

The Fairness of Problem-Oriented Policing

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The concept of problem-oriented policing has been around since 1979, almost 40 years, or nearly one-quarter of all of American police history. So in one sense, it is an old idea – two generations old, or up to eight generations of training officers who might have been passing on the principles and methods of problem-oriented policing.

In another sense, POP still has feel of a new idea. It is still experimental in some departments; never yet adopted in some departments; and tried, abandoned, and brought back in some departments.

Back in 1980, when I was first introduced to POP, those of us working on the approach imagined we would be well past it being experimental by this time; that we wouldn't have to use a label – it would just be called policing.

Although POP remains a viable approach – validated as proven effective in a variety of ways – today, it is sometimes offered as but one option among many other policing strategies, including community policing, Broken Windows policing, evidence-based policing, intelligence-led policing, hotspots policing, and predictive policing.

One way to think of POP is as a parent idea that has spawned these offspring. And, as offspring will do, some go grow up to do good things and some go bad. (I'm looking at you, zero-tolerance policing.) These other approaches aren't so much alternatives as approaches that emphasize different aspects of POP:

- The need for community assistance is emphasized by community policing
- The need to take account of community norms and importance of dealing with disorder is emphasized by Broken Windows policing
- The need to systematize problem solving is emphasized by intelligence-led policing
- The importance of the geographic clustering of incidents is emphasized by hot spots policing
- The value of prevention is emphasized by predictive policing

Try not, however, to get hung up on labels. Keep your focus on problems by asking these basic questions:

- What is the problem?
- What is causing or contributing to it?
- Who bears responsibility for the problem, and who should?
- What's being done about it now?
- What more or different should be done?
- And, having done new things, what effect did they have on problem?

- If you had success, report it. If you experienced failure, report that, too, and go back to the drawing board.

In this sense, POP will always be new because new problems are forever popping up, if you will. As long as police are still tasked with addressing problems of public safety and security, POP, by whatever label or no label at all, will be relevant. So keep working on problems and sharing your results with your profession.

Now I'd like to try to put our work into the larger context of what's happening with regard to policing, at least in the United States. By many accounts, the field is facing yet another wave of dissatisfaction with police. This view is by no means universal, but it is felt by significant segments of society. Much of this dissatisfaction is focused on police use of force, but it's not confined to just that.

Public dissatisfaction with police is, of course, not new to the field, but the sentiments being expressed today haven't been this strong for at least several decades. They might not quite be as widespread as in the 1960s, but they are close in their intensity.

As Professor Tom Tyler of Yale University, and his colleagues have argued (and shown evidence for), public dissatisfaction with police, under some circumstances, can lead to erosion of police legitimacy. Police legitimacy is that unspoken, but profound, acknowledgment of citizens that police are deserving of respect and of submission to their authority. Legitimacy is not the same as popularity or fondness. In part, it means that a person who might not like an officer's decision—to arrest or cite or side with another person in a dispute—at least accepts that the officer is doing her job.

So what if legitimacy is lost? Police officers are well accustomed to not always being liked. When legitimacy is lost, policing becomes exponentially harder. As Tyler and others have shown, loss of police legitimacy can also mean some loss of respect for the law and government in general. It might not always seem so, but most people obey the law and other rules not just out of fear of getting caught, but because they accept that law and rules are fundamentally fair, or at least necessary, for society to function properly. And they are also more likely to cooperate with police and to agree to granting police yet wider latitude to carry out their duties.

Perhaps the most profound lesson emerging out of community policing is that for police to be effective, they need community cooperation and assistance. The important question is what causes the public to see police as either legitimate or illegitimate. And here the research points to fairness—whether the citizen perceives the officer to have treated them fairly.

Fairness has been broken down into four core elements: That the officer:

- treated the person respectfully
- seemed to be neutral or unbiased and explain their actions
- listened to the person's side of the story

- demonstrated concern for the person's welfare

This is what is now referred to as procedural justice. Consequently, there is now a lot of attention being paid in policing to procedural fairness. It has been connected to cultural and special-needs sensitivity training, verbal judo or de-escalation techniques, and calls for greater transparency in police decision-making. Most of which is aimed at making each interaction between an officer and a civilian less abrasive and antagonistic. It focuses on officer tactics and "bedside manner."

Some of the research indicates that the outcome of the transaction doesn't particularly matter to the civilian's perception of whether the police are fair. For example, outcomes such as whether the person is arrested, cited, warned, released, or otherwise coerced into action.

But this possibility that outcomes don't matter much to perceptions of fairness I find troubling. One interpretation of it might be that it doesn't much matter the outcomes of police action—whether a dispute is resolved, crime prevented, a case solved, a life saved—all that matters is that the police were fair in the manner in which they dealt with the matter. Does this mean that police need not, after all, be much concerned about being effective? That only perceived fairness matters? Might it mean that clearance rates can remain low, crime rates can be high, chronic problems can go unresolved, all so long as police act fairly in their failure? Might it mean an officer can deliver an ass-kicking, so long as he does so with a smile on his face and a song in his heart? Is the public that easy to fool? Do people really have such low expectations of their police? Or does police effectiveness, in some fashion, matter to whether the public perceives police as being a legitimate authority in society? Does it matter to their willingness to cooperate with and assist police? Does it matter to their willingness to take greater responsibility for their own actions and to behave themselves, not just for fear of being punished, but out of sense of social duty?

It's possible that if the public believes that the only function of the police is to enforce the law, and that police are essentially powerless to improve public safety and security, then fair treatment by the police in each interaction with a civilian is all that matters. But, if we believe, and the rest of the public believes, that police are capable of at least helping to make society more safe and secure, then outcomes, results, effectiveness might also matter.

If police effectiveness in achieving their objectives is important to the larger issue of public trust in and legitimacy of the police, then we have to ask, is POP a good path, and if so, why?

What most of us know about problem-oriented policing is that it is principally a means of making police more effective. Although, the effectiveness POP contemplates is not merely whether a law is enforced, an offender is put in jail, a dispute resolved for the moment, but a more ambitious understanding of effectiveness that has several important dimensions to it: an effectiveness that is longer-term, more than stop-gap interventions; that is more preventive, reducing the likelihood of similar bad things happening in the future; that results in less overall harm to the public, and not just fewer calls and complaints for police to answer.

What has always been embedded in the principles of POP, but which has been less well recognized, and not as openly discussed, is a concern for fairness. Results matter, but so too do the means and methods by which those results are achieved. Crime reduction brought about by widespread violation or diminishment of citizens' Constitutional rights is, by definition, at least in the American constitutional democracy, a failure because part and parcel of the American police function is to protect Constitutional rights, even those involving restraints on police authority. Problem resolution that is achieved through prolonged, highly intrusive and coercive police action is not the ideal because we know, since Sir Robert Peel's days, that "the degree of co-operation of the public that can be secured diminishes proportionately to the necessity of the use of physical force." And, we understand that solutions to public-safety problems that dump all responsibility on one sector of society when other sectors that are contributing to the problem bear none of it is not quite fair.

What is it about POP that increases the likelihood that actions taken to address public-safety problems will not only be effective, but will be perceived as being fair? I can think of six principles of POP that promote fairness:

- POP explicitly discourages police from over-relying on use of the criminal justice system, in part because the criminal justice system lacks the capacity to handle all police business, but in part because use of the criminal justice system necessarily entails coercive government authority, which is sometimes absolutely necessary and sometimes the best path to non-punitive interventions (e.g., drug courts), but which more often leads to punitive actions that aren't necessarily effective in achieving long-term prevention.
- POP calls for police to consider a range of alternatives for responding to problems, and not restricting police to conventional law-enforcement responses.
- Among the factors police should consider in choosing from among viable alternatives is the likely impact that responses will have on police-community relations: will they enhance or undermine them?
- POP emphasizes responses likely to prevent recurrences of the problem over those that only react to incidents.
- POP promotes prior deliberation of response options and consultation with key stakeholders to build consensus and community support for the responses that will ultimately be implemented.
- POP emphasizes the sharing of responsibility for addressing problems among those who are directly and indirectly contributing to it.

But these principles relating to fairness are not self-actualizing; they don't ensure fairness merely because we say we're doing POP. Police officials managing POP initiatives have to actualize them; have to raise the concerns explicitly; to ask whether there might be a fairer, less coercive, more publicly supported response to the problem.

We now have lots of examples in problem-oriented policing:

- Drug markets—shifting from just locking up drug sellers to disrupting drug markets and marketplaces
- Metal theft—shifting from locking up metal thieves to controlling through regulation the purchase of stolen metal
- Store robbery—from stakeouts/shootouts to promoting robbery prevention security by store owners
- Gun violence—from mass-scale stop-and-search campaigns to focused deterrence of violent offenders
- Speeding—from crackdown speed enforcement to traffic calming through roadway redesign
- Opioid abuse—from criminal drug enforcement against users and traffickers only to controlling the supply of opioids through improved regulation of doctors and pharmacists

At this year's conference, as you listen to and engage with the many presentations, I encourage you to think about what impact the new responses to problems being discussed might have not only on achieving the desired safety outcomes, but also on public perceptions of police fairness in addressing that problem. It is clearly a relevant issue in the presentations about the use of civil citations in lieu of custodial arrests, the use of gunshot-detection and video surveillance systems, and body-worn police cameras, but I think you will find that fairness is an issue and consideration in nearly every one of the presentations at this conference. This is not because we made fairness a special theme at this year's conference; it's because fairness has always been built into the principles and practice of problem-oriented policing. If you attend tomorrow morning's informal discussion session with Herman Goldstein, I'm confident you will find this question of fairness much on his mind as well.

A colleague of mine—who, I can't remember—has one of those quotations embedded in his or her automatic email signature that reads something like: "Don't just be good; be good for something." This line always brings to my mind the key distinction between community policing and problem-oriented policing: community policing aims mainly to make the relationship between the police and the community better; problem-oriented policing aims to make the community better, and I believe, in the process also makes the relationship between the police and the community better—a truly virtuous cycle. "Don't just be good; be good for something."

While there clearly is and always will be need to ensure that police officers treat people fairly in each and every transaction—what we might think of as tactical fairness—there is equal need for police to address policing problems fairly—what we might think of as strategic fairness. For all that the concepts of community policing and procedural justice do to open paths to greater police legitimacy through fair treatment of citizens, problem-oriented policing still seems to me the better path to both fairness and effectiveness, recognizing that good policing demands both.