

Craft to Improve Patrol Officer Decision-Making

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Given the significance of police discretion for the allocation of justice within American society, it is crucial to understand what determines the routine choices patrolmen make.

Michael K. Brown, *Working the Street* (1981)

Correct prognoses will generally issue from the judgements of those with better knowledge of mankind.

Can one learn this knowledge? Yes; some can. Not, however, by taking a course in it, but through ‘*experience*’.—Can someone else be a man’s teacher in this? Certainly. From time to time he gives him the right *tip*.—This is what ‘learning’ and ‘teaching’ are like here.—

What one acquires here is not a technique; one learns correct judgements. There are also rules, but they do not form a system, and only experienced people can apply them right. Unlike calculating-rules.

What is most difficult here is to put this indefiniteness, correctly and unfalsified, into words.

Ludwig Wittgenstein, *Philosophical Investigations* (1958)
(as quoted by Nussbaum 1992, p. 54)

1 Introduction

The enormous discretionary authority of patrol officers operating at the “coal-face” of policing received little scholarly attention until the 1950s, when the American Bar Foundation Survey of the Administration of Criminal Justice conducted the first major observational study of criminal justice practitioners in the field (Walker 1992; Bayley 2008, p. 13). Researchers, riding along with patrol officers in cities and rural communities across three states, learned that police work was complex, and that officers did not simply act as ministerial agents of the law “doing precisely what they were mandated by law to do” (Goldstein 1977, p. 93). Instead, they also routinely exercised their authority in more informal ways with little guidance or oversight (Kelling 1999). According to police historian Samuel Walker (1992, pp. 56–57), this field research had a compelling effect on the researchers: “It was not only that innumerable routine decisions had profound implications for individuals, but also that these decisions were guided by no formal standards and were largely ad hoc accommodations designed “to get the job done.” In the process, the members of the team also observed a great deal of lawlessness, racism, and casual unprofessional conduct.”

Similar concerns about the pervasiveness and arbitrariness of discretion on the front lines were raised a decade later, amidst the Civil Rights movement of the 1960s. The National Advisory Commission on Civil Disorder (1968) reported on demonstrations against police brutality, institutional racism, and economic inequality (Cobb 2021). Around the same time, President Lyndon

Johnson's Commission on Law Enforcement and the Administration of Justice (1967, pp. 10, 103) recognized the "hard choices policemen must make every day," choices that depended largely on an individual police officer's personal discretion since "every policeman, however complete or sketchy his education, is an interpreter of the law."

Fifty years on, there is still much progress to be made. Police agencies and officers continue to gloss over, or deny (at least formally), the enormous leeway they have to choose "among possible causes of action or inaction" (Klockars 1985, p. 93). Moreover, the idea that police primarily act as law enforcers still exerts a strong grip on the public imagination. And yet with disturbing regularity, news stories and social media accounts describe troubling and tragic uses of police discretion in the form of unlawful police killings, controversial arrests, unjustified stops and searches, and reckless pursuits. The growing recognition that police officers may be "out of control" (Goldstein 1979, p. 239), neither protecting nor serving (Baldwin 1966), has led to the rise of Black Lives Matter, widespread protests, civil lawsuits, and national demands for police reform.

As others have argued, reckless or malignant abuses of police authority deserve to be central to efforts to improve policing (Thacher 2016, p. 535). However, reformers also need to wrestle with the full extent of patrol officers' discretionary leeway, the conditions that underlie it, and with formulating more innovative and effective mechanisms for structuring and governing its use. Even the most routine police–civilian encounters can involve factors that make these interactions nuanced, ambiguous, and complex. Egon Bittner, one of policing's most sophisticated observers, helped illustrate some of these challenges with several fine-grained analyses of the challenging situational judgments required in relation to seemingly low-profile encounters, such as patrol officers handling residents on skid-row (1967), responding to people with mental illness (1967a), managing complaints about a dog bite (1990, pp. 181–182), and telling groups of youths to "vacate a street corner" (1990, p. 187). The choices patrol officers make in these kinds of situations often do not "directly involve a decision whether or not to enforce a law" (Goldstein 1977, p. 95), but they can contribute to some of the most serious issues facing police–community relations today, including questionable uses of police authority, disproportionately harsh responses to petty offenses, and the indifferent or arbitrary treatment of community members, even when they are calling on the police for help and support.

High-profile and dramatic encounters may be the most likely to make national headlines, but most police activities do not involve crime fighting, making arrests, or using coercive force (Bittner 1990, pp. 240–243; Bayley 1994). A much larger

proportion of patrol work can comprise numerous less visible but ambiguous situations, such as handling harassment complaints, arbitrating or mediating between disputants, responding to public disturbances, or “protecting the rights of individuals to live where they want to live and say what they want to say” (Goldstein 1967, p. 1125).

As Bittner (1990, p. 240) observes, “the activity of criminal law enforcement is not at all characteristic of day-to-day, ordinary occupational practices of the vastly preponderant majority of policemen.” The Police Services Study conducted in the 1970s examined 26,418 calls for service in three metropolitan areas. It found that only 19 percent of calls involved crime, and only 2 percent involved violent crime (Walker and Katz 2005, p. 7). A recent and much larger analysis of millions of calls for service across nine agencies helps reveal the tremendous range of issues the police are called upon to handle, the majority of which do not involve criminal law enforcement, nor do they often result in officers taking any formal action (62–83 percent of calls received) (Lum, Koper, and Wu 2021, pp. 16–17). Currently, neither the law nor police administrators offer much guidance on most of the “mind-boggling variety” of police duties (Bittner 1990, p. 250), and unlike criminal incident or arrest reports, official record systems often fail to capture information on what actually transpired during many police–civilian encounters. Consequently, “what ultimately gets done depends primarily on the individual officer’s perspicacity, judiciousness, and initiative,” with few systems in place for assessing the patrol officer’s actions as part of a regular process for strengthening performance accountability, or for improving decision-making in future encounters (Bittner 1990, p. 262; see also Goldstein 1977, p. 97).

There also appears to be muted interest among police administrators, supervisors, and line officers in reflecting upon and discussing these decisions, despite the current spotlight on the police. And yet research suggests that when it comes to “policing for people” (Mastrofski 1999), members of the public have high expectations for the quality of individual police service they feel they deserve (Goldstein 1977, p. 161; Mastrofski 1996; Tyler 2004). These expectations only seem to be increasing over time, as people capture and share details of their own interactions with police officers (or those of others), and upload their cell phone videos to various social media and websites (Bayley 2016). There can be little doubt that civilians are quite comfortable observing and judging how rightfully or reasonably they feel treated (Mearns, Tyler, and Gardener 2015). Moreover, undesirable outcomes and widespread community outrage can result from what initially appear to be commonplace incidents, such as minor traffic violations, but that quickly escalate. It is possible that these outcomes could have been avoided by officers

“slowing down,” that is by paying careful attention to situational details of the immediate problem, and by doing the little things that help civilians feel respected and valued (and indeed respecting and valuing civilians), while not letting routineness and familiarity become a cause of undue complacency (Owens et al. 2018, p. 48).

Notwithstanding their importance, police responses to these encounters, which are more aligned with the police role as guardians of the community than warriors against crime (Rahr and Rice 2015), do not receive the attention they deserve, are rarely a central element of reform movements, and yet would seem to be crucial to improving community satisfaction, trust, and police legitimacy (Tyler 2004). Instead, reformers tend to focus on more sweeping organizational strategies, such as community- or problem-oriented policing, and grander objectives for transforming, or even abolishing, police organizations (Bittner 1970, p. 40; Mastroski 1999, p. 1; Searcey 2020). Thus, a core question for advocates of police reform, one rendered more urgent by recent events, is what might be done to channel more principled and defensible everyday uses of police discretion, and to hold patrol officers more accountable for what they do and how well they do it?

To these ends, in this Element we build on some of our previous work (Willis, Koen, and Toronjo 2022; Willis and Toronjo 2023) to advance a *craft learning model* for reviewing and channeling officer decision-making. We see our model as a potential supplement to existing systems of discretion control, systems that may be marginalized by the powerful effects of the police subculture, and that can fall short in providing useful guidance in relation to the realities of actual police practice (Mastroski 2000; Thacher 2008).

Our purpose is to envision a means for involving patrol officers more directly in the development of performance standards based on their considerable resource of collective, concrete, context-dependent knowledge and skills learned through their many and varied experiences working the street (Brown 1981; Flyvbjerg and Sampson 2001). Furthermore, we argue for a direct role for the public and other relevant experts or partners in helping improve street-level police discretion. While the problems of policing are not new, it seems a growing segment of the public may no longer be satisfied with delegating this responsibility to politicians and police managers. In developing our model, we are motivated by a desire to elevate policing as a “true” profession (Mastroski 2000, p. 428), and we draw selectively on insights from some of the better-established professions, such as medicine and social work. One of the key characteristics of any profession is that its members are trusted to exercise their own judgment, and yet policing seems to lag behind in this respect.

By narrowing the potentially overwhelming array of criteria for assessing an officer's performance in a particular situation to some of the most relevant and practicable considerations, we argue that standards could offer useful guidance on how to exercise discretionary authority in everyday encounters with the public, contribute to the development of professional knowledge, and lead to more principled decision-making. As with any profession, there is a place for knowledge gained through scientific experimentation. There are medication efficacy trials in medicine, program evaluations in social work, studies of the deterrent effect of sentencing practices in law, just to name a few. But in policing, as in other professions, such science can only inform, not solve, the challenge of situationally and normatively complex problems (Lum and Koper 2017). We argue that officers also need frequent opportunities to develop their capacity for making skillful judgments by reflecting on specific cases, especially when they confront situations that are dynamic and unclear, and deciding what to do is not obvious.

For Bittner, good patrol work requires an ability to make subtle or deft judgments based on an intuitive grasp of situational exigencies, qualities and skills that need to be “liberated and allowed to take their proper place in the scheme of police organization” (Bittner 1990, pp. 146–147). Gary Klein (2011, p. 6), a proponent of naturalistic decision-making (NDM) (choices that occur in an unstructured and unpredictable social environment) refers to this as thinking and deciding in the “world of shadows, the world of ambiguity.” To be effective, we further suggest that these standards need to be integrated with a compliance or accountability process for reviewing and assessing the choices made, both good and bad, and for encouraging the kind of honest and constructive feedback that promotes reflection and learning (Thacher 2001; Stoughton, Alpert, and Noble 2015).

The model we envision here is structured around a regular performance review process conducted by first-line supervisors to promote the kind of thoughtful deliberation that could aid “the exercise of proper discretion” (Goldstein 1963, p. 147). Building on recent interest in pushing policing to become a more critically reflective practice (Charles 2000; Ramsey 2014; Christopher 2015; Phelps et al. 2016), and on research suggesting that nonstandard supervisory interventions encouraging officers to reflect on their thought processes and actions can result in salutary effects (Owens et al. 2018), we outline a process that would involve supervisors regularly reviewing their officers' body-worn camera (BWC) footage through an interactive practitioner-based learning approach of reflection-in-action.

These prospects of guidance and control that we outline for the craft learning model are consistent with a post-bureaucratic focus on more flexible and transparent public service organizations (Thacher 2022). This focus encourages frontline workers to take initiative to address recurrent challenges or problems, but it also demands “that such initiative be reflective and accountable” (Sabel and Simon 2016, p. 167). This is in stark contrast to the current dominant paradigm in policing of increased administrative rulemaking and bureaucratization. This model, which rose to prominence in the mid-twentieth century (Mastrofski and Willis 2010), depends on “stable, hierarchically promulgated rules and lightly supervised discretion” and shows no signs of abating (Sabel and Simon 2016, p. 167).

What we propose is ambitious, especially because of its direct involvement of lower-level organizational participants in promoting fairer and more effective policing, the very same group that is considered responsible for much that currently ails policing, and because we seek to loosen police organizations’ traditional, bureaucratic, and hierarchical “coercive-alienative” approach to strengthening compliance. We think that more attention should be paid to a “normative-moral” perspective, with its emphases on collaborative learning and strengthening the moral commitment between the community and the police toward good police work (Etzioni 1975, pp. 12–13; Mastrofski and Greene 1993).

While audacious, our proposal embraces the goals of the Elements’ series, which promises “to focus on radical new ways of understanding and framing criminology, whether of place, communities, persons, or situations.” Similar to John Laub’s Presidential Address to the American Society of Criminology in 2003 (2004), we are suggesting the need for a “turning point” in the ideas around police reform, a turn which would focus more interest on the complex situational and normative dimensions of frontline police decision-making and on meaningful attempts to help officers “refine” their capacity “to humanely manage difficult incidents during the moments when they arise” (Thacher 2008, 2022, p. 64). Thus, we hope our Element will be a catalyst for building knowledge about the daily choices police officers are called upon to make, and for developing and testing new strategies for improving frontline decision-making processes and outcomes.

This Element begins by reviewing the current subsystems for controlling street-level discretion in police organizations. Doing so provides a context for understanding the logic of the craft learning model, and for assessing its potential for improving how patrol officers choose particular goals and tactics in their encounters with the public, and the values their actions implicate. We will pay particular attention to contrasting the recent resurgence of interest in

the more constraining properties of the “if–then provisions in rules and procedures” of policymaking, which are largely limited to restricting discretion and punishing wrongdoing (Engel and Worden 2003, p. 132). Our framework emphasizes broader standards that practitioners might *strive* to meet when making decisions. Incidentally, the strongly hierarchical and punitive model of police professionalism extends to the use of BWCs, where much attention has been paid to how BWCs can strengthen compliance with rules and policies and help deter use of force and police misconduct (Lum et al. 2020). In comparison, there has been much less exploration of how to use this technology as a learning tool for capturing and improving craft knowledge and skills (Willis and Mastrofski 2017; Willis 2022).

Next, we build on some of our own research to provide a detailed description and explanation of our conceptualization of a craft learning model, before considering some of the challenges to what we envision, including misalignment with traditional police culture, the limited role of first-line supervisors, lack of public input into discretionary decision-making, and conflicting values. We conclude by summarizing our main ideas, and by considering the need to balance different strategies for controlling discretion, particularly those between bureaucracy, craft, and science.

We argue that the challenge for researchers and police reformers is finding a balance that is mutually enhancing – one that helps prevent arbitrary responses and abuses of police authority, but that also allows for, and rewards, patrol officers for using the kind of “imagination and resourcefulness” associated with the best that the police craft has to offer (Goldstein 1977, p. 82). We do not think this is a zero-sum proposition, namely, that it is possible to increase the role of craft in advancing good police work without degrading science or bureaucracy. This might be achieved by encouraging a shared commitment to the “mutual aims and interests” of better policing (Mastrofski and Greene 1993, p. 83). Indeed, Lloyd Ohlin, a consultant for the field research on the original American Bar Foundation Survey, and a crucial advisor for the overall project, proposed a “middle course” to decision-making that supported “thoughtful discretion” by rewarding excellence and by allowing for flexibility and the exercise of “intelligent judgment.” Such a course

requires training in the decision-making that is guided by the basic values of a democratic society and professional norms of conduct. It also requires constructive use of supervision, review procedures, and policy development involving frontline decisionmakers. It calls for rules that do not take the form of mandated action but require attention to the criteria that should guide action and inform sensible judgments. The challenge is to devise controls that preserve and nurture that kind of discretion. (1993, p. 18)

2 Police Discretion and Strategies for Its Control

Since the American Bar Foundation called attention to the broad discretion enjoyed by patrol officers about seventy years ago, police leaders, public officials, and reformers have sought to structure and control it. In this section, we draw and expand upon the work of police scholar Stephen Mastrofski and others to examine policing's major discretion control strategies, many of which fall under one or more of the following five categories: (1) rule of law, (2) administrative rulemaking, (3) community participation, (4) police science, and (5) professional governance. These systems overlap, and understanding the challenges, opportunities, and consequences of a craft learning model first requires understanding the nature of these existing subsystems for influencing how policing gets done. The current policing crisis demonstrates how reformers continue to struggle with their effectiveness in trying to control the exercise of police authority and attain the 'Holy Grail of democratic policing' (Worden and Dole 2019).

2.1 The Rule of Law

According to the legal scholar H. M. Hart (1958, p. 402), the criminal law should not be treated abstractly, but examined as a method or "a way of doing something" in the real-life context of the institutions that make use of it and give it meaning. At the state level, legislators debate and enact criminal codes, and the judiciary is responsible for interpreting these codes and reviewing police conduct. From the perspective of the police, the law sets forth "technical standards and expectations that stipulate or guide the officer's actions in a number of domains" (Mastrofski et al. 2000, p. 313). The role of the law in guiding officer behavior tends to be "downplayed" by scholars (Herbert 1998, p. 352), who point to the powerful effects of the occupational subculture. Nonetheless, despite its limitations for effectively structuring discretion, "all basic police responsibilities and powers are defined by the law" (Herbert 1998, p. 352). Most obviously, the law instructs officers on the kinds of problems that deserve their attention, and the kinds of actions that are permissible. As Mastrofski (2000, p. 84) notes:

Few would argue that the law is irrelevant to these decisions. It is clear that the law empowers police, giving them the authority to intervene and take certain actions (e.g., arrest) in specific circumstances (where evidence suggests the probability of a violation). Without a legal basis for intervention and action, it is undoubtedly true that the police would show less inclination to get involved in many problems and take certain legal actions.

In interpreting whether and how the law applies to a particular situation, officers must know its directives and evaluate what the evidence warrants. Thus, the law is fundamentally important for helping officers define a situation as meriting their attention, and for shaping their response (Harmon 2021). These empowering aspects of the law are illustrated in the many provisions of a state's motor vehicle code, which provides police with "a nearly unlimited reservoir of legal authority to pull motorists over when they want to check for fugitives and contraband (or, for that matter, when they want to pursue any other goal ancillary to the overt purpose of the traffic code)" (Thacher 2016, p. 103).

The fact that patrol officers will use the law as a resource to accomplish whatever objectives they identify as necessary helps explain why it is applied in ways that may appear to others to be arbitrary or legally inconsistent (Bittner 1990, p. 246; Mastrofski 2000). For example, the purpose of a traffic citation following a legal stop might be to raise revenues for the city, or to satisfy a department quota, rather than the ostensible purpose of punishing violators to increase traffic safety (Klockars 1985, p. 99). The stop might also be used to discriminate against specific groups, which is why some reformers have focused much of their attention on controlling police discretion through law's restraining properties, or its capacity for proscribing certain police actions. Some have argued that the law's greatest potential for influencing police behavior seems to lie "in its capacity to define forbidden actions . . . rather than to specify desired ones" (Mastrofski and Greene 1993, p. 84).

This variation and potential for abuse helps explain the motivational basis behind the 1960s "due process" revolution of the Warren Court era (1953–68). The Supreme Court under the leadership of Chief Justice Earl Warren helped establish standards for the legal control of the police regarding the appropriate basis for making an arrest, stopping and searching a civilian, and for interrogating those accused of committing a crime (Walker 1992). In *Mapp v. Ohio* (1961), the Court ruled that evidence collected in an illegal search and seizure was not admissible in court, and in *Miranda v. Arizona* (1966), police were required to inform detained criminal suspects of their rights before being interrogated to protect suspects from self-incrimination. The articulation of criminal procedural rights under the Constitution is closely tied to a long history of racial discrimination in the United States and the Court's concern with fairness and equality (Skogan and Frydl 2004, p. 254). Research, however, shows that police are quite capable of using their discretion to circumvent legal prescriptions and that a system which relies upon a miniscule proportion of questionable cases being reviewed in court to be effective is a relatively weak form of accountability (Gould and Mastrofski 2004). Victims of unfair police practices are unlikely to make a complaint, and officers rarely file charges

against each other. Even if a case makes it to the prosecutor's office, it will often get screened before it gets to any judge (Mastrofski 2000, p. 424).

Scholars have suggested several other limitations to the law as a formal system of discretion control. Laws are written in very general terms, leaving officers with considerable leeway in choosing how to apply them. Even when it comes to laws designed to specifically narrow an officer's decision-making (e.g., mandatory arrest laws), officers must still decide whether the factors relevant to a specific domestic violence assault meet required legal standards for an arrest. That is, even these highly targeted laws "do not eliminate the exercise of discretion Was there in fact an assault? Was it a felonious assault? How serious is that injury?" (Walker 1993, p. 38). There still remains much room for interpretation, particularly when it comes to misdemeanor offenses (Mastrofski 2000, p. 423).

While it could be argued that a facet of late modernity is the rapid expansion of substantive criminal law to cover many areas of social life, "the law fails even to recognize most of the discretionary choices open to police and therefore provides no guidance on what to do when an arrest cannot be made" (Mastrofski 2000, p. 423). In the case of the neighbor dispute in an apartment building that we introduce in Section 3 (where both parties have strongly opposed viewpoints), it is not clear a law has even been violated that would permit an arrest. In general, when there is little ground for a legal arrest, the law offers police little guidance: "the criminal law devotes virtually all of its attention to arrest, offering scarcely more than a whisper on banishment (except for protection from abuse orders), and nothing about threats, warnings, advice, and persuasion" (Mastrofski et al. 2000, p. 313). With the scenario of the estranged neighbors, should the officers separate the parties, counsel them together, threaten them, call a family member, or refer them to the building manager?

In sum, the law itself and the external legal institutions designed to strengthen compliance with its edicts are important influences on police decision-making, but there are still significant limits on their effectiveness as a mechanism of guidance and control. In light of this, since the 1960s, many reformers have advocated for an internal system of administrative rulemaking that tries to regulate police decision-making through more detailed department rules, regulations, and policies, and through the use of internal reviews to help ensure patrol officer compliance.

2.2 Administrative Rulemaking

By the mid-1970s administrative rulemaking had become the dominant paradigm for controlling police discretion, and it remains so today (Walker 1993).