

8-1961

Paradoxes in Law Enforcement

E. F. Roberts

Cornell Law School, efr4@cornell.edu

Follow this and additional works at: <http://scholarship.law.cornell.edu/facpub>

 Part of the [Criminal Law Commons](#), [Law and Society Commons](#), and the [Politics Commons](#)

Recommended Citation

Roberts, E. F., "Paradoxes in Law Enforcement" (1961). *Cornell Law Faculty Publications*. Paper 1267.
<http://scholarship.law.cornell.edu/facpub/1267>

This Article is brought to you for free and open access by the Faculty Scholarship at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in Cornell Law Faculty Publications by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

PARADOXES IN LAW ENFORCEMENT

ERNEST F. ROBERTS

Ernest F. Roberts is Professor of Law at Villanova University, Villanova, Pennsylvania. He also teaches a course on Criminal Law and Procedure in the police program at The Community College of Temple University, which program was introduced in the Fall of 1960. This article was presented originally to the Professional Police Organization of the Delaware Valley, and because of its thought provoking quality, we are privileged in being able to present it to our readers.—EDRROR.

It is the purpose of this article to demonstrate that the modern law enforcement officer is the victim of certain paradoxes existent in modern society. These paradoxes are of such a nature that the officer is rapidly finding enforcement efforts impeded, not so much by the growth of organized crime, but by the very nature of the society in which the officer is expected to work. In order to understand properly the dilemma in which the law enforcement officer is today enmeshed, therefore, these paradoxes must be brought into the open and, at the same time, their effect upon law enforcement made clear.

It is submitted that ours is a nation of paradox, of contradiction. Police work must go on in the vortex of social, political, and economic problems, all of which remain unsolved and all of which must affect the administration of justice at the police level. A careful examination of these paradoxes is obviously in order.

1. The first is the paradox of private wealth and public poverty. This phrase is intended to point up the fact that in our society there exists a proliferation, a surplus if you will, of private commodities and of comfort items, and the means to buy them. Yet, while Americans live in the best of all possible worlds once they enter the portals of their own homes; outside those homes there is a pitiful inadequacy of public goods and services, such as schools, transportation, medical facilities, and *police departments* properly paid and fully staffed.

It is amazing if one stops to think about it for a moment. This nation is made up of the wealthiest individuals in the world: more people die in this country from overeating than from undernourishment. The population is *not* increasing faster than the food supply; rather, the nation goes deeper into public debt each year paying the storage costs for foods its leaders are at a loss to know what to do with! America then is a land of *private plenty*. If supply exceeds demand, Madison Avenue succeeds in creating new demands so that the economy keeps rolling along at its merry pace.

Does everyone have a TV set? Then the slick advertisements insist that a portable set for the beach is a necessary item if the listener is to maintain his social standing. Does everyone own a telephone? Already it is common knowledge that anyone who amounts to anything has a wall phone in the kitchen and a turquoise one in the bedroom.

Thus it is that the economy is kept going by multiplying private things, most of which are not really essential. The paradox is that the public tends to forget the other segment of the economy—namely, the supply of public services. In most places, at least, the police forces are underpaid and undermanned, just as schools are overcrowded, public recreation areas are badly lacking, and slums are still expanding. Indeed, a Harvard economist, Professor Galbraith, has pointed up this particular paradox in rather bitter terms:

“The family which takes its mauve and cerise, air-conditioned, power-steered and power-braked automobile out for a tour passes through cities that are badly paved, made hideous by litter, past blighted buildings, billboards, and posts for wires that should long ago have been put underground. They pass into a countryside that has been rendered largely invisible by commercial art . . . They picnic on exquisitely packaged food from a portable ice box by a polluted stream and go to spend the night at a park which is a menace to public health and morals.”¹

This paradox has a direct bearing on police efficiency. How good is morale going to be in a precinct in which the station house is fifty years old, when men have to take up a collection to buy a typewriter that will work so they can type reports, when a squad of thirty-four detectives must make do with one squad car, with a defective brake at that? Such a precinct existed in New York City in 1959 and was not untypical.² Indeed, it is also a fact that in 1960 most of the two thousand detec-

¹ GALBRAITH, *THE AFFLUENT SOCIETY*, 253 (1958).

² *NEW YORK TIMES MAGAZINE*, March 1, 1959, p 14

tives in New York City used their own cars for police work because of a shortage of squad cars.³

2. The second paradox is that while the public is vitally concerned over social upheavals abroad, it tends to ignore a tremendous revolution going on here at home. Indeed, the social changes now going on in our larger cities dwarf the affairs in Cuba and relegate even Castro to a teapot tempest. The boom in the suburbs, the immigrations from the South, the lack of public funds—all of these are part of the fact that every large Eastern city and its suburbs are rapidly becoming part of one vast metropolis, stretching along the Atlantic Coast from Boston to Miami. A similar phenomenon is in the making on the Pacific Coast. At the very time the middle class is moving to the suburbs, thereby creating impossible traffic problems and clogging public transportation, the cities are becoming centers of extremes—places in which reside only the very rich or the very poor. But fear not; things will get worse.

Thus, in America's cities today there are seventeen million people who live in dwellings that are beyond rehabilitation—decayed, dirty, and rat infested, without decent lighting or plumbing. It will never be possible to provide parking space in our largest cities for all the motorists who want to come to them. Moreover, the cities have become centers of crime. In New York City, for example, murders occur at the rate of one a day; assaults and rapes at ninety a day; robberies, burglaries, and larcenies at nearly four hundred a day. Of the \$55,000,000 worth of property lost or stolen in a year, slightly more than a third is found or recovered. More than 170,000 persons are arrested in a year—although only two out of five major crimes are solved by the police.⁴

3. The third paradox is that while the various state and federal governments appear to be impressive centers of power, the fact is that they have been impotent to solve any of these problems. While the public is constantly informed about the wonders that a few minutes a day of positive thinking will do, both major political parties have fallen under the sway of negative thinking. In order to solve the problems of the times, political action is necessary—but political action requires a cohesive majority cooperating to effect an agreed plan. The irony, however, lies in the fact that this is now a nation of warring pressure groups; each of which is powerful enough to veto ideas it considers inimical to its interests; but themselves

are unable to agree on any program of concerted activity.

Thus, David Riesman in the *Lonely Crowd* attests to the fact:

“. . . no class or group is in power. Small business and professional men in Congress . . . ; military men who control defense, and, in part, foreign policy; big business managers and their lawyers . . . who . . . influence the rate of technological change; labor leaders who control worker productivity and worker votes; southern whites who have the greatest stake in southern politics . . . ; farmers—themselves warring groups of corn men, dairymen, cotton men—who control key departments and committees. . .”⁵

All these factions share power, but no one of them can call the tune.

4. The fourth and last paradox concerns the position of the law enforcement agencies themselves, caught as they are in the midst of this chaotic situation. While the crime rate has been increasing during this post World War II upheaval, and one constantly hears calls for the police to do something about it, the policeman finds himself caught in an impossible position.

Thus, Max Lerner has recently written in *America as a Civilization*:

“The American is not overly impressed by police authority, considering the police officer as a badly paid job-holder, not above being fixed by a bribe. The police, in turn, are assigned to dangerous and brutalizing tasks, especially in big cities where they must cope with lawless hoodlums spreading terror in the streets; and they are exposed to the temptation of petty bribery and Big Money.”⁶

Again, Thurmon Arnold pointed out some time ago that Americans demand law by enforcement at the same time that they multiply the laws beyond the point of enforceability and themselves violate them from day to day. The law condemns book-making; yet a large percentage of the population places bets with illicit bookies, or play the numbers. In turn, the police are at once supposed to stop organized crime, but not harass the local bookie. The cop on the beat is not supposed to accept a petty bribe from this selfsame neighborhood bookie, but neither is he supposed to interfere with him. The police are supposed to enforce the law, but everybody has one exception, one “little” law, which he says the police should

³ NEW YORK TIMES, March 14, 1960.

⁴ NEW YORK TIMES MAGAZINE, March 1, 1959, p. 14.

⁵ RIESMAN, THE LONELY CROWD, 257 (Anchor ed. 1953).

⁶ LERNER, AMERICA AS A CIVILIZATION, 433 (1959).

ignore; this, however, amounts to 170,000 exceptions—and, ultimately, to anarchy.

THE LAW ENFORCEMENT AGENCIES

Thus, the ultimate paradox is that the law enforcement agencies are themselves caught in the vortex of forces they cannot control and yet, are criticized when these forces rage out of control. While juvenile crimes increase, the call goes out for the police to become "tougher" and the New York City Council tries to force the police commissioner to arm his men with nightsticks around the clock. On the other hand, if the police do happen to "work over" a hoodlum, they find themselves subjected to the wrath of the same free press, now joined by the American Civil Liberties Union, and, usually, City Hall.

Again, the nation can cheat on its income tax, can cheat on its expense accounts, can play the bookies. Charles Van Doren is simply a symptom of the times. Inevitably, however, someone goes too far and the cry for reform is heard—but it is Van Doren who is offered up as a scapegoat, and the public goes right on cheating on its income tax and doctoring its expense accounts, sure that with the bloody sacrifice God is in heaven again and all is right with the world. In police history it is the same—politics, petty bribery, various little forces effectively shield the bookie, for example, until something goes wrong. Then, however, the police find themselves in the position of Van Doren and they, convenient scapegoat that they are, are singled out for a condemnation. But, in the case of the police, the punishment is worse. Because Van Doren was a fraud is not taken to mean that all college professors are frauds; but let a cop get caught with his hand in the till, and it only goes to confirm the idea that *all* cops are shiftless rogues at heart.

Our law enforcement agencies, therefore, are inhabitants in a society where the causes of crime are largely beyond their control. Again, the police authorities must, on the one hand, be "tough" with offenders in order, at least, to maintain crime at its current level; while, on the other hand, if they are "tough", they will be accused of gestapo-like methods. Here is the crux of the police problem: how to battle crime effectively in a society in which nothing is being done about the causes of crime while, at the same time, the society, by and large, is suspicious of any police activity.

There is a paragraph in the New York City Police Examination which aims to test an applicant's reading ability. But it does more than that;

it points up this basic problem in a very succinct fashion:

"No matter how efficient a police force may be, and no matter how careful to observe civil liberties of long standing, it will always have to fight its way against an undercurrent of opposition and criticisms from some of the very elements which it is paid to serve and protect, and to which it is, in the last analysis, responsible." Thus it is that the major problem of police officials today is the fact that they are trapped in a dilemma not of their own making. They must not let their own forces succumb to the lax morals of the community; they cannot enter into the nearly universal "fix". On the other hand, if improvements are going to be made, the most important thing that they can do is to restrain a frustrated police force from taking out its frustrations by brutal methods. If this happens, the already skeptical attitude of the public will be confirmed and no solution will be possible. Americans are a people ruled by ideas about things, and there is already current an idea that the police today are a very serious menace to civil liberties.

For example, one of the most sympathetic treatments of juvenile delinquency in Harlem is to be found in Warren Miller's novel, *The Cool World*. Here, then, is one picture of the police that the public is getting:

"Before the cops beat him on the head Little Man used to be War Lord of the Crocodiles. Man he had heart. One time he stood up by himself against six Wolves. He got picked up by the cops and didn't have the chance to get rid of his piece. It was a zip gun he made in shop . . . when Little Man got home from the precinct he tell us. Them headbreakers. Motherin headbreakers—3 of em beaten up on me on the head all the time with their goddam fists. You give us too much trouble you little black bastard.

"Wham. Sock. Wham . . . One in front of me. Put up my hands to protect myself. Wham they hit me from the back. Bend over they hit me from the side. 3 of em. Teach you a little lesson black boy. Murderers. This here detective sits theré. He don't hit me. He just keeps wiping his shoes on my suit."

A similar image is given the public in an article written recently by a former Supreme Court Law Clerk and recently published in *Commonweal* magazine:

"Most police now recognize that the third degree . . . is . . . unnecessary. Public opinion

⁷ MILLER, *THE COOL WORLD*, (1959).

is outraged. But neither courts nor public have reacted with the same force, however, when suspects have been held by the police in illegal detention before arraignment. One person out of every four arrested by the Chicago police during 1956 was held for a period in excess of seventeen hours before being booked. One in seven was held more than twenty-four hours and one in fourteen for more than thirty-six hours . . . Shocking as these figures may be, there is every reason to believe that they represent an understatement of the actual situation."⁸

TOWARD A SOLUTION

It is timely to suggest that the law enforcement agencies, caught in this web of circumstance, cannot look to anyone but themselves for help. In this situation it is certainly true that God will only help him who helps himself. Whatever reforms are needed, whatever improvement must be made, the impetus must come from the police themselves.

Since we are a people ruled by ideas, the only feasible solution is that the police agencies must raise themselves by their bootstraps to the level of a full fledged profession—one dedicated to law enforcement without regard to political by-play and resolved to respect civil liberties as the first rule of their own canon of ethics. Only if they achieve the stature of a profession will public support follow, support which will enable the law enforcement agencies to make headway toward the solution of some of these problems.

But, there is *more* to being a professional man than claiming to be one. The first criterion was suggested by Inspector Ashenhust of the Dallas Police: "If we analyze the professions, we know we find that a first requirement is training."⁹ A city like New York has its police school, but what about the suburban areas outside of the large cities, into which most of the public is moving, a large part of which still suffer from the illusion that suburbs are polite rural areas? Just a few months ago New York State took steps directed at training its up-state forces:

"A program to end casual and haphazard training of rookie patrolmen particularly in small towns and rural areas, was made public today by Governor Rockefeller. The program, said to be the first of its kind in any state, calls for a minimum of two weeks' basic training. The pro-

gram is part of a campaign . . . to put police work in the state on a more professional basis."¹⁰

It is obvious that similar steps must be taken in every area. Again, if this is to be a profession, the Police Officer ought to be licensed by a State Board of Police Examiners, themselves senior members of the *profession* selected on the basis of merit and not political action. Lastly, the police must soon subscribe to a Code of Ethics, written by police and enforced by themselves. The code originally proposed by the California Police Officers' Association could serve as a model of such a canon.

In furtherance of such a program local police associations might effectively use their own areas as models to collect some much needed data on the current levels of training, salaries, and promotion. Again, they might, unofficially at first, set up some minimum requirements for local police forces to aim at. Further, the law schools have found that if a school is at the bottom of the list in financial backing, the university will pay out some money to improve things. But if the police do not have a picture of conditions elsewhere, they do not have a guide to work with. Concomitantly, just as the law schools find it pays to bring in people from other schools to visit for a few days and look the place over, so local police forces might benefit from an evaluation through the eyes of detached outsiders by setting up a program of visits between local forces.

Again, a profession must communicate its problems directly to other influential segments in the community. The point of view of the professional policeman ought to be of interest to the bar, even to the A.C.L.U. Indeed, a day of talks around particular sorepoints, such as lengthy detention before arraignment or mass arrests, might serve as a pilot model for an effort to get the professional policeman's ideas across. But it is imperative that the police be their own spokesmen: the district attorney or the local mayor have too many other irons in the fire to represent fairly and accurately the police point of view.

THE NEED FOR ARTICULATE POLICE SPOKESMEN

In the process of legislating, and even in the judicial process of deciding cases, the lawmakers rely heavily upon articulate and well reasoned authorities in every field. Thus; in considering the

⁸ NOLAN, In The Name of The Law, THE COMMONWEAL, Nov. 20, 1959, pp. 231-33.

⁹ ASHENHUST, The Goal: A Police Profession, 49 J. CRIM. LAW, CRIMIN., AND POL. SC. 605 (1959).

¹⁰ NEW YORK TIMES, February 6, 1960. EDITOR'S NOTE: Also see GEORGE H. BRERETON, Importance of Training and Education in the Professionalization of Law Enforcement, 52 J. CRIM. LAW, CRIMIN. AND POL. SC., 111-21 (1961).

problem of wiretapping, the legislature will call upon all kinds of experts and listen to their views. But the spokesmen from the civil liberties camp inevitably triumph because they are well informed and prepared. The police, with some exceptions, never seem able to get their side of the argument across. Articles, speeches, books condemning wiretapping and promoting an absolute of privacy daily pour off the presses: the same amount of material is not readily available from which one could extract the opposing arguments of the law enforcement agencies. Indeed, the Federal Bureau of Investigation finds itself in the position of daily violating federal law by continuing to wiretap; but, in the interests of national security, it would be a heinous crime if it were to obey the law! It seems manifest that wiretapping then is in need of a new look, of some accommodation under which the complete ban is taken off in favor of some more sensible balance between civil liberties and the needs of effective law enforcement. But until the law enforcement agencies learn to state their own case and present that case *to the public*, the present inane situation will continue.

The same problems are current in the day-to-day work of the local police. Presently, the movement is afoot in many areas to stop the practice of making mass arrests, such as often occur after a brutal rape-murder in one of the urban centers. Yet, by a process of rounding up, not innocent citizens, but *known* sex offenders, the police are often able to narrow the search down in short order and solve the crime. Again, there is a proposal to treat any restraint of a person's movement as an arrest, thus cutting down the time available for interrogation of the suspect before arraignment. But, as anyone familiar with police work knows, it is those few precious hours of interrogation which, in nine cases out of ten, lead to the solution of crimes.

This is not to say that mass arrests are good, or that secret grillings ought to be carried on all night in remote dungeons. But it must be noted that *such practices are not all wrong*. Without some measure of authority to round up suspects and question them, police work cannot go on. Thus it is vital that a proper balance be struck between the rights of the individual and the *rights of the society to be protected*. Until spokesmen are found for the last named right, however, the trend to further hamstringing police work will continue in the name of the "public good." Since the public cannot be expected to act in a vacuum, the task of speaking for them falls upon the enforcement agencies themselves. The late Robert Patterson once observed:

"The underworld of today would rate Jesse James as a small-fry amateur. Crime has become big business. . . . If we look for a parallel in history, we may go back to the robber-barons of the feudal age."¹¹

But the same Robert Patterson had the courage to ask, "What to do about it?"

The organized bar is no longer the spokesman for the community as it was during the nineteenth century. The lawyers of today are primarily interested in corporate structure and tax returns. Indeed, there is no longer any prestige in being a successful criminal lawyer; the only public reaction is cynical suspicion. The spokesmen for the community today are not the politicians, either, for they cannot really say anything worthwhile lest they offend some pressure group. Indeed, the only spokesmen for the community are the self-appointed pressure groups like the American Civil Liberties Union, which, no longer having the very worthwhile wars of the early 1930's to fight in the name of the common man, are now concerned in promoting oversimplified, black and white solutions to the problems of arrest and wiretapping. The tragedy is that these well-intentioned, but hopelessly naive groups, will have their own way—unless articulate professional police associations are willing to speak up for the other side.

Thus, it is that the need for *professional* police officials has never been greater. But there is hope for the future. If local law enforcement officials begin to present their side of the case and develop a spirit of public service, nothing but an improvement can come out of it. Making the Bill of Rights his first principle, the responsible police official can present a strong case for reasonable criminal laws which provide for a limited right to wiretap, to interrogate and to round up suspects. The Bill of Rights is not a one-way street allowing the criminal element the right to commit crime; it only aims to curb *excesses* upon the part of the police. But articulate police, sworn *not* to commit excesses because of the very fact that they are a dedicated group of disciplined professionals, must be prepared to lead the way into the land of reason. The wall of well-tempered criminal administration is cracking under the assault of fuzzy-thinking platitudes. It now is the task of all police organizations to jump into the breach and lay before the people and their legislatures a well-reasoned and temperate program to set the scales of justice right again.

¹¹ Speech to the Assembly of the American Bar Association, Sept. 19, 1951.