

Trust and legitimacy: Policing in the USA and Europe

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Abstract

This paper argues for the value of new approaches to policing in the United States and Europe. These new approaches focus upon building police legitimacy among members of the public with the goal of encouraging widespread voluntary compliance with the law, acceptance of police authority and deference to police decisions, as well as a general willingness to cooperate with the police to fight crime.

Keywords

compliance, cooperation, legitimacy, policing

Introduction

The 2004 National Academy of Science report on policing (Skogan and Frydl, 2004; Skogan and Meares, 2004) argued that in recent decades the objective quality of policing has improved in the United States. The police are more effective in fighting crime; they are less corrupt; and they are less likely to engage in unprofessional acts such as unlawfully shooting civilians. Although there are many ongoing issues involving police performance, in particular in terms of the relationship of the police with minority communities, the overall impression given by the report is of increasingly professional and effective police departments and of more and more sophisticated policing practices. There is indeed a new professionalism in policing and it benefits all of those people, White or non-White, who will have contact with the police.

However, one aspect of this new approach to policing, at least in the United States, has been that the police have centered both policing policy decisions and the control of policing resources in police departments. Top-down decisions have enabled the police to more effectively combat crime, relying upon crime rate statistics and management programs such as the well-known COMSTAT program in New York City. They have also led

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to the establishment of zero tolerance and order maintenance programs through which many ordinary citizens have been stopped, searched and, possibly, cited or detained for engaging in minor lifestyle crimes and sometimes just for walking on the streets or driving their cars.

Although the professionalism of police forces and their decisions may be responsible for increases in the objective quality of policing, the other consistent finding of studies of the police in the United States is that over the last 30 years public support for the police – often indexed as ‘trust and confidence’ in the police – has been at best moderately positive. In 2009, the percentage of Americans expressing trust and confidence in the police was at 59 percent (Sourcebook, 2011). Second, that level of trust has been more or less unchanged in recent years.

A similar paradox in policing has been noted in the UK. Hough notes that, owing to a new professional vision of policing, ‘crime is falling; government efforts to further reform policing continue; and yet public ratings of the police show little response’ (Hough, 2007: 63). This is because concerns of public consent and police legitimacy have been ‘submerged under a wave of crude managerialism’ (Hough et al., 2010: 3). The focus of this managerialism is crime control.

This discrepancy between the improving professionalism of police performance as defined in the terms above and generally unchanging levels of public support suggests the need for a focus on the factors that shape public views about the legitimacy of the police. If public trust and confidence in the police are not linked to objective performance, the nature of trust and confidence needs to be addressed as a distinct question in and of itself. The issue is: ‘What is the basis of perceived police legitimacy?’ Understanding how public views about police legitimacy form and change can provide us with a new framework through which to evaluate policing policies and practices. That framework provides us with a lens through which to examine police legitimacy.

Such a legitimacy-based approach to policing is, as noted above, relevant to policing in the United States and the UK. How broadly is it relevant? Although much of the research I will discuss was conducted in the United States, the theoretical framework out of which this argument develops is very European. It is built upon the writings of Weber on legitimacy and Durkheim on the police as representatives of community moral values. Irrespective of the origin of these ideas, my suggestion is that their adoption addresses key issues of contemporary policing. This question is currently being addressed in two linked Europe-wide studies: the EURO-JUSTIS project (Jokinen et al., 2009) and the European Social Survey (Jackson et al., in this volume). These projects are examining the importance of legitimacy – in comparison with issues of officer effectiveness – in shaping public compliance and cooperation with the police. Their findings, when available, will allow the breadth of the arguments being made here to be more fully addressed.

Measuring legitimacy

How is perceived legitimacy assessed? A simple approach used in national surveys is the already mentioned ‘trust and confidence’ index, which asks people to express confidence in the police as an institution or in the ability of the police to protect citizens against crime and to otherwise do their jobs well. As defined by scholars, legitimacy is typically

argued to involve two core issues (Tyler, 2006a, 2006b). First, legitimacy involves the belief that police officers are trustworthy, honest and concerned about the well-being of the people they deal with. Second, legitimacy involves the belief that police authority ought to be accepted and people should voluntarily defer to police decisions and directives. From this perspective, the police are legitimate if people defer to their decisions and follow their directives (also see Tyler, 2007, 2008).

The basis for current policies

Current policing policies and practices in Anglo-American jurisdictions – and in many other developed countries – reflect the use or the threat of the use of punishment to motivate behavior. This model supports policies such as Broken Windows or zero tolerance policing (Kelling and Cole, 1996; Wilson and Kelling, 1982), and the resultant widespread use of police stops, fines, arrest and incarceration as a law enforcement strategy (Harcourt, 2001; Punch, 2007). By a forceful intrusion into the lives of those who might consider committing offense, the police make salient that those who break the rules can and will be punished. The Broken Windows perspective is that this intervention should occur for minor offenses as a way of deterring later more serious crimes. And, of course, stops allow for searches that can either detect evidence of more serious crime occurring at the time (for example, drugs offenses) or prevent more serious crimes in the future (for example, offenses using guns).

The use of such proactive high-discretion police street stops is emerging as a key strategy in major city policing efforts to manage crime in urban communities (Alpert et al., 2005; Collins, 2007; Long, 2009). For example, a Chicago initiative aimed at containing misbehavior and intimidation by unruly youth and gang members led police to order over 89,000 individuals to disperse and resulted in the arrest of over 42,000 people during a three-year period on charges of ‘gang loitering’ (City of Chicago vs. Morales). From 2003 to 2007, a time when the order maintenance model attracted particularly strong public support in New York City, the number of street stops there rose 500 percent, even though the crime rate was stable during this period (Fagan et al., 2009). These stops were disproportionally concentrated among minority group members (Gelman et al., 2005). Data from other jurisdictions show similar patterns (Ayres and Borowsky, 2008).

One question is whether such policies are effective. Research has offered mixed answers on this point. Police officials (Baker, 2009), with some researchers (Kubrin et al., 2010), suggest that these policies reduce robbery and homicide, and others argue that they do not lower crime (Harcourt, 2001; Harcourt and Ludwig, 2006).

These practices are also suggested to have negative side effects: to lower trust and to impede compliance and voluntary cooperation with law enforcement. ‘[I]ntensive frisks and needless arrests can often be a source of friction,’ thereby ‘undermining the very sense of legal legitimacy they were designed to foster’ (Collins, 2007: 426; Delgado, 2008; Howell, 2009; Taylor, 2006). The police are criticized because ‘day after day, the cops continue harassing and degrading these innocent New Yorkers’ and ‘the people getting stopped and frisked are mostly young, and most of them are black or brown and poor’ (Herbert, 2010). These comments about street stops parallel similar ongoing

criticisms of the practice of racial profiling in motorist stops. The general suspicion that the police stop minorities disproportionately while driving has led to the expression 'being arrested for driving while Black'.

The argument outlined here is that punishment – real or threatened – is not generally the best mechanism for policing if the goal of policing is to deter law-breaking (Tyler, 2007, 2008). Further, the quality of police performance in fighting crime is not found to be the most important factor motivating public cooperation with the police (Sunshine and Tyler, 2003; Tyler and Fagan, 2008).

Over the last 20 years, research has shown that people obey the law and cooperate with legal authorities primarily if and when they view those legal authorities as legitimate (Tyler, 2006b). That legitimacy, in turn, is a product of how the police treat people and make decisions when they are exercising their regulatory authority – that is, procedural justice. Fairness in decision-making – that is, neutral and nondiscriminatory behavior – and fair interpersonal treatment are the key to securing cooperation. This message means that, in this arena, doing what is right (acting ethically) and doing what works converge. Realizing that the fairness of police behavior, not the fear of police force and the threat of punishment, drives public actions has dramatic implications for a range of policing policies, such as racial profiling and zero tolerance policing.

The framework of policing needs to be reconceptualized to focus upon how policing policies and practices impact upon public views about police legitimacy. The police need to select, train and reward officers with an eye to ensuring that police encounters with the public build legitimacy, a focus that leads to concerns about the quality of people's experiences, not just their outcomes. Even legally trivial interactions – situations in which a person is not arrested or incarcerated – can have a strong influence on people's views about the police. This argument further suggests that we need to measure police legitimacy when evaluating the police and policing practices, and not just pay attention to arrest or clearance rates.

How do people evaluate police practices?

From a legitimacy perspective, every encounter that the public have with the police, the courts and the law should be treated as a socializing experience that builds or undermines legitimacy. Each contact is a 'teachable moment' in which people learn about the law and legal authorities. To understand the consequences of personal experiences for views about police legitimacy it is important to consider what it is about their own personal experiences that the public consider when reacting to encounters with police officers.

People often assume that the primary issue in people dealing with legal authorities is their outcome: that is, if people receive a ticket they are upset; if not, they are happy. But what does research indicate about how people evaluate their personal experiences with the police? Fortunately, there are a number of research studies that explore personal experiences with the police (see Belvedere et al., 2005; Bradford et al., 2009; Gau and Brunson, 2009; Hinds, 2007, 2009; Mastrofski et al., 1996; Reisig and Chandek, 2001; Sunshine and Tyler, 2003; Tyler and Fagan, 2008; Tyler and Huo, 2002). These studies suggest a different conclusion. They show that the primary issue shaping people's reactions to personal encounters with the police is whether or not the police exercise their authority in fair ways, something referred to as procedural fairness.

Studies consistently find that these procedural justice judgments have a stronger influence upon people's reactions to the police than do the outcomes of their experiences. People who feel fairly treated are more likely to view the police as legitimate and to be more willing to defer to their decisions and directives (Lind and Tyler, 1988; Tyler, 2003; Tyler and Lind, 2001).

This body of research can be illustrated using a study of police–citizen encounters in Oakland and Los Angeles (Tyler and Huo, 2002). What shapes willingness to accept police directives during police stops? To get a sense, we can divide those stopped by the police into four groups along two dimensions: outcome favorability and quality of treatment.¹ If we do that, we find that people are about 15 percent more willing to accept decisions that are favorable, compared with those that are unfavorable. However, people are about 70 percent more willing to accept decisions when they receive fair treatment as opposed to when they receive unfair treatment; a difference that is found irrespective of whether the outcome was good or bad. Hence, although both factors matter, quality of treatment dominates people's reactions to personal encounters with the police. This study further shows that procedural fairness is central to the reactions of people of all the ethnicities studied – White, African-American and Hispanic – to their personal experiences with the police. The overall finding is that people of all groups want basically the same thing – procedural fairness – when dealing with the police (Davis et al., 2004; Tyler, 2005; Weitzer and Tuch, 2006). These findings are typical of this literature (Tyler, 2006a, 2006b, 2009; Tyler and Huo, 2002).

The importance of legitimacy to successful policing

Why is it important to care how people end up feeling about the police? Success in policing efforts depends upon gaining supportive public behavior. This includes the already discussed deference to police orders. In fact, police researchers have noted that skill in 'handling the rebellious, the disgruntled, and the hard to manage' in ways that lead to compliance is the litmus test of the quality of a street officer's performance (Mastrofski et al., 1996: 272).

Public judgments about police practices are not only important when people have a personal encounter with police officers. They also matter more broadly because the legal system relies upon widespread voluntary public compliance with the law and cooperation in police efforts to fight crime. Widespread voluntary cooperation with the law and legal authorities allows those authorities to concentrate their resources most effectively on pursuing the long-term goals of society. The authorities do not need to provide incentives or sanctions to all citizens to get them to support every rule or policy they enact, and the resources needed for order maintenance can be deployed in other ways.

The everyday law-related behavior of people within different communities has been the focus of a series of public opinion studies. These include a study of the residents of Chicago (Tyler, 2006b) and two studies of the residents of New York City (Sunshine and Tyler, 2003; Tyler and Fagan, 2008). The results support several of the key points outlined. First, legitimacy is important in motivating both compliance and cooperation and it is as important as or more important than risk judgments in shaping compliance. It is also more important than are assessments of police effectiveness in fighting crime. Second, legitimacy is especially important in the case of voluntary cooperation. The

influence of both risk estimates and performance evaluations is approximately the same for compliance and cooperation, but the influence of legitimacy relative to these instrumental factors more than doubles with cooperation in comparison with compliance (also see Kane, 2005).

What about the general impact upon legitimacy of evaluations of the procedural justice by which the authorities exercise their authority? Sunshine and Tyler (2003) explore the influence of general evaluations of the police's procedural justice upon people's judgments about the legitimacy of the police. Their findings indicate that procedural justice is a key antecedent of legitimacy. If the police are evaluated as exercising their authority fairly, they are viewed as more legitimate (Murphy et al., 2008; Reisig et al., 2007).

Race and policing

In addition to the low general level of public confidence in the police, there has been a large and persistent racial gap in confidence in the United States. In one careful survey across all income groups, less than 20 percent of African-Americans viewed the American legal system as fair (Brooks, 2000). In 2000, a national Gallup poll suggested that Whites were 27 percent more likely to express confidence in the police than other groups; while in 2009 a national United States Department of Justice survey reported that Whites were 26 percent more likely to express confidence in the police. Similarly a 2007 Pew Research Center study suggested that Whites are 29 percentage points more likely than African-Americans to have confidence that the local police will enforce the law; 29 percentage points more likely to say that the police will not use excessive force; and 30 percentage points more likely to say that the police will treat all races equally (Pew Research Center, 2007). After President Obama criticized a police officer's actions in dealing with an African-American man in Cambridge, Massachusetts, in the now widely known Gates incident (see below), a poll by the Pew Research Center found that twice as many Whites as Blacks disapproved of the President's comments (Pew Research Center, 2009). Similar findings recur throughout the literature.

Because of this clear evidence of racial differences in trust and confidence in the police, any new approach to policing needs to address issues of race and policing. The recent interaction between Harvard Professor Henry Lewis Gates and Cambridge Police Sergeant James Crowley in July 2009 has been suggested to have provided a teachable moment concerning race and policing in America. This teachable moment should be about police practices in general, not just those directed toward the minority community. But, given the high levels of mistrust within the minority community, it is a necessary focus of any discussion about policing.

The encounter between Gates and Crowley involved a misunderstanding in which Sergeant Crowley suspected that Gates might be a burglar, whereas Gates was actually entering his own home. Gates reacted with anger and was arrested. This incident has encouraged a great deal of public discussion because it touched on a wide variety of hot button issues related to race and policing. For the same reasons it provides an opportunity to address those issues, in a nation that Attorney General Eric Holder (2009) has characterized as being 'cowards' when it comes to discussing race-related topics. But, as

with any teachable moment, the key question is: 'What is the lesson to be learned?' The lesson is broader than just one of race relations, although they are central to the Gates incident. The message is that America's policing model for dealing with the people in all communities and of all ethnicities needs to change.

A review of the Gates–Crowley incident by an independent review panel suggests a perspective similar to that outlined here. It states that, 'if police tactics leave many law-abiding residents feeling resentful, the best-intended and most successful accomplishments of the police may not be well-regarded or recognized as effective' (Cambridge Review Committee, 2010: 5). As a consequence, the Committee argues the police need to be concerned when the residents of their community do not support a police action or policy. Citing social science research, the Committee notes that police legitimacy is important and is gained or lost through the procedural justice of police activities. The Committee further notes that officers can act in ways that are lawful but still undermine their legitimacy.

Changing police practices

Can the police implement changes and develop practices that lead them to be viewed as fairer? The answer is clearly 'yes.' First, many of the changes needed in police procedure are simple and easy to implement. They involve learning to provide people with opportunities for explanation before decisions are made; explaining how decisions are being made; allowing people mechanisms for complaint; and, in particular, treating people with courtesy and respect. Recently randomized field experiments in Queensland, Australia, have identified police practices associated with fairness (Bennett and Mazerolle, 2010). Similarly, the police in London have shown that, when the police provide newsletters to local neighborhoods reflecting an awareness of resident concerns, they build support (Wunsch and Hohl, 2009), and the police in Sweden have demonstrated that, when the police re-call those who have called the police to see 'if everything is all right,' public confidence in the police increases (Elefalk, 2007).

From a policy change perspective, the crucial question is why the police would want to implement these changes. Two assumptions are obstacles to change. First, there is a belief that the situations the police face are dangerous and that they are safer if they project force and dominate people and situations. Although the argument that projecting force leads to safety is widely held, research does not support it (McCluskey, 2003).

It is important to directly address the issue of whether, at least for the police on the streets, it is important for police officers to firmly project authority, that is, to control people and situations by making unequivocal commands backed up by non-negotiable displays of incontestable force. According to a force-based model, the police should be able to increase citizen compliance by projecting authority. McCluskey (2003) tests this argument using observer ratings of police behavior. He focuses upon police requests for citizens to control themselves and reports that, for initial requests by the police for compliance, '[s]urprisingly the coercive power that police bring to bear on a citizen in the form of commanding, handcuffing, arresting and so on, has a minimal impact on citizen's compliance decision' (2003: 100). At later points in the interaction McCluskey finds that 'the higher the level of coercive power displayed by police, the less likely

targets are to comply. . . . For every one unit increase in the index of coercion citizens are about twice as likely to rebel against the self-control request' (2003: 108). This leads him to conclude that, '[t]hough coercion may be a central component of the police role, it appears to serve little to enhance compliance when first asked or when requests are repeated by the police' (2003: 173). McCluskey notes that, when the police mention the possibility of arrest, compliance goes up. However, he views this effect as resulting not from coercion but from the greater legitimacy that the police have when their actions are seen as consistent with the law. As a consequence, police scholars generally argue that 'the best officers are those who use less, not more force' (Terrill, 2001: 232; also see Belvedere et al., 2005; Bouffard and Piquero, in press).

In contrast to the general ineffectiveness of coercion, McCluskey finds that, when the police use procedures that are fair, compliance increases substantially. He identifies three distinct aspects of procedural justice – ethicality, information-seeking, and decision-making – and shows that each independently contributes to the general increase in initial compliance that results from procedural justice. McCluskey describes people as 'seekers of justice' (2003: 173). When the police react to perceived threats by displaying force this often leads to escalations of conflict, whereas treating people with respect and explaining decisions lowers hostility and minimizes conflict.

This point is worth emphasizing because issues of officer safety must be central to any discussion of policing tactics. For example, in examining the Gates–Crowley incident in Cambridge, the Review Committee emphasized the key role that concerns about safety played in shaping the actions of Sergeant Crowley in the situation. As the report of the Committee notes when issues of legitimacy and procedural justice conflict with officer safety, 'safety must take priority' (2010: 8). It is important to focus on the gains to officers through training in the de-escalation of conflict and training in the principles of procedural justice. For example, 'the police should be taught that "officious" behavior can unintentionally offend and frighten citizens, and that sometimes the actions that police take to protect their safety and the safety of others can seem cold, insensitive, or overly authoritarian. . . . [P]olice should recognize that for many citizens, the actions of a police officer in uniform create a certain degree of anxiety and tension. Whatever police can reasonably do to explain the reasons for the interaction and de-escalate a situation is vital to the peaceful resolution of the encounter' (Cambridge Review Committee, 2010: 27).

A second assumption is that projecting force – threatening to make or making arrests and putting people in jail or prison – is the best strategy of crime control. Research shows that, on the contrary, high legitimacy is more strongly linked to low rates of criminal behavior than is creating a greater fear of being caught and punished by the police or the courts (Sunshine and Tyler, 2003; Tyler, 2006a; Tyler and Fagan, 2008).

Implementing change

There are multiple aspects to any strategy for changing policing. The overall goal is to build police legitimacy by enacting policing procedures that the public view as procedurally fair.

One important factor is the attitude of police leaders – tone from the top. The organizational culture of police departments is shaped by the values articulated by their leaders

(Tyler et al., 2007). This tone must, of necessity, involve attention to issues of crime control and citizen/officer safety. But it can also be about a broader set of issues that include the importance of building legitimacy through fair policing practices. Leaders can articulate the benefits of building public support, benefits that include help in fighting crime and greater officer safety but also general support for policing and for the community. People are more likely to come to and revisit communities in which they feel that they will be well treated by the representatives of government they are most likely to encounter – the police. This benefits communities economically because people more willingly come to them to work, to shop, as tourists and for entertainment and sporting events. Hence the police play a central role in creating the ambiance that makes a community inviting and desirable to the general public. Leaders can further communicate that, although the resort to force will always have a role in policing, that role should be used as a last resort, with the police viewed as ‘reluctant warriors.’

To implement change, police training needs to emphasize the importance of framing policing actions when dealing with the public in terms of procedural fairness, since building legitimacy is a goal of policing. Officers need to be trained in new approaches, and the value of these approaches to their mission of crime control needs to be emphasized. This training should lead officers to frame every interaction as an opportunity to build or undermine legitimacy through quality treatment.

Although training is important, police departments can also promote changes in policing by designing new operational guidelines. For example, it can become a part of police procedure for officers to carry and give to people a statement of police principles and procedures for filing complaints. This statement, which officers can hand out as a written brochure, should indicate that they have a right to have the reasons for the stop explained; to tell their side of the story before decisions are made; to have the laws and rules explained to them; to appeal decisions they disagree with; and to complain about unfair treatment.

Police reward structures also need to be reshaped so that building legitimacy in the community is viewed as a goal of equal importance to crime control. Police officer behavior responds to the directives of the leadership, and tone from the top is crucial to communicating the need for a new approach to policing. If officers believe that their opportunities for advancement, their compensation, and the respect that they will have in the eyes of their leadership are linked to their ability to create legitimacy and motivate cooperation, then they are more likely to engage in procedurally just behavior when on the street. When thinking about reward structures in police departments, it is important to think beyond material rewards. Studies of work organizations suggest that the impact of material rewards generally flows through their role in signaling management respect to employees and their contributions to the workplace. Studies of police organizations suggest that one of the best ways to communicate respect to officers is to treat them with the same fairness that has already been outlined. When officers feel respected, they are more likely to follow workplace policies when they are out on the street (Tyler et al., 2007).

Being able to reward the police in this new way requires the collection of new data on police legitimacy, both among those who have had personal experiences with the police and in the community more generally. For most police departments the crime rate is the only quantitative information that is available for benchmarking performance. If

commanders had information on the impact of policing practices on legitimacy, that impact could also be considered in making decisions about whom to reward, promote, or reassign. Providing counterbalancing information on how policies and practices shape public views on police legitimacy would allow police leaders to reward performance that impacts on the legitimacy of the police in the community.

What do the police gain? First, they have a more efficient and viable strategy for managing public order. This better strategy is linked to capturing the cooperation of the public in all communities – White or minority. Second, they gain a safer and less hostile working environment. And, given political realities, emphasizing gains to the police is central to changing police culture. There needs to be a change in what the police want to do. Just as with the public, seeking to compel change through lawsuits and consent decrees is not particularly effective because the police then seek ways to avoid accountability. For example, the New York Police Department sought to avoid the study of racial profiling in their street stops by resisting providing information to researchers about who they stopped on the street (Fagan et al., 2009).

Conclusion

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

Addressing public concerns involves reframing the way we think about the goals of policing. The police need to view as a key concern public judgments about how they are exercising their authority when policing. They need to focus upon how people evaluate the police and police actions. Why? Because public views shape how people behave in reaction to the police.

Note

1. As noted above, quality of treatment is one of two aspects of procedural fairness. The other is quality of decision-making. In this study, quality of treatment emerged as the more important of these two aspects of procedural fairness.

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