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Rightful Policing

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Introduction

During the summer of 2009, the nation and the world trained their attention on Cambridge, Massachusetts, a small northeastern city of about 100,000 people abutting Boston and home to Harvard University. That summer, a Cambridge police officer arrested renowned Harvard University African American Studies scholar Henry Louis Gates, Jr., who was attempting to enter his home following a long trip abroad. The media were flooded with stories and accounts of "racial profiling," the nature of the problem and the necessity for a national response. Even President Obama famously commented on the incident.[1]

To understand the controversy following Professor Gates's arrest, it is useful to have a factual context: Sergeant James Crowley, the officer who arrested Professor Gates, radioed that he would go to the Gates residence after receiving a dispatch at 12:46 p.m. on July 16, 2009, that a possible breaking and entering was in progress. Crowley arrived to find Gates in his home, and from there the stories diverge. Crowley's version of the events is that Gates was yelling and

behaving in a "tumultuous" manner as Crowley attempted to ascertain enough facts to ensure that a crime was not occurring. Gates's view, on the other hand, is that Crowley disrespected him by failing to respond when Gates asked Crowley for his name and badge number. Gates was also upset that Crowley suspected him — a slight, elderly man with a cane — to be a burglar. It is important to emphasize that Sergeant Crowley arrived at Gates's home in response to a 911 call as opposed to an exercise of his own discretion. This point is critical because the typical conception of racial profiling focuses on its legality, and the legality of police action is primarily framed around placing constraints on when police decide to engage people as opposed to how police engage people. Even though his experience fit somewhat uneasily into the typical legal framework of racial profiling, Professor Gates has described his experience in exactly those terms.

How, then, are we to understand the disjuncture between Sergeant Crowley's insistence — as well as the conclusion of many — that he conducted himself lawfully and Professor Gates's insistence that he was unfairly treated and, therefore, racially profiled?

To find an answer, it is necessary to see how two dominant ways of evaluating police leave little room for considering how ordinary people tend to assess their treatment by state authorities. Experts, whether they are police officials or scholars of policing, tend to assess police action either with respect to its lawfulness or with respect to its effectiveness at reducing crime and increasing public safety. Police fidelity to law, especially constitutional law, has long been used as a criterion to distinguish good from bad policing. In addition to the Fourth, Fifth, and Sixth Amendments, other bodies of law — such as police agency administrative regulations, civil lawsuits, or the very law that authorizes police to act in the first place, substantive criminal law — provide standards by which legal authorities measure and assess whether or not policing is carried out properly.[2]

Effectiveness at crime fighting has become the other primary police evaluation metric. Promoted initially by scholars, this yardstick is newer than lawfulness, because for decades many, including police, believed that law enforcement had little impact on crime rates.[3] David Bayley, in his 1994 book, *Police for the Future,* summed up this view nicely:

> The police do not prevent crime. That is one of the best kept secrets of modern life. Experts know it. The police know it, but the public does not know it. Yet, the police pretend that they are society's best defense against crime and continually argue that if they are given more resources, especially personnel, they will be able to protect communities against crime. This is myth.[4]

This is no longer true. Police executives are expected — and expect themselves — to reduce

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crime rates in their jurisdictions. Policing scholars devote themselves to finding causal connections between various police practices and crime statistics, typically by relying on a theoretical model that assumes offenders are rational actors who are persuaded to desist from criminal behavior when the prospect of formal punishment outweighs the benefits of that behavior. In arresting Professor Gates that day, Sergeant Crowley pursued these two aims of policing simultaneously. He was an assiduous crime fighter, and he acted in a way that was legal. Does that mean that Sergeant Crowley's conduct was unambiguously rightful?

No, it does not. It does not because there is a third way, in addition to lawfulness and effectiveness, to evaluate policing — "rightful policing." Rightful policing attempts to account for what people say that they care about when they assess individual officer behavior as well as agency conduct generally. It differs from lawful policing and effective policing in at least two ways. First, rightful policing does not depend on the lawfulness of police conduct. Rather, it depends primarily on the procedural justice or fairness of that conduct. Second, rightful policing does not depend on an assessment of police as ever more effective crime fighters (although it turns out that rightful policing often leads to more compliance with the law and therefore lower crime rates). This third way may well help us move toward police governance that is substantively, as opposed to rhetorically, democratic. Finally, rightful policing is better for cops on the street. Its precepts not only encourage the people whom police deal with on a daily basis to comply with the law and police directives, they also encourage behaviors in encounters that tend to keep police safe.

Two Views: More Law? Or Less Crime?

Before this paper delves into greater detail about "rightful policing," it is useful to understand what rightful policing is not. Rightful policing is not confined simply to constitutional policing, nor is it subsumed entirely by policing aimed at crime reduction. Rather, it is about how to achieve both by promoting fairness and engendering trust in police among the public.

This discussion began with a widely publicized example of what many, including the person who was arrested, Professor Henry Louis Gates, believed to be racial profiling by police. New York City, like Cambridge, has been embroiled in its own racial profiling controversy for more than a decade. In New York, the controversy is centered not on one high-profile incident, but, rather, on hundreds of thousands of stops and frisks of nameless, primarily young, African American men. The criticism of "stop and frisk" leveled against the police in New York is not limited to that city or this country. Philadelphia, for example, has been involved in a similar controversy, and London police have come under fire for implementing what critics believe to be a too-aggressive "stop and search" strategy. In each of these cities, there have been vocal complaints about what critics claim is the overbroad exercise of state power in the form of searches and seizures. These criticisms usually are asserted in legal terms and framed around precepts of constitutional law. The critics' preferred remedies

in turn are usually described using the same set of tools — the architecture of law and rights.

Thinking about police lawfulness in terms of a tradeoff between the risk of arbitrary or oppressive enforcement and an individual's right to privacy and autonomy is a dominant approach in the literature.[5] Those who measure good policing with reference to its lawfulness do not usually focus on police effectiveness at reducing crime. Rather, the lawfulness metric almost always casts police power as a necessary evil as opposed to a welcome utility or a potentially critical mechanism for empowering communities to pursue their own democratically chosen goals and projects. According to the "more lawfulness" view, police adherence to strict dictates that constrain their discretion generally results in less policing and more liberty for individuals. The higher level of crime that might result from less policing is simply a price citizens pay for more freedom in society.[6]

Police executives who are committed to lowering crime rates in their communities do not agree that less policing is an ideal they should seek to achieve. In pursuit of accountability, one of the four cornerstones of the new professionalism advocated by Stone and Travis[7] — the primary components of which include reducing crime and making communities safer, controlling costs, and conducting themselves with respect toward the public whom they serve[8] — police have become much more concerned with effectiveness, considering commitment to crime reduction a prime aspect of accountability.[9] The question is no longer whether or not police can make a difference. Police executives instead ask, "How much of a difference in crime rates can police make?" The new literature on the relationship between crime rates and policing is voluminous. Criminological research over the last couple of decades has shown that deploying police forces in geographically focused ways — "hot spot policing" — can significantly reduce crime without displacing it to other areas.[10] Other scholars have demonstrated that strategies such as problem-oriented policing and community policing can be useful to address crime and/or the fear of crime.[11] The advances in statistical approaches are striking and useful, but a weakness of the scholarship on police effectiveness is that lawfulness is largely irrelevant to it.

Those who promote success at crime fighting as the best way to assess police effectiveness too often fail to understand that police failure to adhere to law is a proper lens through which to view public perception of overbroad policing — in the form of too-prevalent stop and frisk, widespread public surveillance, or other everyday policies and practices. Comments by both former Mayor Bloomberg and former Police Commissioner Ray Kelly in reaction to the federal court order striking down New York City's prominent stop, question and frisk practice illustrate this attitude on the part of police agencies and public officials. Following District Judge Shira Sheindlin's order declaring the practice in violation of both the Fourth and Fourteenth Amendments as it operated at the time the order was issued, Bloomberg and Kelly claimed that the judge had imperiled the city's safety by limiting liberal use of the practice.[12] On the other hand, those who promote lawfulness as the best metric to assess good policing too often

ignore the fact that crime and predation among individuals result in significantly less freedom for residents of high-crime communities, even though private actors impose that constraint on freedom. Residents of high-crime communities often see higher levels of policing as a way to achieve freedom as opposed to its constraint.[13]

Rightful policing is attentive to both lawfulness and effectiveness, and it captures important dimensions that neither one of the prevalent modes of evaluation does. The notion of rightful policing also includes a critique of a "get-tough" approach to law enforcement, which uses as its principal touchstone instrumental theories of deterrence. Deterrence, without the balance of a focus on legitimacy, can be effective, but its effects often are short-lived and expensive to implement. Moreover, commitment to some methods of achieving deterrence, such as stop and frisk, can predictably backfire in communities that need crime reduction most. There is also strong reason to believe that many heavy deterrence strategies are not particularly effective in encouraging offenders to desist from crime.

Rightful Policing: It's About Legitimacy

Police actions such as stops and frisks can be costly even when they are lawful, constitutional and short. People do not automatically approve of a stop just because an officer is legally entitled to make one. This reality crystallizes a basic problem with focusing on lawfulness as the single yardstick for rightful police conduct. Indeed, research I have conducted with Tom Tyler suggests that the public does not recognize lawful police conduct when they see it.[14]

If people do not focus on the lawfulness of police conduct, what do they care about? Although it seems counterintuitive, decades of research show that people typically care much more about how law enforcement agents treat them than about the outcome of the contact. Even when people receive a negative outcome in an encounter, such as a speeding ticket, they feel better about that incident than about an incident in which they do not receive a ticket but are treated poorly.[15] In addition to being treated with dignity and respect, research demonstrates that people look for behavioral signals that allow them to assess whether a police officer's decision to stop or arrest them was made fairly — that is, accurately and without bias. These two factors — quality of treatment and indications of high-quality decision-making — matter much more to people than the outcome of the encounter.

Two additional factors matter as well. People report higher levels of satisfaction in encounters with authorities if they feel that they have an opportunity to explain their situation and their perspective on it — i.e., to tell their story.[16] Finally, in their interactions with police, people want to believe that authorities are acting out of a sense of benevolence toward them. They want to believe that the authorities' motives are sincere and well-intentioned and that the authorities are trying to respond to people's concerns.[17] All four of these factors — quality of treatment, decision-making fairness, voice and expectation of benevolent

treatment — make up what psychologists call "procedural justice."

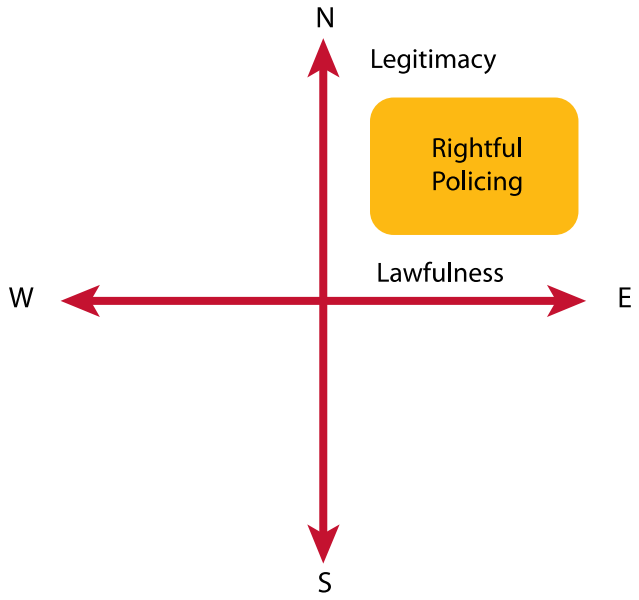
Procedural justice matters a great deal in civil society. One important consequence of people's perceptions of procedural fairness according to these terms is that they lead to popular beliefs of legitimacy. When social psychologists use the term "legitimacy," they are referring to a "property that a rule or an authority has when others feel obligated to voluntarily defer to that rule or authority. A legitimate authority is one that is regarded by people as entitled to have its rules and decisions accepted and followed by others."[18] This conception of legitimacy is not normative. When psychologists discuss legitimacy, they are not exploring in some philosophical sense whether people ought to defer to legal authorities; rather, they are seeking to determine whether, in fact, people do defer. Their approach is positive and empirical. Thus, when researchers have sought to determine why people obey the law, the legitimacy-based explanation is distinct from an explanation grounded in fearing the consequences of failing to do so and from one grounded in morality. When people voluntarily comply with rules and laws because they believe authorities have the right to dictate proper behavior, their compliance is legitimacy-based. Rightful policing leverages these ideas.

A robust body of social science evidence from around the world shows that people are likelier to obey the law when they believe that authorities have the right to tell them what to do.[19] Research shows that people are motivated more to comply with the law by the belief that they are being treated with dignity and fairness than by fear of punishment. In fact, being treated fairly is a more important determinant of compliance than formal deterrence.[20] When police generate good feelings in their everyday contacts, people are motivated to help them fight crime. All of this encourages desistance from offending, law-abiding and assistance to the police, contributing to lower crime rates.

Although police are conceived and constituted by and through law, focusing on the lawfulness of police conduct can obscure one's ability to identify and remedy policing behavior that the public may well view as problematic. It is important to see that although procedural justice can be related to the lawfulness or legality of police conduct, these two valences do not proceed in lockstep. One way of thinking how these valences relate to one another is to imagine points on a compass (see figure). If we array lawfulness from west to east, with lawfulness to the east and unlawfulness to the west, then we would expect police to be as far east as possible. Now, imagine procedural justice or legitimacy as running north and south on the compass. When police are respectful and procedurally just, they are headed north. When they are not, that behavior is categorized as "running south." Putting the two parts together, one sees that the best place for law enforcement to be is in the northeast.[21] That is where one finds rightful policing.

This image, however, also reveals the southeast and the northwest. A primary problem with street policing in urban cities such as New York and Chicago, and in many communities across the

Figure: Rightful Policing as the Convergence of Lawfulness and Legitimacy



Source: Tracey L. Meares, *The Good Cop: Knowing the Difference between Lawful or Effective Policing and Rightful Policing — And Why It Matters*, 54 Wm. & Mary L. Rev. 1865, 1879 (2012).

globe, is that too often such policing comprises behavior I would locate in the southeast: police conduct that is very likely lawful, but that citizens in many encounters perceive as deeply illegitimate, using the term as defined here. In the figure, for example, if one asks a lawyer what constitutes racial profiling, that person typically will answer, "It is police behavior solely or perhaps partially motivated by race"; however, the review earlier in this essay of the events connected to Professor Gates's arrest in the summer of 2009 should make clear that many who believe themselves to have been profiled care little about the legal determinants of their encounters with police.

The bottom line is clear: regardless of the lawfulness of police behavior, lack of procedural justice in encounters can change public perceptions of policing agencies, leading to lack of trust, ill-will and ultimately less law-abiding.[22] Considering both the lawfulness and the legitimacy of police conduct allows both the police officer and the citizen stopped to be right in a way that is not possible when one operates in the single dimension of lawfulness. The possibility of both sides being right can lead to fruitful conversation about the rightfulness of policing.

Putting Legitimacy to Work

This argument raises the question for police of how they can put these ideas into practice. A focus on the procedural justice of encounters can help policing agencies identify behavior, tactics and strategies that many members of minority communities find problematic and that lead to disaffection, even though they may be lawful and, considered in isolation, appear effective. Second, a focus on the psychological aspects of legitimacy in individual encounters may have important crime control benefits when incorporated into tactics and strategies. Two case studies illustrate this. The first is a strategy for violence reduction in Chicago, Illinois, which has been running since 2002.[23] The second is an experiment conducted in Queensland, Australia, on road traffic enforcement.[24] I have deliberately chosen two very different examples to show that legitimacy-based approaches have a wide application across different aspects of the police

mission. These two initiatives, however, are not unique. Lorraine Mazerolle and her colleagues recently completed a meta-analysis of legitimacy policing interventions and concluded that "police can achieve positive changes in citizen attitudes to police through adopting procedural justice dialogue as a component part of any type of police intervention."[25]

When the Chicago initiative started, the city's homicide rate hovered near 22 per 100,000. Crime is often concentrated by geography, and in Chicago the neighborhoods on the city's west and south sides drove the city's homicide rate. The highest crime area on the west had a homicide rate of 72 per 100,000. Using funds provided by a billion-dollar nationwide federal initiative to combat gun crime called Project Safe Neighborhoods (PSN),[26] United States Attorney Patrick Fitzgerald proposed a strategy modeled after Project Exile in Richmond, Virginia, targeting ex-offenders in the high-crime areas with federal penalties for gun possession and other gun offenses. Fizgerald believed, from crime analysis, that ex-offenders were primarily responsible for the gun violence in Chicago. This approach is entirely consistent with the typical "get-tough" deterrence-based thinking around crime control — a crackdown on potentially high-harm offenders.[27]

In devising the particulars of the strategy, the program's architects suggested to the task force that the proposed strategy should be wrapped in the theory of legitimacy. The resultant strategy would still target the group the U.S. Attorney thought most vulnerable to gun offending, but the communication strategy to this group would emphasize aspects that research indicated clearly most people care about when determining that law enforcement is fair. Although offenders would be brought in and alerted to the consequences that would follow should they pick up a gun, they would also receive information about services to help them turn away from a life of crime.

Modeled after Operation Ceasefire in Boston,[28] hour-long, roundtable-style meetings were the centerpiece of the new strategy. Each of these forums gathered no more than 20 offenders, who sat around a table with representatives from state and local law enforcement and the community. Instead of simply confronting the offenders with the punitive consequences of their behavior, emphasis was placed on the quality of the interaction — less a tribunal and more a dialogue between citizens — and the potential rewards of law-abiding, which is consistent with attempting to achieve legitimacy-based compliance.

Legitimacy-based law enforcement focuses more on persuasion than punishment. To persuade, authorities must create the necessary social capital that engenders trust between governors and the governed. Simply emphasizing rewards and punishments does not automatically lead to trust, because such an approach assumes that all individuals care about is the bottom line — an assumption that is contrary to the theory of procedural justice and much empirical evidence. The notion that compliance is typically created only by threats of coercion backed up with

punishment is fundamentally inconsistent with trust, for such a stance assumes that individuals cannot be counted on to defer to and comply with the law voluntarily.

Statistical assessments of the impact of the Chicago program are striking. Papachristos, Meares and Fagan assessed the impact of Chicago's forums on neighborhood-level crime rates and gun violence, compared with the impact of three other components of PSN — increased federal prosecutions for convicted felons carrying or using guns, the imposition of longer sentences associated with federal prosecutions, and the removal of guns from the street.[29] Their analysis demonstrates that although all tested PSN initiatives were associated with a decrease in the homicide rate, the forums had the largest effect. Comparing the relative effects of the forums and federal gun prosecutions shows that a unit increase in forum participation (or approximately 45 new offenders) among those eligible is roughly 8.5 times more powerful than a unit increase in federal prosecutions in reducing homicide rates.[30] Further research suggests that the forums make a difference at an individual level as well. Those who attended were significantly more likely to stay out of prison than those who did not, all other things being equal.[31]

In the second example, I shift from tackling serious inner-city violence to the reduction of road deaths by traffic enforcement. The Queensland Community Engagement Trial (QCET)[32] used a randomized field trial to test the application of legitimacy in how Queensland police enforced the drink driving laws.

Police officers across Australia administer thousands of breath tests to drivers under legislation that empowers them to carry out random roadside breath-testing. The tests tend to be administered at test sites identified as hot spots of drink driving and collisions causing serious injury. These police actions are justifiable as both legal and evidence-based. The researchers at the Australian Research Council Centre of Excellence in Policing and Security, in partnership with Queensland police, set out to see whether they could significantly enhance the impact of the testing regime so that the testing not only checked for alcohol on the driver's breath but also increased public confidence in the police and support for the enforcement of drink driving legislation.

In QCET, the testing sites were randomly allocated either to a control — the standard police procedure — or to a "legitimacy treatment." In the control, drivers were stopped, given a short legal warning, and required to provide a breath test. The legal minimum process and time were taken to provide a test. In contrast, in the "legitimacy treatment," the drivers were taken through a five-stage procedure that emphasized five dimensions of procedural justice: decision neutrality, to explain that those drivers stopped had not been singled out, but that the test was being provided to drivers at random; trustworthy motives, to provide context about the reasons for the test site and the testing campaign; citizen participation, including crime prevention advice and details of local Crimestoppers numbers; redress and feedback, or an opportunity to raise any issues of

concern; and dignity and respect, which included thanks to the drivers for their cooperation.

There was a very small difference in the time taken for the two approaches (around a minute extra for the legitimacy treatment), yet the drivers' perceptions of the process were very different. Drivers who experienced the legitimacy treatment "reported significantly stronger generalized perceptions of police fairness, police respect, [and] higher satisfaction" with how police do their job.[33] The caveat on these interim findings is that researchers could not see from this trial a wider increase in the respondents' general confidence in the police or a wider tendency toward compliance with the law. Given that the encounter, even in the longer, legitimacy treatment, only lasted 1 minute and 37 seconds, this may not be surprising. However, the study suggests that the deployment of legitimacy approaches in day-to-day police interactions with citizens can have a significant and measurable benefit over an approach that simply relies on the letter of the law. It also makes the point that such approaches are not only relevant in the critically difficult relationships between police and minority communities but should also be considered as an important part of wider police operations.

Conclusions and Implications for Policing

If legitimacy is as important as I have argued, then it raises the questions of how the police should incorporate this approach and what the obstacles are to implementation. I think we can make progress on answering these questions by considering three issues:

Training. Much police training, despite improvements over the last 20 years, retains a strong bias in favor of learning the rules, particularly legislation, procedure (especially constitutional criminal procedure) and departmental policies. Such training does not apply only at the initial recruitment phase. In the United Kingdom, for example, the key gateway for promotion for all first-line managers is to pass a set of examinations in the law and procedures for crime, roads policing, general duties, and evidence and procedure.[34] This kind of reliance on law and procedure as the qualification for recruits and managers is typical across most jurisdictions. As Janet Chan and her colleagues show, procedural/legal training is now frequently supported by programs to address behaviors and practical skills but almost never by an educational approach that provides officers with the means and material to understand the social science evidence for what works in policing or how approaches such as legitimacy make their practice more effective.[35] Indeed, Chan and her colleagues demonstrate how the legal valence of frontline culture can undermine even the attempts to inject some "social context." Peter Neyroud has recommended a much more fundamental shift in the framework of training for recruits, specialists and managers so that police training in the United Kingdom would be governed by a new professional body and start with a prequalification that emphasizes learning about evidence-based practice.[36] Without such a

radical shift, it seems likely, from studies like that of Chan and colleagues, that police training will continue to underpin a legalistic way of thinking about problems and their solutions. There are promising signs of change, however. Chicago Police Superintendent Garry McCarthy has instituted a day-long training in police legitimacy and racial reconciliation for the entire force. To date, more than 8,000 officers and leaders have been trained.[37] Early assessments of the program are extremely positive.[38] In the United Kingdom, extensive practical training on procedural justice in particular situations is also becoming the norm.[39]

Strategies and tactics. Too often, compelled by the ever-present demand to bring crime statistics down (especially in big cities), police executives focus on strategies and tactics designed to reduce violence in too-cramped ways. If this is right, then police executives should consider problem-solving in more holistic ways that will yield approaches that are designed not only to quell violence but also to enhance safety by changing the attitudes and dispositions of those alienated from them in ways that sustain voluntary compliance. I have in mind here hot spot policing that is not only deterrence-based but also legitimacy-based. Braga, Welsh and Schnell recently found, in a review of broken windows policing strategies, a distinct break between the effectiveness of aggressive, deterrence-focused broken windows approaches, such as stop and frisk in New York City, and other more legitimacy-based approaches. Only the latter group produced large and statistically significant impacts on crime.[40] Moreover, commitment to legitimacy can also help police increase safety and, by implication, quell violence at the incident level by encouraging officers to engage in tactics that defuse violent incidents.[41]

Democracy and community participation. I agree with Loader when he notes that, "The police, in short, are both minders and reminders of community — a producer of significant messages about the kind of place that community is or aspires to be."[42] Policing makes community. It is no accident that an iconic symbol of England itself is the Bobby's hat.[43] In the United States, policing's symbolic valence is not so positive. At least one scholar has located the genesis of American policing not in the benevolent image of a kindly community protector but in the more sinister form of the slave patroller.[44] The procedural justice literature reviewed above makes clear the ways in which this dark history can and likely does undermine trust in police in the modern era. And yet this same literature provides a roadmap for a more positive relationship that not only benefits those who need help from the police but also potentially supports their participation in democratically led government. It is important for people to feel that if they call on the police (and other legal actors and institutions), not only will their security be protected, but they will also be treated with respect, their rights will be recognized, and they will be subject to fair decision-making. The fact that most people in a community rarely call on the police for services does not change this, because police and other legal actors are in the background in

every community and shape what people think, feel and do. People want to feel comfort, not fear, when the police are present and to anticipate that they will receive help and professional treatment when they need it. When they do, they become invested in the communities in which they live. Research on popular legitimacy, to which police contribute, suggests that when people evaluate their police and court systems as procedurally fair, they identify more with their communities and engage in them socially by trusting neighbors, politically by voting, and economically by shopping and going to entertainment venues within that community.[45]

Police play a critical role in teaching the people with whom they interact (and those who observe those interactions) what it means to be a citizen.[46] Writing recently in the *Annals,* Justice and Meares argue that the criminal justice system offers a curriculum of lessons on what it means to be a citizen, much as public schools do. The overt curriculum of policing, found most obviously in the text of the United States Constitution, is designed to convey concern for rights. People's interests in autonomy, privacy and bodily integrity ought not to be subject to the whim of an individual police officer. We are a government of laws designed to restrain state power against the individual. Education theorists explain that a hidden curriculum is often taught alongside the overt curriculum typically found in textbooks and official rubrics. In schools, the hidden curriculum may be found in adult/student and student/student interactions, in the enforcement of school discipline policies and behavior codes, in the deeply buried assumptions and narratives of history textbooks, in a school's choice of mascot, in who gets to sit where in the cafeteria, or in the musical selections at the prom. The hidden curriculum of policing, similarly, is a function of how people are treated in interactions and the ways in which groups derive meaning regarding their status in the eyes of legal authority resulting from that treatment. Too often the hidden curriculum of policing strategies sends certain citizens clear signals that they are members of a special, dangerous and undesirable class — the mirror image of the positive overt curriculum. People do not necessarily learn these lessons. What is learned depends in part on the degree and frequency of exposure and on individual and community resilience. As Justice and Meares note:

> [T]he hidden curriculum flourishes in those contexts where democracy is dislocated. In high-performing public and private schools, teachers and students work together toward common goals that honor the social contract between the school, the student, the family, and the community; punishment is appropriate and merciful, and offers forgiveness; interpersonal interactions encourage success and reaffirm belonging; trust is endemic. Remove the confluence of interests, the accountability of those with authority to those under it, the fundamental sense of legitimacy, and the hidden curriculum eats away at the overt.[47]

Commitment to rightful policing can help, but executives cannot be sanguine about its potential impact. The approach requires broadly conceived and coordinated efforts among a variety of contexts — crime reduction, community relations and, importantly, internal discipline[48] — to effect real change.

Endnotes

1. *See* Nicholas Graham, *Obama on Skip Gates Arrest: Police Acted "Stupidly,"* Huffington Post, Aug. 22, 2009, http://www.huffingtonpost.com/2009/07/22/obama-on-skip-gates-arres_n_243250.html (last visited Nov. 13, 2014).

2. Rachel A. Harmon, *The Problem of Policing,* 110 Mich. L. Rev. 761 (2011).

3. Christopher Stone & Jeremy Travis, Toward a New Professionalism in Policing (2011), http://www.nij.gov/pubs-sum/232359.htm (last visited Nov. 13, 2014).

4. David H. Bayley, Police for the Future 3 (1994).

5. For one example criticizing the police-lawfulness tradeoff, consider the discussion by Meares and Kahan of the legal struggle regarding searches for guns in Chicago public housing. *See* Tracey L. Meares & Dan M. Kahan, Urgent Times: Policing and Rights in Inner City Communities (1999).

6. *See id.* at 18–22.

7. Stone & Travis, *supra* note 3, at 1 (noting that accountability is a critical aspect of what they call the "new professionalism," along with legitimacy, innovation and national coherence).

8. *See id.* at 12. ("The best chiefs speak confidently about 'the three C's: crime, cost and conduct. Police departments today are accountable for all three.")

9. *Id.* at 12–15.

10. *See* Anthony Braga & David Weisburd, Policing Problem Places: Crime Hot Spots and Effective Prevention (2010).

11. *See* National Research Council, Fairness and Effectiveness in Policing: The Evidence 297 (Wesley Skogan & Kathleen Frydl, eds., 2004); Anthony A. Braga, Brandon C. Welsh & Cory Schnell, *Can Policing Disorder Reduce Crime? A Systematic Review and Meta-Analysis,* J. Res. Crime & Delinq. (Forthcoming); Anthony A. Braga, Problem-Oriented Policing and Crime Prevention (2d ed., 2008).

12. *See* Transcript, *Bloomberg Vows to Appeal Federal Judge's Ruling That Stop-and-Frisk Policy Violated Civil Rights in Press Conference,* N.Y. Daily News, Aug. 12, 2003, http://www.nydailynews.com/news/politics/bloomberg-vows-appeal-federal-judge-ruling-stop-stop-and-frisk-policy-article-1.1424630 (last visited Nov. 13, 2014); John Eterno & Eli Silverman, *Mike Bloomberg's Fact-Free Defence of Stop-and-Frisk,*

The Guardian, Sept. 11, 2013, http://www.theguardian.com/commentisfree/2013/sep/11/stop-and-frisk-michael-bloomberg (last visited Nov. 13, 2014).

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