

POLICE DISCRETION

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Introduction :

Police discretion is a controversial issue. Even though the law has laid down due process for the police to follow and requires them to carry out non-discretionary full enforcement; in reality, that police exercise discretion is a commonly known fact. There are two broad areas where the police can and need to exercise discretion. Firstly, an officer has to decide whether or not to arrest an individual when such circumstances arise. Secondly, he has to make disposition decision against those who are arrested. He has to decide what formal or informal action is to be taken. Although there are various reasons suggested to justify the need for police discretion, some people still think that it is objectionable. They argue that police have been given too much power and if discretion is allowed freely, justice will be hampered. However, discretion can be good or bad, can mean justice or injustice depending on the way it is exercised and the availability of guidance and sanction.

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In their day-to-day dealings with the public, the policemen have to handle all sorts of people and situations. They are often required to make on-the-spot decisions such as arrest and disposition of the subjects. Discretion may be exercised in very different ways by the policemen when encountered with different people and situations.

This paper is going to discuss and analyse those factors influencing the way police discretion is exercised in different communities and situations. As there are a multitude of factors that one can find, here I concentrate on the more significant ones. The factors to be analysed are: -- organisational demands, societal and political pressures, police working philosophy, offence and moral character of the suspect and the peace-keeping role of the police.

Organisational Demands

There are two levels of organisational constraint on police discretion. The first comes from departmental policy. Local police administrators can influence individual officers either by very explicit guidance on the enforcement of a particular law over a specific period of time, or by less explicit sets of 'expectations' of law enforcement behaviour. Wilson in his study on police discretion in eight American communities found that after the appointment of a 'reform' police commissioner, a tough policy was adopted on vice in Nassau City, resulting in tremendous increases in arrests¹. In the same study, he reported that at Syracuse traffic ticket production had increased 58% by the end of 1964; and between 1964 and 1965, it increased another 18% after a new police chief took over and adopted a tough line on traffic law enforcement.²

The second kind of organisational constraint relates to the wider

organisational features of the criminal justice system in which police decision forms a part of the total network. Police action (arrest and disposition) is sometimes influenced by courts' view and judges' attitude towards the kinds of offences brought before them. The police will often not wish to waste time on arresting individuals who may subsequently be given a merely nominal sentence by the court.³ Wilson found that among 58 gambling cases disposed of by the Syracuse city court during 1964, over half (59%) were dismissed or the defendant was acquitted - none resulted in a jail sentence. As a result, police action towards gambling in that community changed from formal arrest to harassment of the gamblers, causing all sorts of inconvenience to discourage them from operation⁴

SOCIETAL AND POLITICAL PRESSURES

Societal pressure can influence the extent and nature to which the law is enforced by the police. Public opinions expressed by pressure groups, civic leaders and the press exert considerable amounts of pressure on the police chief. Public pressure can be transformed into political pressure which is more influential on police departmental policies. Members of the public can direct their complaints against police practices to local public or political figures like mayors, city councillors and legislators. Politicians often tend to be very sensitive, if not responsive, to public arousal since, if they are neglected, it can well have damaging effects on their political lives. To avoid public arousal or discontent and to gain public support especially in the time of election, politicians would exert even greater pressure on the police administrator for more pleasing policies and practices. As politicians have much say in how resources are distributed to police departments,

to gain support from the politicians is one of the main concerns of the local police administrator. Demands from politicians have to be duly satisfied. Thus mayors, city councillors and the press have substantial opportunities to control the police administrator and his policy.

How far public pressure can influence police policy depends to a great extent on the source of the pressure. If complaints come from the poorer strata, their significance is much reduced. However, pressures coming from the economically and politically powerful groups are treated more seriously and promptly. This discrimination in police practice is being studied by Chambliss and Seidman. They pointed out realistically that the police must avoid, at all costs, aggravating persons who can influence the views of the legislators, councilmen, mayors or governors. Standard procedures or due process are followed when dealing with 'respectable' citizens and 'crime-control' methods are employed when handling slums and ghetto residents to ensure that public arousals only occur rarely⁵

Societal pressure can influence police discretion even more directly. Firstly, it affects the way members of the public report crimes to the police. Secondly, it affects police decisions as to how to handle those crimes that are reported to them. If a community is more 'tolerant' of illegal activities, fewer crimes will be reported to the police and hence fewer police actions would be taken and vice versa. The degree of toleration of illegal activities is a function of the socio-economic composition of a community. Empirical evidence can be cited from Wilson's study of some American towns and cities. He found that in upper-income suburbs such as Brighton and Highland Park where there was no vice, at least of the sort run by professionals, when a bookie was found attempting to set up business in a hotel on the

outskirts of town, it was put out of business by the police.

"If organised gambling or vice were discovered in such towns, there would be a scandal, and the police know it. Residents would expect that 'in a town like this' the police could 'keep that element out' and they would be right."⁶

"Where as in small industrial towns such as Amsterdam and Newburgh, it is another story. With many bars and dance spots and a working class population, there are many opportunities for illegal business and little, if any, pressure from public opinion to eliminate it altogether."⁷

As nobody complained and nobody demanded the police do anything about it, the police in Amsterdam and Newburgh were more 'tolerant' towards the vice. In 1966, there had not been a single arrest for prostitution even though there were at least two brothels in Newburgh. Gambling arrest was also rare with only four or five a year. These men usually reopen business at the same locations.⁸

All this empirical evidence corroborates the postulation that socio-economic composition of a community affects both the extent of illegal activities and the level of social tolerance against crime. In small upper-class communities, opportunity for operating vice is fewer because the public is more ready to report it to the police and the police are more apt to take action. In large and mixed communities with a substantial proportion of lower-class constituents, demand for vice is usually greater. Illegal services are provided by those who find the trade profitable. Comparitively fewer reports are made to the police. Less public pressure or initiative would not only result in fewer police actions but also in less tough measures being taken against

those crimes reported. Police can justify their non-action by excuses such as : 'the public wants them'; 'they don't bother and won't co-operate'; 'we are short of manpower'.

POLICE WORKING PHILOSOPHY

McEachen and Bauzer (1967) found that police discretion is influenced by the characteristics of individual police officers and police officers and police department.⁹ How far does the police department influence police discretion has been analysed in a previous section. However, police discretion is influenced to a greater extent by their occupational norms than by individual characteristics and values. The working philosophy or, in Jerome Skolnick's terminology, the working personality' of the police is shaped by their subcultural norms. Skolnick found that police subcultural norms are derived from two peculiar characteristics of the policeman's role, danger and authority.¹⁰

To maintain law and order in society, the police are required to exercise authority over the ordinary citizen. Policemen regard the public as hostile to them. They are often suspicious and self-defensive because they believe themselves to be under constant physical danger from unknown and mysterious sources. They are apt to resort to authority and force as resources to reduce perceivable threats. However, they demand respect from the public as they think they are protecting them.

There is ample empirical evidence to show that 'respect' and 'authority' are significant variables influencing police discretion exercised in different communities and situations. In general, we can say, police are more likely to arrest and take formal action against those

suspects who challenged their authority and did not show them due respect. In situational intervention like handling public and private disturbances, it is very important to the officer that he can control the situation. To master a situation, officers sometimes have to exert excessive authority over the participants. In Westley's interview with the police officers concerning the use of force in arrest situations, a fair amount of respondents (39%) gave 'disrespectful behaviour' as the reason for force being used.¹¹ Paul Rock isolated the 'maintenance of authority' over a geographical area and over a particular group of deviants as the overriding concern of police officers.¹²

these two variables, respect and authority, become more significant when police are dealing with juvenile delinquents. Goldman found that in making police referral decisions, respect for authority is an important factor.

"The necessity for maintaining respect for public authority in the community. A juvenile who publicly causes damage to the dignity of the police, or who is defiant, refusing the help offered by the police, will be considered as needing court supervision, no matter how trivial the offence",¹³

Another accepted practice in police subculture is the application of dual-standards to the upper-class and the lower-class. The reason why dual-standards are practised between different socio-economic classes was analysed in the section on political pressure. Here, I confine the discussion on how far this accepted discriminatory practice influences police discretion in the light of the followings.

1. The location of criminal behaviour - where and upon whom will the police look for crime?

2. How those arrested are treated?

When a policeman has to go out to look for crimes, where would he go?

It is commonly held among the police that most of the troubles come from the poorer sector of the community like the slums, and in America the ghettos. Besides, official records show that these areas have the highest crime rate. On the contrary, the suburbs where most of the well-to-do class live are seldom 'disturbed'. However, this is a self-fulfilling prophecy as Chambliss and Seidman criticised.

"Crime will be prevalent where we look for it, not because of the inherent criminality of the areas surveyed, but merely because so many of the things that people do in their daily lives are against the law that any area inundated with policemen will show a correspondingly high crime rate."¹⁴

As a result, the working-class and Negroes are subject to more police scrutiny. They are more likely to be stopped on the street and interrogated than those respectable middle-class gentlemen. When they are arrested, they are treated discriminately. Policemen are more ready to use force to arrest them. More harassment is exercised on them to secure evidence, information or guilty-plea. Police are more likely to make bargains with them, to exchange information for a charge of minor offence or even release. However, when dealing with the more powerful sector, policemen become more cautious. Standard procedures like the judges rules will be followed.

Such kind of discriminatory justice is an accepted common practice among the police and has significant influence on what kind of persons will be questioned or arrested and how they will be treated when they are taken to the police station.

Offence and Moral Character of the Offender

At this stage, we must distinguish between discretion exercised according to the nature of the offence and those exercised according to the character of the offender. The amount of police discretion and the way it is exercised depend on both the seriousness of the offence and the judgement of the character of the offender by the police .

Piliavin and Briar's study on police disposition of juveniles renders support to this point.¹⁵ If the offence committed is serious like robbery, homicide, aggravated assault, grand theft and rape, there will be few or no discretion left with the officers. The offender is to be arrested and charged for the offence he has committed. In most cases when the offence is relatively minor, discretion plays a major role in the arresting process. Discretion exercised is in turn affected by the character of the offender.

How does an offender's moral character influence police discretion ?

If a suspect is judged by an officer as basically a good guy, less severe action will be taken. He may be cautioned and released. If a suspect is judged as obstinate and a serious delinquent, it is unlikely that he can escape severe sanction. How do the police judge the moral character of an offender? The assessment is based on, among other things, the attitude and personal characteristics of the suspect or offender. If the attitude of a suspect is respectful, co-operative and remorseful, the officers would regard him as a good boy deserving a 'break'. If he is hostile, impassive and without fear, he would be judged as non-salvageable and punishment-inviting.

Sullivan and Seigal, in their analysis of the factors influencing

police handling of juveniles found drunk and disorderly on the street, reflected that three-quarters of the police in the sample chose the item 'attitude of offender'.¹⁶ In America, Negroes are treated with more severity than whites by the police. This is closely related to the attitude of the Negroes towards the police. As Negroes are particularly picked out for selective enforcement, their frequent encounters with law-enforcement personnel increases their hostility they tend to be recalcitrant, spiteful and unco-operative. Such response offends the officers, who regard them as serious delinquents deserving more severe disposition. This reinforced prejudice is reflected in police statistics showing a disproportionately high percentage of Negro offenders, there by providing justification for concentrating police attention on them.

A suspects' moral character is also judged from his personal characteristics. Police from their daily working experience, formulate a stereotype of those personal characteristics indicative of criminal behaviour. If a suspect lives up to this police image or expectation, his chances of being arrested are considerably increased. Piliavin and Briar in their study of juvenile delinquents found that police action (arrest and disposition) were based on cues like the youth's group affiliations, age, race, grooming, dress and demeanour from which the officer infers the youth's character.¹⁷

The suspect's moral character' is also judged by whether he has any past criminal record or not. In fact, it is a common practice among police to detect any crime by first checking on known criminals and previously located suspects. The assessment of the 'moral character' of individuals and environment as shorthand detective technique is best summarised by Werthman and Piliavin.

"Policemen develop indicators of suspicion by a method of pragmatic induction. Past experience leads them to conclude that more crimes are committed in the poorer sections of town rather than in the wealthier areas; that Negroes are more likely to cause public disturbances than whites; and that adolescents in certain areas are a greater source of trouble than other categories of the citizenry. On the basis of these conclusions, the police divide the population and physical territory under surveillance into a variety of categories; make some initial assumptions about the moral character of the people and places in these categories and then focus attention on those categories of persons and places felt to have the shadiest moral characteristics."¹⁸

Peace-keeping role of the Police

So far our analysis of discretion was related to the law-enforcement role of the police in society. They are seen as agents of social control, enforcing a particular set of social orders to members of the community. In reality, a substantial amount of police work is to render support and services to members of the public. Services provided range from answering public enquiries, giving street directions, to calling ambulances. Sometimes policemen are called upon by citizens to solve private disputes like family disturbances. In this case, they act as peace-keeping officers and exercise considerable amounts of discretion especially in dealing with minor issues. Discretion exercised is affected by three variables :

1. Attitude and co-operation of the participants or victim-complainants in a dispute.
2. Judgement of the utility and consequence of police intervention.

3. Availability of alternative measures or resources for settling a dispute.

Parnas in his study of police intervention in domestic disturbances, indicated that non-arrest in these situations derived primarily from the wishes and attitude of the victim-complainant who frequently did not want the offender (usually the husband) arrested.¹⁹ Further empirical evidence comes from Hohenstein's study on juvenile offences. He analysed a 10% sample of juvenile offences handled by the Philadelphia Juvenile Division in 1960. He concluded that the attitude of the victims towards prosecution is the single most important factor determining police disposition. In 96% of the cases, the victims were against prosecution of the offenders who were then remedied informally.²⁰

The co-operation of the victim-complainant is important for police prosecution especially in cases where the victim is the only witness. This explains why most of the rape cases are not brought to court. Most of the victims refuse to prosecute the offenders because they do not want to relive the situation when they are required to give evidence in court.

Sometimes, when settling a dispute, an officer has to consider the utility and consequences of his action or non-action. Among the things he would consider are : -whether an arrest might cause greater harm to the family in the long-term; whether there is prima facie evidence to establish the case in court. Very often, because of lack of prosecution witness and evidence, the officers have to settle a case by informal actions.

At times, an officer may have to decide what alternative measure other than arrest he should take against an offender. This is espe-

cially the case when he is dealing with a juvenile offender. As Sellin and Wolfgang have pointed out, the police have to consider the juvenile's home condition, the attitude of the parents, their resources & ability to help the child and the availability of the other community agencies which might be useful in helping the offender.²¹

Conclusion

Police discretion, whether we like it or not, is bound to exist. As mentioned in the introduction, police discretion can mean justice and injustice depending on the way it is exercised. Our analysis, so far, shows that the philosophy of police discretion is a self-fulfilling prophecy. Some of the ways discretion is exercised bring injustice to certain less fortunate sectors of the community. Should individual policemen alone be held responsible for this? I do not think we should blame them alone. Institutional pressures and police subculture overshadow individual policemen's personal values and sentiments. They are constantly adjusted, shaped and conditioned by the entire criminal justice system which should also be held responsible for the misplaced justice brought by police discretion. The lack of proper guidance and effective sanctions make discretion a matter of personal choice of the police. Therefore, for the benefit of the entire community, including the police themselves, discretion must be properly confined, structured and sanctioned

NOTES

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4. Wilson, op .cit.
5. Chambliss, W. J. & Seidman, R.B. "Law, Order & Power", Addison-Wesley, 1971.
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7. Ibid. P. 102
8. Ibid. P. 102
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13. Goldman, N." The differential Selection of Juvenile Offenders for Court Appearance", New York, 1963. as quoted in Bottomley op. cit. P.69.
14. Chambliss & Seidman , op. cit. P .331
15. Ibid. P. 337
16. Sullivan , D. C & Seigal, L.J. " How Police Use Information to Make Decisions - An Application of Decision Games", Crime & Delinquency, Vol. 18, 1972, P. 253 as quoted by Bottomley, op. cit.

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18. Werthman, C. & Piliavin, I. "Gang Members and the Police" as quoted in Bottomley, op. cit. PP. 55-56.

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21. Selling, T. & Wolfgang, M. E. (ed.) "Delinquency: Selected Studies", New York, 1969 as quoted in Bottomley op. cit. P. 70.