circumstances of a given situation and

determine that actions other than an arrest may result in a better solution even though an offense has been committed (Bronitt & Stenning, 2011). Goldstein (1963) identifies that policing in this manner portrays police officers as reasonable individuals and implies that their judgment is an essential component exercising enforcement authority to resolve an incident. Research indicates that this perception of the ability of an officer to make discretionary decisions is critical to the willingness of citizens to cooperate with the police and conform to the expectation of society in adhering to established rules and laws (Mazerolle, Bennett, Antrobus & Eggins, 2012). For this reason, despite criticism of the order maintenance policing function, the use of discretionary decision-making has become an integral component of other policing concepts such as problem-oriented policing, zero-tolerance policing, neighborhood policing and, to a lesser degree, community policing (Anderson & Giles, 2005; Caudill, Getty, Smith, Patten & Tulsan, 2013; Solomon, 2011). Accordingly, to make proper discretionary decisions, an officer must possess an intimate knowledge of criminal law and procedures (Logan, 2011).

Constraints Upon Discretionary Enforcement Authority

One of the basic tenants of democracy is that laws must be consistently and impartially administered by the legal system (Jiabing, 2012). Enforcing the rule of law is accomplished by various entities within the criminal justice system. However, it is the police function that is the most widely recognized symbol of power and authority (DeLisi, 2010).

The rule of law. Research activities have indicated that the manner in which the rule of law is enforced has a profound impact upon public perceptions of legitimacy and willingness to cooperate with authorities (Gottschalk, 2010; Nair, Luqman, Vadeveloo, Marimuthu & Shanmuggam, 2012; Schafer & Martinelli, 2008; Sherman, 1993; Wu, 2013). Accordingly, prescriptive criminal procedures have been developed to detail the manner in which the police

function ensures due process provides for consistency in enforcement actions as well as the use of coercion and force to compel compliance with the rule of law (Anderson & Giles, 2005; Meyer, Steyn & Gopal, 2013). However, enforcing the letter of the law by the police in every situation is not always in the best interest of society and fails to consider the advantages of allowing officers to respond to diverse situations through the use of discretion in exercising enforcement authority (United States Department of Justice, 2003).

Criminal procedures. Studies have identified that rigid procedural controls upon the application of criminal law have a direct correlation upon the public perception of police legitimacy in the exercise of enforcement authority (Mazerolle et al., 2012). Complicating the exercise of police enforcement authority is the differing opinion of the public that criminal procedures are either too restrictive or not restrictive enough (Schulhofer, Tyler & Aziz, 2011). However, the prevailing issue is the unrealistic expectations placed upon the police to interpret complex laws and constitutional principles with the same academic degree of rigor and competency as more highly trained members of the judicial system (Logan, 2011).

Due process. The ramification associated with the failure of a police officer to fully comprehend the scope and criminal procedure and laws restricting their actions can often result in due process concerns with the unlawful detention of a citizen (Lamboo, 2010; Logan, 2011). When this occurs, the exercise of discretionary judgment on the part of an officer inevitably results in concerns with due process and actual or alleged instances of discrimination. However, studies have shown that police agencies can reduce the instances of improper discretionary decision-making by taking a more proactive approach in developing structured guidelines and providing formal training programs for officers at all levels of the organization (Fyfe, 2002; Mastrofski, 2004).

Knowledge of Discretionary Enforcement Authority

It is imperative that policies and guidelines define that acceptable and unacceptable basis for exercising discretionary enforcement authority (Stenning, 2003). However, it is impossible to provide specific direction for every possible situation that discretionary decision-making would apply. Therefore, officers must receive training that identifies acceptable alternatives available to resolve a situation that adheres to the precepts of due process and are within the bounds of criminal procedure (LaFave, 1990).

Policies and guidance. To properly control discretionary decision-making, it is essential that police administrators establish clear policies and guidelines to ensure that ambiguous concepts are consistently implemented by police officers (Fallon, 2013; Kelling, 1999). Although policing involves a wide array of diverse situations, the development, and implementation of effective policy level guidance can significantly minimize the potential for problems in interaction between police officers and citizens. Nevertheless, policies concerning the exercise of discretionary enforcement authority by the police are not only difficult to clearly articulate, but the actions listed may also change over time due to the changing expectations of American society (Zelcer, 2013). However, instead of attempting to detail the response to every type situation that could be encountered, effective police policy provides the guidance necessary for officers who confront similar situations to be able to resolve the incident in a consistent manner (Finckenauer, 2002). Studies and assessments of organizational policy level guidance generally conclude that police administrators have a keen awareness of the need for effective policies to control officer behavior and to ensure consistent enforcement practices necessary to protect the rights of citizens (Millen & Stephens, 2012; Neyroud, 2009; Terrill & Paoline, 2013). Despite police administrators having the foresight to research and develop carefully worded

organizational policies, the information provides no tangible benefit if guidance is not effectively implemented. Accordingly, studies indicate that officers must be provided with the training necessary to acquire the requisite knowledge, skills, and abilities necessary to make equitable discretionary enforcement decisions (Logan, 2011).

Training considerations. The policing of contemporary American society involves the performance of increasingly complex order maintenance functions (Bayley, 1992; Ferrandino, 2014; Kelling & Moore, 1989; Kim & de Guzman, 2012; Lamboo, 2010; Lee, 2010; Maguire & King, 2004; Zhao, He & Lovrich, 2003). As such, police officers are required to possess an in-depth working knowledge of laws and criminal procedures to include the manner in which discretion may be exercised within the bounds of organizational policies and guidance (Bronitt & Stenning, 2011). Studies identify that it is imperative for police officers to be provided with a working knowledge of criminal laws in order to readily determine the boundaries of their legal authority and make discretionary decisions in the performance of order maintenance functions (Armstrong, 2013; Bradford & Pynes, 1999; Gau & Brunson, 2010; Logan, 2011; National Research Council Committee on Law and Justice, 2004; Scott, 2009). This serves to underscore the importance of providing police officers with in-depth initial academy training and subsequently through in-service training to provide the requisite knowledge of the rule of law and criminal procedures (Cordner & Shain, 2011; Gau & Brunson, 2010; Pinizzotto, Bohrer & Davis, 2011; Rai, 2012; Scott, 2009; Thacher, 2004). However, the importance traditional training for the reactive nature of police work aside, research indicates that police academies have been slow in embracing the need to provide officers with training involving cognitive reasoning skills and the problem-solving techniques (Bradford & Pynes, 1999; Marion, 1998). Further, studies also identify that law enforcement training generally fails to implement adult

learning and instructional design strategies that facilitate long-term retention of information needed by officers to effectively discharge assigned duties (Karp & Stenmark, 2011; Mugford, Corey, & Bennell, 2013; Mumanthi & Hazel, 2014; Oliva & Compton, 2010; Peeters, 2010; Rai, 2012; Werth, 2011). Nevertheless, studies of police training provide the indication that current training approaches are effective in providing officers with the knowledge necessary to perform assigned duties and in enhancing interpersonal skills (Blanch-Hartigan, Andrzejewski & Hill, 2012; Chappell, 2008; Herz, 2001; Shinder, 2001; Telep & Weisburd, 2012; Werth, 2011).

Conclusion

The preponderance of literature indicates that the best interest of society is not served by having the police enforce the letter of the law without allowing officers to use their best judgment in determining the appropriate response for a given situation. This endorsement of discretionary tactics is of significance given that order maintenance policing functions invariably place a police officer in the position where they are required to use their professional judgment to resolve a given situation. Studies have indicated that when officers are required to use discretionary enforcement authority the risk of violating fundamental due process rights guaranteed to all citizens becomes an increased concern. However, research also indicates that organizational policy and guidance is generally sufficient to allow officers in the field to effectively make unsupervised decisions regarding the manner in which particular offenses are or are not enforced. Further, studies identify that the training necessary to provide officers with critical thinking skills have begun to become more widely provided by police training academies. Accordingly, the conclusion of this research effort is that discretionary enforcement authority by police officers in American society is deemed to provide a more viable alternative than enforcing the strict letter of the law?

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