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# **Royal Canadian Mounted Police External Review Committee**

## **Reflection on Police Management Practices**



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The Committee publishes a series of discussion papers to elicit public comment to assist the Committee in the formulation of recommendations pursuant to the *Royal Canadian Mounted Police Act* (1986). The views expressed in this paper are not necessarily the views of the Committee.

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**Royal Canadian Mounted Police  
External Review Committee**

Discussion Paper Series

Number 12: Reflection on Police Management Practice

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## **Foreword**

Dr. Shearing and I have been associated professionally since 1973 when he became Director of Research to the Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure within the Royal Canadian Mounted Police which I had the pleasure of chairing.

Both during the currency of that Commission and the years ensuing there were many animated discussions on the subject of police discipline and the value of remedial action; on occasion questions arose in our discussion about the value of discipline and whether or not it still had its place in policing. In short, through our first professional association and in subsequent Commissions and Inquiries, the debate over police management and arguments favouring a remedial approach have always taken place against a background of knowledge that there were other perspectives which were more traditional and needed to be revisited.

It was agreed a few months ago that Dr. Shearing would launch a broader debate on the topic which we had so often discussed; while these reflections do not cast doubt on our original position, they do invite the reader to reflect on the fact that even in remedial management there is a dimension of discipline necessary and which will likely never totally disappear from the police culture. That dimension is not without value.

Hon. René J. Marin  
Chairman  
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### INTRODUCTION

#### 1.1 The Debate Over Police Management

For several decades, the military or quasi-military style of public police management, of which drill, punishment and blame are critical elements, has been under attack from critics inside and outside the police community. There have been two thrusts to this criticism. One is a legally inspired concern to ensure that the process by which blame is assessed and punishment is meted out be fair and just.<sup>1</sup> The other branch concerns the value of blame and punishment, and to a lesser extent drill, as a regulatory strategy. The first of these criticisms accepts the use of blame and punishment but seeks to ensure that it is applied in ways that comply with legal norms of due process. The second is more radical since it questions the regulatory strategies lying at the core of the traditional military style of management. This second line of criticism is the concern of this report.

The basis of this criticism is that the traditional style of police management, which accords a central place to blame and punishment and especially that directed at the rank-and-file level, is an inadequate way of controlling the activities of police officers and thus of providing effective and appropriate policing. The nub of the critics' argument is that the punitive style that has traditionally characterized police management should be replaced by a remedial focus that seeks to correct behaviour in ways that do not privilege punishment.

This argument is part of a more general critique of traditional control systems relying on punishment. Garland describes the shifts in the nature of penal practices resulting from this critique, in a comment on Foucault's work,<sup>2</sup> as follows:

In this modern system the focus of judgement shifts away from the offence itself towards questions of character, of family background, and of the individual's history and environment. This will ultimately involve the introduction of experts -- psychiatrists, criminologists, social workers, etc. -- into the judicial process, with the aim of forming a knowledge of the individual, identifying his or her abnormalities and bringing about a reformation. The result of these changes is a system of dealing with offenders that is not so much punitive as corrective, more intent upon producing normal, conforming individuals than upon dispensing punishments: a penal system that the Americans named best when they called it, simply, "corrections".<sup>3</sup>

These strategies do not simply punish troublesome cases, but develop a whole new method of sanctioning which Foucault calls "normalization".<sup>4</sup>

## **1.2 Arguments Favouring a Remedial Approach**

The argument advanced in support of a remedial approach within the police community, or what is sometimes called "preventative discipline"<sup>5</sup> has been an instrumental one. It contends that because the corrective utility of punishment is at best very limited, it should not occupy a central place in the police managerial repertoire. This management should focus on strategies that train and correct rather than punish for punishment's sake. This argument has become the conventional wisdom of "progressive" police managers and it is increasingly difficult to find anyone who, publicly at least, is willing to argue the case for punishment in police management. Within this conception, punishment is an anachronistic managerial strategy that inappropriately injects a concern with retribution into the process.

## **1.3 The Gap Between Rhetoric and Practice**

Despite an apparent consensus around these reformist arguments, punishment remains an essential part of police management in Canada and elsewhere. There is an enormous gap between what is said and what is done; between rhetoric and practice.

This does not mean that corrective measures are not taken. Nor does it mean that changes recognizing remedial arguments have not been instituted. What it means is simply that punishment, and the institutions for administering it, remain central to police management.

For evidence of this one need look no further than the Royal Canadian Mounted Police Act.<sup>6</sup> This legislation was developed largely in response to a Commission of Inquiry, the Marin Commission,<sup>7</sup> that argued strongly against the weight given to punishment within the RCMP and proposed instead a remedial, non-punitive style of discipline. Nonetheless, it would seem that the new Act conceives of police management along essentially punitive lines.<sup>8</sup>

Why is there a gap between rhetoric and practice? Why has punishment retained such a firm hold despite the fact that in discussions of police management it is difficult to find anyone willing to support it? Why, despite the dominance at a conceptual, theoretical level, of arguments questioning the utility of punishment as a managerial strategy, has it remained significant at the level of practice?

## **1.4 Reformers' Responses to the Gap**

The response of remedial reformers to these questions is typically that the continued presence of punishment is simply the result of the dead weight of tradition that keeps a concern for retribution inappropriately alive within the police community. That is, punishment remains central to police management because of the inertia of an "old guard" who believe that the old ways are best and who resist innovation simply because it is new. The traditional style is thus portrayed as a stubborn remnant of the past that should be shed in favour of more modern, scientifically valid forms of management.

By discrediting resistance to remedial reform as unthinking and unprogressive this response

has done much to strengthen the legitimacy of the reformers' arguments. Within this view traditional police managers who believe in the use of a punitive style are denigrated as retributive "stick in the muds". While this has effectively silenced them in the debate over police management it has not stopped them from practising what they believe. That is, it has done little to change traditional management practices.

### **1.5 An Alternative Perspective**

The sheer tenacity of punishment as a response to misconduct both within police organizations and the wider society raises doubts about the validity of this response. If punishment retains such a hold over police management, and continues to be used by new generations of police supervisors, perhaps there is more to it than the reformers acknowledge. That is, perhaps the consistent refusal of so many police managers to take the reformist advice requires us to look more critically at the latter's arguments. Perhaps police managers who continue to adopt a punitive style understand more about the process than reformers, and I include myself in this, have been willing to acknowledge. Perhaps in short, it is time to listen to these traditional police managers rather than silence them.

What this suggests is that it may be time to stop simply dismissing punishment as a dysfunctional anachronism and instead to examine it more closely to see what it accomplishes and why it is so steadfastly endorsed by so many police managers. It may be time to take seriously the unarticulated "practical knowledge"<sup>9</sup> of traditional police managers as a source of intuitive or practical wisdom to be explicated rather than dismissed.<sup>10</sup>

I have elsewhere argued that the retributive features of punishment cannot simply be ignored, especially in the context of public complaints about the police.<sup>11</sup> The present report goes further than this by arguing that punishment has instrumental value that "progressive" police managers have been too quick to dismiss.

### **1.6 Integration Rather Than Choice**

In arguing that more attention be paid to traditional managerial practices this report does not contend that a corrective approach should be abandoned. Rather, it argues that traditional strategies make a contribution to remedy. The point is that we need to be more sensitive to the utility of the traditional approach so that the experience it expresses can be related to, and integrated with, the very persuasive arguments advanced in favour of a remedial managerial style.

We must recognize that the tenacity of a punitive style of police management points to its strategic value. This value must be clearly understood if arguments in favour of remedy are to move from the level of rhetoric to practice. Once the managerial work accomplished by punishment has been understood it will be possible to consider whether arguments can be mustered in its defence and whether less punitive alternatives, more in keeping with contemporary sensibilities, are available.<sup>12</sup>

## **1.7 Outline of Report**

The next chapter identifies the control of police conduct as the critical task of police managers and establishes an analytical framework through which to consider it. Chapter III identifies the place of punishment and drill in traditional police discipline. This will be followed in Chapter IV by an analysis of the arguments for a remedial style of management. Finally, Chapter V identifies the value of a punitive style of police management and critiques the arguments of progressive managers for their failure to recognize this.

## Chapter II

### SHAPING POLICE CONDUCT

The central feature of police management is the shaping of police conduct. Police managers are required to ensure that those under their supervision act in ways that promote the objectives of the police organization. They are required to create a particular organizational order; in other words, to guarantee a particular way of doing things.<sup>13</sup>

#### 2.1 Impartial Policing

The "way of doing things" that police managers in liberal democratic countries have sought to guarantee is impartial policing. This vision defined the "new police" in Britain in the early 19th century and it continues to shape our conception of appropriate state policing today. This image is one that has been particularly important to the RCMP. Indeed the idea of the "Mountie" pursuing "his man" without fear or favour is part of Canadian mythology. It is also an image central to the history of American policing generally as reformers have sought to free policing of what were viewed as sectarian influences and establish policing as a "professional" activity. Brown describes this as follows:

By seeking to bring police work under the control of centralized administrative organizations, reformers have sought to make policemen more impersonal, detached, and strict, and more responsive to legal and bureaucratic restrictions on their power, while making them less subject to external community and political pressures.<sup>14</sup>

This idea, as I have just suggested, has guided the British police since their inception. This was made clear by Sir Robert Mark, one of the most outspoken Commissioners of the London Metropolitan Police, when he observed that the British police had been characterized by a

long tradition of constitutional freedom from political interference in our operational role... the police are not servants of government at any level. We do not act at the behest of a minister or any political party, not even the party in government. We act on behalf of the people as a whole.<sup>15</sup>

To argue that policing should be impartial and non partisan is not to argue that it can be nonpolitical in a more general sense of the term. State policing, including impartial policing, is "inherently and inescapably political".<sup>16</sup> The police are expected to enforce the order established by a system of laws and these laws are, by virtue of the process of their creation, political. In enforcing the law and preserving the peace defined by law the police carry out the will of government, past and present, and governments are by their very nature, political entities reflecting and serving interests.<sup>17</sup>

As Reiner observes, the idea of the new British police established in the early 19th century

was to create a professional body responsible to government which would wrest control of the police away from local communities. Thus, "[t]he new police signified a move away from a degree of popular control which had existed in some places over parish constables".<sup>18</sup>

The idea also represented a shift in the style of governance from one that was direct and personal to a more indirect and impersonal one.<sup>19</sup> Miller describes this well in his comments on the orientation of the new British police:

The concern of the first police commissioners, Charles Rowan and Richard Mayne, for restrained, impartial and visible police authority was a farsighted strategy for institutional effectiveness, indeed survival, in a period of public fear and hostility. The new police coincided with, and were an early embodiment of, the change from direct, personal class rule to indirect, institutional bureaucracy.<sup>20</sup>

Within the United States the concern motivating police reform, at the turn of the 20th century, was that partisan political influence would undermine the rule of law and the order of the state. Reformers argued that the police had become tools of partisan political interests, at the expense of the "public interest".

Fogelson reports on this argument as follows:

According to most reformers, the corruption, incompetence, and inefficiency of the big-city police departments was fundamentally a function of political involvement in departmental affairs. "Politics is the curse of our free institutions," a New York magistrate told a special committee of the Chamber of Commerce in 1905, and nowhere is it more clearly shown than in the Police Department." ... So long as the police forces were entangled in local politics, the reformers insisted, they were doomed to machine control.<sup>21</sup>

The notion of impartial policing requires the police to maintain the order of the State and not to subvert this by seeking to realize an order at odds with the lawful "peace", for personal or partisan interests. The fact that the law requires interpretation and that the police exercise discretion in determining the deployment of their resources to preserve the peace complicates matters. In other words, law alone is not a sufficient guide for police conduct.

Ensuring impartial policing, then, requires more than a willingness to submit to law but also a proper exercise of police discretion. For the appropriate exercise of discretion to occur, a particular consciousness out of which action arises is required. By "appropriate exercise", I mean one that review authorities like the courts will recognize as furthering the peace that the police are required to preserve.

Achieving the reformers' goal of a professional police force in furtherance of impartial

policing involves a constant struggle in which police managers seek to create a coterie of officers willing and able to police impartially. This requires the creation of both the appropriate skills (capacity) and a readiness on the part of officers to have their actions guided by the standards of law and professional conduct.

## **2.2 The Context of Policing**

The task of creating an impartial style of policing takes place under conditions that are difficult for at least two reasons. First, the nature of police work means that police officers are seldom under supervision.<sup>22</sup> They work on their own away from direct control by the managers responsible for them.<sup>23</sup> As Brown notes, "[t]he important fact is that police administrators are really capable of controlling only the more trivial and mundane aspects of a patrolman's behavior".<sup>24</sup> This feature of distance from supervision has been reduced as communications technology has enhanced the ability of supervisors to contact officers in the field.<sup>25</sup> Nonetheless it remains the case that the majority of police officers still do not work under direct supervision.<sup>26</sup> Even today "policemen simply cannot be supervised all of the time".<sup>27</sup>

Second, because the order the police are required to preserve is so consequential, they are frequently exhorted to act in ways that serve particular interests rather than preserve the peace more generally.<sup>28</sup> This may encompass both the pleading looks of a young motorist whose automobile insurance costs are likely to increase substantially, and perhaps prohibitively, if charged with a speeding offence, as well as drug dealers willing to pay substantial amounts of money to persuade the police to turn a blind eye to their activities. Brown describes these features of the police situation as follows:

[T]he police wield their coercive powers amidst deep-seated moral and political conflicts. They are often at the center of group and class conflict. The police are by and large deployed to protect society from the actions of specific groups, most often the lower classes (in fact, the development of the police in the nineteenth century was largely predicated on controlling the "dangerous classes")... The fate of "deviant" groups within a community often depends on the vigor with which the police enforce laws against those behaviors which offend the moral sensibilities of a community.<sup>29</sup>

Thus, the challenge for police managers is to create an organization of people who will police impartially in the face of attractive inducements to do otherwise in a situation of only indirect supervision.<sup>30</sup>

Brown expresses this by arguing that the challenge is to create a police organization in which "the sole restraint upon the behavior of policemen derives from the force of administrative pressure to adhere to the law and organizational rules and procedures".<sup>31</sup>

MacNamara points out that together these two features of policing combine to create a

challenge of major proportions:

The very nature of the police officer's job (its responsibilities, powers, opportunities, temptations, dangers, pressures, and frustrations) creates disciplinary problems unlikely to develop in most other occupations.<sup>32</sup>

### **2.3 Professional Policing**

The notion of the police as a professional body ruled by law and internal regulations and independent of political influence has been, and continues to be, a vision that guides images of State policing.<sup>33</sup> This notion is nicely expressed in the common-law idea of police independence, expressed most influentially by Lord Denning, in which the police are conceived of as responsible to the law alone.<sup>34</sup> In this vision police are seen as a body of technical experts who act as "detached public servants, standing above the community, utilizing [their] powers of coercion and expertise in the public interest".<sup>35</sup> Jefferson, writing in the British context, relates this to the idea of police independence as follows:

The idea of impartial law enforcement stems from the office of constable (the police office common to all officers whatever their rank) and the obligation this imposes to uphold the law generally, that is to say, against all offenders without fear or favour. This unique obligation is mirrored by a unique form of accountability -- not to a statutory body, but to the law itself. Together these notions make up the hallowed doctrine of police independence -- the idea that the police do not operate at the behest of others, but are servants only of the law. Breaking with this idea of police as independent legal officers would make policing a political matter and result in a selective (or partial) law enforcement.<sup>36</sup>

This notion of police officers who respect and operate under the rule of law has been and continues to be the reigning conception of policing.<sup>37</sup> Police managers have therefore had to face the issue of how to give expression to this vision of a professional, disciplined body in their organizations. Wilson calls this the "bureaucracy problem":

Any study of organizations that is addressed to what is popularly called the "bureaucracy problem" must have as its central focus the problem of getting the front-line worker -- the teacher, the nurse, diplomat, police officer, or welfare investigator -- to do the "right thing".<sup>38</sup>

In answering this question police supervisors have drawn upon managerial theories dealing with how best to select, and then shape, the people who will express this ideal. The concern has been with creating a force of "good men" who will act impartially.<sup>39</sup> In shaping such a body of people considerable attention has been given to the selection of candidates who have the potential to become professionals. As Vollmer, the renowned Chief of the Chicago Police, argued, "[w]hen we have reached the point where the best people in society are selected for police service there will be little confusion regarding the duties of members".<sup>40</sup> Once "good men" were selected, all that remained was the appropriate training and the proper direction. In commenting on the results of this approach in the United States, Brown has this to say:

The key to understanding the impact of police professionalism lies ... in understanding that the reformers attempted to deal with the question of legitimacy by bureaucratizing police work. The autonomy from local politics sought by the reformers was predicated on the need to make the police efficient, effective crime fighters. But, as the reformers clearly recognized, this entailed the necessity of establishing stringent internal discipline within police departments. Such discipline was not merely necessary to eliminate corruption or to provide the trappings of efficiency and effectiveness in order to bolster the status of the police. It was necessary, the reformers believed, for developing a police force based on a set of universalistic and formalistic values responsive to the community as a whole. Autonomy from local politics and internal discipline are thus the twin pillars of police professionalism. The price of acting as a professional who addresses his clients in a community is to be a bureaucrat subject to the coercive inclinations of administrators.<sup>41</sup>

Two phases in the development of the notion of police professionalism can be identified. These are based on the source of inspiration resorted to by police managers in their task of developing a form of internal discipline to promote a body of professional police officers who would then police impartially. The first of these sources, and the one considered in the next chapter, was the military.

In seeking a strategy to achieve this professionalism, managers turned to the example of the military and in particular to its conception of a command structure in which administrative authority cascaded from the top downwards.<sup>42</sup> This was a structure in which drill<sup>43</sup> was a crucially important control strategy and in which deviation from the rules of professional conduct received a punitive response.<sup>44</sup> Indeed, as Bittner observes with respect to the United States:

American police departments have been, for the greater part of their history, the football of local politics, and became tainted with sloth and corruption at least partly for this reason. Police reform was literally forced to resort to formidable means of internal discipline to dislodge undesirable attitudes and influences, and the military model seemed to serve such purposes admirably. In fact, it is not

exaggeration to say that... the movement to "professionalize" the police concentrated almost exclusively on efforts to eliminate political and venal corruption by means of introducing traits of military discipline.<sup>45</sup>

## Chapter III

### TRADITIONAL MANAGEMENT

This chapter outlines the strategies that police organizations developed during the early phase of police reform to solve the bureaucracy problem. This will establish a backdrop for the critique of the "traditional" approach.

#### 3.1 The Military Analogy

Fogelson in his analysis of police reform in the United States notes that, in seeking an approach to professionalization, reformers opted for a military model.<sup>46</sup> This occurred after some discussion of the civilian or "corporate model that had dominated Progressive thinking about the schools and other urban institutions since the turn of the century". In taking this stance they followed the example of the British and the Canadians who turned instinctively to the British experience.<sup>47</sup> This "military analogy"<sup>48</sup> has had far-reaching implications. One implication has been support for the concept of independence, so central to the police conception of professionalism and the relationship between the police and politics.<sup>49</sup> Fogelson articulates this linkage as follows:

In view of the long-standing and much-heralded separation of the military and the politicians it followed that the police should be as free of partisan interference as the army and the navy. And in view of the common conception of the military as a rigidly authoritarian and strictly hierarchical organization, it followed that the police chief should be entrusted with virtually absolute power over the every day operations of the department. In other words, the military analogy implied that the American police should be controlled not by the politicians, especially not by the ward bosses, but by police chiefs...<sup>50</sup>

The military analogy also served to promote a system of discipline that would foster professional independence.<sup>51</sup> Fogelson continues:

[T]he reformers proposed to upgrade the rank-and-file by shielding them from political interference, placing them under martial discipline, removing them from temptation, and generally treating them as soldiers. To this end the reformers recommended that all officers up to or even including the chief be provided civil service status and perhaps be assigned military rank; that internal discipline be modeled along the lines of a court-martial, with appeal to the courts severely limited or abolished outright ...<sup>52</sup>

As I have already suggested, in Canada as in Britain, the struggle against local influence was not as vigorous in the 20th century because the idea of a professional bureaucratic police was already firmly entrenched. The British struggle had taken place much easier, in the course of 18th and 19th century debates over community control of the police. It was precisely these questions that were settled in the triumph of the idea of the "new police" in the 1829 *Police Act*.<sup>53</sup> The insulation

of the police from political influence has long been an accepted feature of British and Canadian policing,<sup>54</sup> as has been an acceptance of a military-type organization.<sup>55</sup>

The relevance of the military analogy to Canada was made clear by Sir John A. Macdonald who, in preparing plans for what was to become the North West Mounted Police (the forerunners of the Royal Canadian Mounted Police), wrote:

It seems to me that the best Force would be Mounted Riflemen, trained to act as cavalry, but also instructed in Rifle exercises. They should also be instructed, as certain of the Line are, in the use of artillery, this body should not be expressly Military, but should be styled Police, and have the military bearing of the Irish Constabulary.<sup>56</sup>

The vision of those reformers who promoted the idea of a professional police was of an independent body oriented to professional standards of conduct, providing a service to the community but not serving it. Brown sets out this idea as follows:

A professional police force does not serve a community by responding to the unique and particular needs of its different segments; rather the police serve by controlling crime and enforcing the law in the community as a whole. The police are more than servants, they are professional servants. They stand above the community and assume responsibility for interpreting and judging what are the serious problems of crime and disorder that a community faces and what should be done about them.<sup>57</sup>

This conception recognizes police discretion but locates the appropriate source of this decision-making in guidelines expressing an ethic over and above the political conflicts existing within communities. Whether or not such an ethic can exist or whether this very notion reflects an "unrealistic Sociology"<sup>58</sup> that tries to legitimate partiality by pretending that an impartial position is possible, this is the claim put forward by reformers.<sup>59</sup>

### **3.2 Police Discipline**

A critical feature of the "military bearing" that Macdonald sought to establish was the adoption of military discipline. Two features of military discipline were adopted as solutions to the "bureaucracy problem". The first was drill, the second was a system for administering punishment to persons judged to have acted inappropriately. The most visible manifestation of this system was the military court.

Although drill has declined in significances,<sup>60</sup> it continues to be an important part of recruit training and it is reinforced daily through routine practices such as the use of titles in addressing superiors, the wearing of uniforms and the daily "parade" before a sergeant that continues to initiate most police shifts.<sup>61</sup>

References to drill as part of the process of creating trained police officers are found regularly in the reports of the early Commissioners of the North West Mounted Police. Thus, Commissioner Herchmer in his Annual Report for 1888, commenting on the difficulty of controlling his members, refers to the use of drill as a source of discipline:

[Members] are under enormous temptation to misbehave and shield whisky offenders, and are constantly in danger of getting into trouble by exceeding their duties. There are less punishments inflicted in the Police than in any force I know of, and remarkably few cases of over zeal. Discipline is impartially maintained, and although very strict indeed, but few cases, beyond slight indiscretions, have arisen during the year. The force is well drilled, but from the numerous different avocations in which the men are employed, although individually drilled men they require some days together before they are in a condition to do justice to themselves on parade. ... We are trained soldiers, both mounted and dismounted, and squads in nearly every division thoroughly understand gun drill...<sup>62</sup>

Police recruit training continues to rely to some extent on drill to mold civilians into police officers.<sup>63</sup> While recruit training is not as drill-oriented as military "boot camps", it has obvious resonances with them.<sup>64</sup> Brown makes this point when he writes:

Police training programs are ostensibly designed to acquaint rookies with the criminal law and departmental rules, and to develop competence in certain basic, required skills such as shooting, self-defense, and driving; but more important than these is the attempt to adjust recruits to the discipline of the organization. Arthur Neiderhoffer [1969:51-7], a policeman turned scholar, has argued that the defining characteristic of recruit training is that it is a total and inclusive process which seeks to strip away the recruit's previous identity and values and replace them with those appropriate to the police role.<sup>65</sup>

Bradley *et al.* make a similar point when they write that:

[T]he primary function of the [recruit] training programme is not to provide a package of skills easily transferable to the live environment of everyday policework, but is instead concerned with a more subtle assimilation process. The peculiarities of police demeanour, attitude,

and other intangible and symbolic elements of the police role are demystified and inculcated in the select few.<sup>66</sup>

Drill, and the concern with minor violations, to do with dress and punctuality, which are part of it, serve to create a particular way of being and a particular orientation to authority, that promotes compliance with a "professional" policing ethos.<sup>67</sup> Again, Brown is instructive:

[A]n officer who violates petty rules -- who does not shine his shoes, does not keep his hair and sideburns cut to regulation length, writes unreadable reports, and is usually three or four minutes late to work -- is presumed to be an officer who cannot wield his powers of discretion in a responsible fashion. Well-chosen, well-trained, and well-disciplined men obviate the need for explicit guidelines for the use of police power.<sup>68</sup>

Reiner points out that at the inception of the London Metropolitan Police, discipline was associated with a willingness to Comply.<sup>69</sup> This compliance was assessed in terms of an officer's acceptance of the discipline of drill:

Only those who obeyed orders "readily and punctually" could aspire to be promoted, for "he who has been accustomed to submit to discipline will be considered best qualified to command".<sup>70</sup>

Through drill and the enforcement of "petty" rules, police managers make use of those areas of police activity that they can directly supervise to gain indirect control over those they cannot.<sup>71</sup>

The second feature of discipline is the use of punishment. Typically Police Acts, under headings like "Disciplinary Proceedings", outline a system of both informal and formal responses to misconduct, defined as the breach of the legally-sanctioned rules that apply to police officers. Formal discipline typically involves a hearing, at what is often called a "service court", in which charges are laid and the accused officer is given an opportunity to defend these charges. Police Acts typically lay out a series of penalties that can be administered by such courts as well the standards of proof which are to apply.<sup>72</sup> For example, section 61 of the Ontario *Police Services Act, 1990*<sup>73</sup> provides that:

If misconduct is proved at the hearing on clear and convincing evidence, the chief of police may,

- (a) dismiss the police officer from the police force;
- (b) direct the police officer be dismissed in seven days unless he or she resigns before that time;
- (c) demote the police officer, specifying the manner and period of the demotion;
- (d) suspend the police officer without pay for a period not

- (e) exceeding thirty days or 240 hours, as the case may be; direct that the police officer forfeit not more than five days' or forty hours' pay, as the case may be; or
- (f) direct that the police officer forfeit not more than twenty days or 160 hours off, as the case may be.

The rules used to identify misconduct are taught to police officers as part of their basic and ongoing training. These rules, along with the law, set the parameters of police action.<sup>74</sup>

Police scholars have long argued that the police occupational culture provides officers with a set of directions for action that conflicts with the formal rules to create competing "rule-worlds".<sup>75</sup> This point was made explicitly by the 1989 Fitzgerald Inquiry in Queensland, Australia, as the following comment by Finnane indicates:

The Report sees the "police code" as operating to prevent equitable enforcement of the law where it involves the misconduct or crimes of police officers. The effectiveness of this code was determined by the influence of a police culture which includes: "contempt for the criminal justice system, disdain for the law and rejection of its application to police, disregard for the truth, and abuse of authority".<sup>76</sup>

This has led Brown to speak of police departments as having "an admixture of two distinct systems of internal control" and of a "bifurcated system of internal control".<sup>77</sup> In similar vein, Punch has written of the police as "the divided organization".<sup>78</sup>

One system of control derives from professionalism and is based on the legitimacy of the hierarchical authority; the other is rooted in the police culture and depends upon widely shared group norms for its legitimacy.<sup>79</sup>

The directions of the police culture sometimes develop a quasi-formal status when they are tacitly supported by police management.<sup>80</sup> This tacit support points to an uneasy relationship of mutual recognition between the formal rules and the directions of the occupational culture.<sup>81</sup> Brown describes the tension between these two sets of standards and the use of police discipline to lend weight to the formal rules within the context of police professionalism as follows:

[P]olice professionalism has sought to impose the law, which is a universalistic set of standards, on the decisions of patrolmen, but this conflicts with the often pragmatic, instrumental criteria they feel compelled to use. Police professionalism enjoins the patrolman to be a bureaucrat rather than a judge, but the patrolman is often confronted with the need to be a judge whether he likes it or not. ... police professionalism has sought to impose a stringent internal discipline

on patrolmen and to assert the salience of such goals as treating citizens courteously and minimizing public complaints about police behavior.<sup>82</sup>

He goes on to dispute the argument that the "institutional hypocrisy"<sup>83</sup> of tacit support for the occupational police culture and the disjuncture between the rhetoric and reality of the formal rules<sup>84</sup> means that the formal rules and police discipline do not restrain police officers. He writes:

It would be a mistake to assume that the values of police professionalism are merely a mask that police administrators wear to fend off critics, a hollow shell that conceals the real nature of police work. It is precisely because professionalism is so closely tied to the question of legitimacy that police administrators must and do take the question of discipline seriously. The professional autonomy demanded by reformers depends on it. The difficulty is that there are serious limits in the ability of police administrators to control their men.<sup>85</sup>

Police managers generally share this view that internal police discipline is necessary to constrain the directions of the police culture as well as identify and root out "bad men". The latter includes those who either are bad by inclination or who have been seduced by the police culture to such an extent that they are no longer responsive to the requirements of professionalism.<sup>86</sup>

## Chapter IV

### A REMEDIAL APPROACH

There are three elements to the critique mounted by contemporary police reformers in response to the "Progressives" who opted for a military approach to police discipline. These have all focused on punishment rather than drill. The first element concerns punishment as retribution, the second deals with punishment as a basis for modifying behaviour, and the third with the tendency of punishment to draw attention to individual rather than to structural problems.

#### 4.1 Retribution

The argument advanced by the remedial reformers with respect to retribution has been that this should not be a concern of police managers. Whatever other activities management includes, it should not be concerned with retribution. The concern of supervisors should be exclusively with shaping behaviour and not with righting wrongs and passing moral judgments.<sup>87</sup> For these reformers punishment and its utility should be assessed from what Duff has called a "consequentialist" perspective:

A consequentialist account portrays punishment as a manipulative technique for promoting certain further ends: it might (given certain non-consequentialist constraints on our pursuit of those ends) portray punishment as a mode of rational deterrence which has some regard for the citizen as a rational agent; but such a system still manipulates those whose obedience it tries to secure by the threat of punishment, since it imposes on them prudential reasons for obedience."<sup>88</sup>

In taking this position remedial reformers support and take for granted the shift in the history of punishment described by Foucault in which the purpose of control became "less to avenge the crime than to transform the criminal who stands behind it".<sup>89</sup>

#### 4.2 The Value of Punishment and the Importance of Structural Remedy

Once the issue of retribution has been dismissed the question requiring attention is how best to effect correction. It is in this context that the latter two elements noted above, namely the ineffectiveness of punishment and the importance of structural remedy, arise.

The debate over the value of punishment as a "mode of rational deterrence" is ancient. While the specifics have changed considerably, the contours of the debate have remained remarkably stable. A fundamental dichotomy in this debate is a disagreement over the relative efficacy of persuasive inducements as opposed to fear of punishment.

Machiavelli, writing in the 16th century on the nature of governance and strategies of control, argued that fear was the appropriate basis for ensuring compliance with the commands of an authority:

It has been sometimes asked, whether it is better to be loved than feared; to which I answer, that one should wish to be both. But as that is a hard matter to accomplish, I think, if it is necessary to make a selection, that it is safer to be feared than be loved. ... Men are generally more inclined to subject to him who makes himself dreaded, than to one who merely strives to be beloved; and the reason is obvious, for friendship of this kind, being a mere moral tie, a species of duty resulting from a benefit, cannot endure against the calculations of interest: whereas fear carries with it the dread of punishment, which never loses its influence.<sup>90</sup>

Traditional police managers tend to agree with Machiavelli. There have, however, always been voices expressing doubts about his conclusion. An early example, within the Canadian police community, is to be found in the Annual Report of 1892 by Superintendent Charles Constantine of the North West Mounted Police:

It appears to me that we must trust more to men and less to regulation. Get good men forward, give more power to individuals, create a confidence though all ranks, one with the other, and things will work harmoniously in maintaining the peace of the country, infusing a confidence in their vigilant guardianship of persons and property.<sup>91</sup>

An argument put forward against the Machiavellian preference for fear of punishment as a source of control is that it frequently backfires and is therefore less reliable than a control strategy founded on "confidence". Bunyard develops this argument as follows:

[T]he threat of punishment can produce forms of behaviour other than conformity to the rules. For example, it may induce a determination not to be caught. Some people will go to great lengths to avoid being caught but stop short of behaving properly! Most people should not be reprimanded in a really forceful manner; any reprimand is a blow to the pride and is usually deeply felt. Administering such a reprimand in public, particularly if it is accompanied by sarcasm, is extremely harmful for the self-respect of the individual at the receiving end and no supervisor should be surprised if he fails to secure full co-operation from a person he has subjected to such treatment.<sup>92</sup>

It is now commonplace to hear the military approach criticized on these and similar grounds. Bittner, for example, in a very influential monograph on the police, argued that the military model was in fact counter-productive and hence quite wrongheaded.<sup>93</sup> He maintained that what was required was not "soldier-bureaucrats" but persons who could be "Induced" to act as "true" professionals who would develop a commitment to "purposeful efficiency" and "professional

expertise".<sup>94</sup> The control of policing, he argued, should not depend on "military-bureaucratic regulation" but on a commitment to promoting professional skills.<sup>95</sup>

This argument that police professionalism would be better served by abandoning the military model has been a recurring theme in police reform for the past two decades. It was taken up in Canada in 1976 by the Marin Commission which used the remarks of Constantine, referred to above, to question the RCMP's reliance on traditional discipline as an effective solution to the bureaucracy problem. The Commission wrote as follows:

It seems that most people comprehend disciplinary action as referring only to the assessment of punishment in response to some failure to perform in accordance with an established standard. This narrow understanding overlooks what we think is the principal function of discipline, which is to train, correct, or develop by instruction or example. Therefore, it is important that there should not be allowed to persist within the Force a conception that malfeasance, attributable to some lack of technical ability, will inevitably result in the person responsible being drawn into a procedure, the principal purpose of which is to determine blame and assess penalties. It would be much more constructive if all those involved with the system could view it as being primarily designed for training and instruction ...<sup>96</sup>

The Commission went on to promote a more positive conception of discipline that reflects what Machiavelli had in mind when he spoke of the bond of love as a "moral tie":

We feel that an ideal disciplinary system should seek to attain more positive results, in the sense that the person should not feel demeaned or humiliated by the actions taken, but motivated to improve his performance on another occasion. It is felt that this objective could best be achieved by having those in authority take a rather less formal approach to problems than may sometimes be, or has been, customary. Most often, as much can be accomplished by a simple oral admonition as by official and formalized sanctions of the kind presently in use.

Implicit in this observation is an understanding that a well-disciplined and effective force is the product of the character and training of its men, rather than of its regulations or regimentation. Discipline, understood in its broadest sense, is better infused through training than through rule or fear of punishment. Thus, the primary means of achieving it must be remedial rather than punitive....

The remedial system of discipline which we recommend takes issue with what is the essential punitive character of the present provisions and the rights of members to whom provisions apply. ... we seek to supplant the solely punitive emphasis of the current

provisions with ones which emphasize remedial action.<sup>97</sup>

In this remedial argument, drill is dismissed as a form of training because of its basis in regimentation. In this view, training is conceived, not in terms of the constitution of a mentality understood as particular habits of mind, but with a cognitive understanding of the procedures that should guide action. The dismissal of drill reflects a shift from learning through doing to learning through listening.

The Marin Commission emphasized that in proposing a remedial approach to RCMP managers it was recommending that corrective action should look beyond the punishment of individuals to structural issues. Thus:

While a remedial approach to discipline recognizes that sanctions may sometimes be necessary, it also recognizes that there are many situations in which punishment is not only inappropriate, but unfair.

Problems of performance and conduct may be due to inconsistencies between rules, regulations and directives and the operational requirements of policing. In other cases, local conditions such as a shortage of adequate manpower, ineffective leadership and supervision or a protracted stress situation may give rise to problems of either conduct or performance.

In a remedial system, steps would be taken to ensure that, before punitive action of any sort was taken, the above considerations had been reviewed and precluded as contributing factors of any significance. Only if a supervisor is assured that a particular difficulty relates primarily to the individual concerned should punishment of any sort be imposed... If a problem results from circumstances over which the individual has no control, it is obvious that unless the circumstances are changed the problem will not be remedied by attempting to correct the behaviour of the individual....

When discipline is necessary, an approach which seeks to correct and educate a member should precede one that seeks to assign blame and impose punishment ....<sup>98</sup>

Schuck summarizes this corrective approach when he writes that "a remedial system must fit the contour of the problem it seeks to ameliorate".<sup>99</sup>

### **4.3 The Corporate Analogy**

As these passages make clear, the Marin Commission report was a broadside against traditional police management, targeting both its tendency to locate problems at the individual rank-and-file level as well as its preference for using punishment as a response to the individual misconduct so identified. This critique, which has well-established roots within the corporate world,<sup>100</sup> has gathered considerable strength within the police community."<sup>101</sup>

The influence of the corporate experience is striking. It is virtually impossible to find a contemporary text on police management that does not advise of the necessity to examine the experience of "private enterprise". Reviews of corporate management practices and the theories associated with it are commonplace within the police management literature.<sup>102</sup>

This interest in private enterprise has led advocates of the remedial approach back to the corporate analogy rejected by American police reformers in the first part of this century."<sup>103</sup> Marin expresses this renewed interest very clearly:

The senior police officer who wishes to improve the administration of his police force must look to private industry to see what lessons can be learned. The police executive will not find any sure-fire solutions, and should be highly suspicious of anybody who claims to have any, but he will find ideas, themes, approaches and other general indications which he can adapt to his own situation; he will find out what works and what doesn't work in a series of specific situations and, more importantly, why things do or do not work.<sup>104</sup>

A recent example of the use of the corporate analogy is the recent RCMP External Review Committee discussion paper entitled "Sanctioning Police Misconduct - General Principles".<sup>105</sup> Redeker<sup>106</sup> is drawn on to argue that the traditional police approach to discipline with its system of progressive punishments "is constructed on an illogical premise: namely that an employee will get progressively better by being treated progressively worse".<sup>107</sup>

As an alternative, it endorses Redeker's system of affirmative discipline.<sup>108</sup> Under this system progressive punishment is replaced by a practice in which the employee is continuously encouraged to declare an allegiance, or "moral tie", to the system of regulations for guiding action. Redeker develops this argument as follows:

Under a traditional system of discipline, the employee may be warned that any future occurrences of that conduct will result in serious discipline. The employee will have the sense of being punished or chastised. In the affirmative system of discipline, the employee will have the sense of not living up to a promise he or she made and will be aware of having made a fresh commitment to conform to company rules. The employee will be inclined to think that he or she must try harder to fulfil a personal promise rather than thinking that he or she must tow the line to avoid more severe punishment.<sup>109</sup>

This approach takes the position rejected by Machiavelli, namely, that a positive attachment to authority and regulation will be more effective in shaping action than fear of punishment. This affirmative approach emphasizes rewards as a means of committing police officers to the police organization and its regulations."<sup>110</sup>

The Honourable René J. Marin in an address to Canadian police managers in a workshop on "Management Under Financial Restraint" in 1983 draws upon the corporate analogy to advocate a reliance on rewards:

At many companies there are incentive plans, but at really good companies, the plans are designed to involve everybody, not just the top ten per cent. Tupperware rewards its top 15,000 sales people annually; Caterpillar has a party when it introduces a new product -- even the machines get dressed up. McDonalds conducts an annual contest to find the "All American Hamburger Maker". You have many ways of rewarding your officers, from financial to moral. You should make full use of them because, in the long run, you will save money by doing so."<sup>111</sup>

Although it endorses the remedial approach, the recent External Review Committee discussion paper echoes the Marin Commission in warning that a focus on rewards should not be used to draw attention to the

individual employee as the cause of the disciplinary problem, without focusing on altering structural or managerial factors (remedial discipline) that may have contributed to or permitted, the disciplinary fault.<sup>112</sup>

This focus on rewards and structural remedy has been reinforced by trends in the legal management-labour relations literature and practice. Adams, for example, in a legal analysis of "Grievance Arbitration of Discharge Cases" written about the same time as the Marin Commission, takes a position that disputes the wisdom of Machiavelli's conclusions:

While disciplinary action is a useful and sometimes necessary aid in maintaining conformity to rules, being based on punishment, it tends to encourage only the degree of co-operation which will avoid its' application... Rather, because discipline is a function of personal commitment and motivation, its attainment is more dependent upon the creation of proper organizational climate and orientation. I agree with those observers who argue that the attainment of discipline centres on the individual employee's sense of personal worth and dignity which, in turn, requires the adoption of personnel techniques that emphasize basic human values."<sup>113</sup>

Like the Marin Commission, Adams also insists that this concern with motivation through commitment must be complemented by a structural focus:

Unfortunately, there has been insufficient recognition that many problems currently attracting disciplinary action may only be

symptoms of much deeper problems stemming from the "the quality of working life" or rather the lack of it.<sup>114</sup>

One of the strategies used to support arguments in favour of a shift in police management from a military to a corporate-inspired model has been to point out that the Japanese who "since 1948... [have] reported the lowest rates for conventional crime of any industrialized, non-communist nation" have "demilitarized" their police and embraced a corporate managerial ethos.<sup>115</sup>

#### **4.4 The Corporate Analogy and the Police Sub-Culture**

The Japanese approach is seen as particularly important to policing because it does not lead to the development of a rank-and-file culture of resistance to management and professional rules. Archambeault and Fenwick argue that

the Z Type Organization [the Japanese favour] creates a positive work climate which reinforces worker commitment and loyalty to the organization and motivates the worker to equate organizational success with that of his/her own.<sup>116</sup>

Similarly, Bayley recognizes in the Japanese police an organizational unity that is strikingly different to the sense of alienation and cynicism experienced by the rank-and-file American police officer, as described by Westley<sup>117</sup> and routinely noted by more recent observers:<sup>118</sup>

The Japanese police display a pride in themselves that is quite remarkable. They are supremely self-confident, not doubting the worth of the police role in society or the public's support of it. The 1973 White Paper of the Police betrays no deep-seated anxiety about the position of the police in modern Japan. Policemen are neither defensive nor alienated. Though they have a strong sense of belonging to a distinct occupational community, solidarity has been self-imposed. They have not been driven in upon themselves by a critical public, isolated among their own kind.<sup>119</sup>

In arguing that North American police organizations should follow the Japanese example of adopting a corporate rather than a military model, these commentators are responding to the argument that military structures encourage the development of a counterculture detrimental to the existence of a professional police force. In particular it is argued that the punitive features of police organizations operating from a military model promote an us/them division between the rank-and-file and management that is avoided by a managerial approach that would work together with the rank-and-file by means of cooperative strategies.<sup>120</sup>

In elaborating on the implications of the Japanese "emphasis on organization-wide teamwork, strong managerial control balanced against 'shared decision-making' with employees, and a holistic humanistic approach toward employees" for police management, Archambeault and

Fenwick describe just how it operates to undermine the occupational counterculture and the us/them distinction that has limited management's ability to implement the requirements for a professional police force:

[The] Japanese police organizational model is a modified Management Z model which employs a number of different control mechanisms, both formal and informal, "to inculcate in policemen the ideas of solidarity and loyalty" to the police organization (Ames, 1981, p. 173). Further, despite labor unions in most other areas of work, there are no police unions, benevolent associations, or other types of officer representation group (Ames, 1981, p. 200); police management provides mechanisms for addressing health care needs, working-conditions, housing, pensions and other areas of worker concerns which are associated in the American mind-set as being "union-issues." Typical of other Management Theory Z organizations, the management of Japan's National Police Agency is fully committed to developing the values of trust, loyalty and agency-wide teamwork among its officers. In return for its investment in the holistic needs of its officers, management gets significant returns on its investment in terms of increased productivity, effectiveness and efficiency (Clifford, 1967, pp. 81-84).<sup>121</sup>

#### **4.5 The Reigning Orthodoxy**

These views are now the reigning orthodoxy within police circles. This is so much so that arguments in favour of a more traditional approach favouring the use of punishment are simply not available. There is at present no viable alternative position at the theoretical level. Machiavelli has been thoroughly discredited and no one seems either willing or able to develop an argument in favour of the use of punishment in police discipline. Stinchcombe sums up this orthodoxy with respect to professionalism as follows:

[P]rofessionalism in the true sense of the word can only occur from the bottom up -- it must be perceived as a vehicle for self-growth by the officers themselves, rather than an imposition by those in authority, in order to be really effective. Only when the existing fear of authority is replaced by a personal commitment on the part of entry-level employees will an environment emerge in which professionalism can grow and be nourished.<sup>122</sup>

#### **4.6 Rules as a Limit and Guide to Police Action**

An essential feature of the remedial approach to discipline is a conception of professional police as persons whose actions are guided by and limited by rules.<sup>123</sup> Within this view, the role of police management is to:

1. ensure that police officers are committed to the rules of the police organization;<sup>124</sup>
2. ensure that the rules provide clear and unambiguous directions; and
3. eliminate organizational obstacles that restrict officers' abilities to follow these rules."<sup>125</sup>

This approach sets rules against local loyalties.<sup>126</sup>

In taking this position on the importance of rules, advocates of the remedial approach argue that the military model is flawed both because it does not pay sufficient attention to structural impediments to conformity and because it does not provide for an effective bond between the rank-and-file members and the bureaucratic rules that are to guide their actions. Brown outlines the importance of this bond to rules as follows:

[A] straightforward attempt [is made] to make police decisions ... overt and open to scrutiny. Discretion is to be controlled by structuring it through the proliferation of policies and rules. Rule-making in police agencies would lead, in the opinion of one proponent, to "an improved system of regulating police conduct." The reason is that the elaboration of rules which guide and therefore limit a patrolman's discretion would provide an improved basis for holding patrolmen accountable for their actions. [As] Herman Goldstein [1967] points out ... "the promulgation of policies to which police officers are required by regulation to adhere would provide a basis for disciplining those who violate such policies ... (and) it would serve in a positive way to inform members of a force what is expected of them".<sup>127</sup>

Underlying this focus on rules is a belief in science as a source of knowledge that can be used to professionalize and shape policing."<sup>128</sup> Those favouring a remedial approach argue that the military analogy is based on strategies that are less scientifically sound than those they advocate.

#### 4.7 A Punishing Reality

While discussion about policing is now very much dominated by the remedial agenda just outlined, the reality is quite different. The practice of police management continues to rely heavily on punishment. Rhetoric and practice are poles apart. This is not to say that the remedial rhetoric has not had an effect. It has. There is, for example, much more concern with structural remedy and there is evidence that corrective measures not reliant on punishment are being used. Yet, despite this, the face of discipline within the police institution has changed remarkably little. Discipline still tends to mean punishment<sup>129</sup> in just the way it did in the 1970s when the Marin Commission was developing its remedial critique. Police departments still operate as "punishment-centred-bureaucracies".<sup>130</sup> As Auten argues:

There is an ample supply of evidence that the paramilitary style of management in police organizations is the rule and not the exception.<sup>131</sup>

The military model continues to be extraordinarily influential<sup>132</sup> even in the most innovative police departments. Thus, for example, Skolnick and Bayley characterize the six police departments they selected for their study of "police innovation" as conforming to the military model:

Each is a classical bureaucracy. Each has a chief or commissioner or director, a hierarchical organization, a paramilitary structure, an assignment of functions, and formal rules for carrying them out.<sup>133</sup>

Das is even more emphatic:

Despite their diversity, Police forces all over the world share one characteristic --the military structure. Although they may operate in a democratic, post-colonial, or totalitarian system, there is no police force which is not based on [the] military model.<sup>134</sup>

Why? Why has punishment remained so important? The answer the remedial reformers give is that the police organization is "particularily intractable in terms of resistance to change"<sup>135</sup> and that police managers are a conservative lot who simply have stuck to their old ways.<sup>136</sup> The lack of change is argued to be a consequence of the weight of tradition. Bradley expresses this response as follows:

[A] contributory factor to the flight from reality among police managers is the traditional police attitude towards reflection upon what they practice.... There are aspects of modern police managerial practice and organisation which defy rational analysis. For example, the reliance of police management upon "terror" as a motivational tool .... Much of present day policing practices should be recognized for what they are: bad theory in bad practice.

... anti-intellectualism, authoritarian structures, paternalistic managerial styles, a siege mentality -- all these and more are occupational hazards for the police manager ... likely to cramp and limit his response to the challenge facing modern policing...<sup>137</sup>  
[Emphasis in original]

Reformers argue that what is required is more effort to compel police managers to change their unfortunate ways and to recognize that new approaches to management are required.

An alternative response to the question "Why?" would be to take issue with the adequacy of the theory instead of the quality of police management. This alternative suggests that we look more closely at, and seek to explicate, the implicit theory that drives traditional police managers and that shapes their view of punishment. Perhaps punishment has retained its central place in police management, in the face of the barrage of criticism that advocates of remedial management have mounted, because police managers recognize a value in it that reformers have overlooked. The next chapter will explore this alternative interpretation.

## Chapter V

### TRADITIONAL POLICE MANAGEMENT REVISITED

#### 5.1 Two Strategies of Control

The preceding chapters have outlined the terms and contours of a contest that has been and is taking place within the police organization between two conceptions of control. At the outset it is important to note that not everything is at issue in this contest. For example, the importance of a structural analysis is taken for granted. The nub of the issue that separates police managers is their conception of how officers are to be motivated to act professionally.

This contest is part of a larger debate about forms of power more generally. This larger argument has been the subject of much scholarly attention. An important figure here is Foucault who has identified a shift from strategies of power based on spectacles of punishment to those based on pervasive surveillance.<sup>138</sup> In the older form, that Foucault saw as receding, spectacles of punishment were used to promote a fear-induced respect for force that enabled rulers, unable to engage in direct supervision of a populace, to secure compliance. In the newer form taken by power, embedded structures of control accomplish close but impersonal supervision and power is no longer centrally located within a society. Thus, power is both everywhere and no one's.

One way that some of Foucault's interpreters have presented this struggle between different forms of control and the visions of power that give rise to them is that between law on the one hand, with its focus on formal proceedings and punishment, and on the other hand, more embedded or informal means. Smart describes this distinction under the heading "The New and Old Contrivances of Power" as follows:

Foucault's genealogy [Foucault was concerned about the roots of origins of social forms, hence genealogy] de-centres law as the prime historical agent or mode of control. Rather he focuses on newly emergent forms of regulation and surveillance and constructs for us a vision of the disciplinary society in which law's place diminishes with the growth of more diverse forms of discipline... it seems to be "against" law that new mechanisms of power develop ... Foucault depicts a struggle between the "new" and the "old" contrivances of power.<sup>139</sup>

Each of these "contrivances" offers a different approach to the issue of how human action is to be shaped. Each recommends a different strategy for addressing what Wilson termed the "bureaucracy problem". Each of these strategies supposes a different approach to controlling police action.

## 5.2 The Terms of the Debate

Foucault's dichotomy provides a useful basis for understanding the debate taking place between police managers. Traditional management favours a strategy for shaping conduct in which control is exercised at a distance through what amounts to pageantry of one kind or another. Examples of this pageantry include the spectacle of law as it is played out through court-like structures ("service courts") or the symbolically charged features of drill in which social relations are captured and expressed in the pomp of parade ground flags and banners as well as symbolic gestures such as a salute or a "Yes Sir!"

The fact that in the police arena the "new contrivances of power", while they have certainly taken hold of the languages or discourse of police management, have not captured police practice is evidence of the failure of the surveillance-based forms of power to sweep away "older contrivances" in the way that Foucault's analysis would suggest. This resistance is not an isolated phenomenon. There is widespread evidence that spectacular forms of power based on pageantry have not disappeared.<sup>140</sup> Smart in critiquing Foucault's conception of power with respect to law as emblematic of the "old contrivances" argues that:

The status of law in modern societies is therefore somewhat uncertain in Foucault's account. We might think it is diminishing in significance as other modes of deploying power (i.e. normalization) come to dominate. However, I am doubtful that law is simply being superseded, nor can we assume that it remains unchanged -- a relic from pre-modern times.<sup>141</sup>

## 5.3 The Position of Traditional Managers

To point out that the continued presence of traditional managerial practices within the police community is an instance of wider features of contemporary society does not of course answer the "Why?" questions raised at the end of the last chapter. This requires an explication of the theory implicit in the practices of traditional managers. These suggest that traditional managers do see punishment primarily as a "mode of rational deterrence" as the "consequentialist account"<sup>142</sup> holds. However, they exploit its symbolic features as a resource in establishing a professional consciousness based on a deep commitment to impartial policing as a style of action rather than a product of rule-following.

These managers share Commissioner Herchmer's belief that "the temptation to misbehave and shield whisky offenders" and the constant "danger of getting into trouble by exceeding their duties"<sup>143</sup> faced by officers will not be resisted by a rational bond to a set of bureaucratic rules but rather require a way of thinking and being that embraces impartiality. Implicit in this position is that, in an environment where supervision is indirect and often non-existent and where temptation to advance a partisan interest is ever-present, sole reliance on bureaucratic rules will not work.

In taking this view, they are proposing an approach to social control of the police that

parallels that of the police culture itself. Here too we find a reliance on symbolic devices that find their expression in the endless series of anecdotes police officers share with each other, and not in a series of recipe-like rules.<sup>144</sup> In other words, traditional police managers maintain that if the police culture is to be resisted it must be contested on its own grounds.

#### **5.4 Creating Habits of Mind**

Foucault has argued<sup>145</sup> that the source of the power of the "new contrivances" of control was their ability to create a particular consciousness out of which people would act, to make the "soul", which he conceived of as "the seat of the habits",<sup>146</sup> the "prison of the body". This ability to produce "compliant bodies" is, for Foucault, the very essence of power. In tracing shifts in power he traces the movement between two strategies for doing this; one that operates from a distance through spectacle and pageant, and one that operates in minute, intimate ways, that rely on pervasive surveillance and that embrocatates power into every feature of social life. It is the value and efficacy of these strategies that are being debated within the police community. Both have the same aim, namely, the shaping of "the soul" of the rank-and-file officer. The quarrel is about the means.

#### **5.5 Opposing Strategies for Shaping Motives**

Both the traditional and the remedial approaches to the bureaucracy problem have as a central feature the shaping of the motivations of rank-and-file members so that they will act in acceptable ways. Both are concerned with limiting the extent to which other sources of influence -- an oppositional subculture, partisan pressures and so on -- will interfere with the ability of managers to produce responses reflecting the vision of policing they are seeking to realize. In other words, both approaches are concerned with producing a professional police. What differentiates them is their understanding of what a properly motivated officer would look like. For the traditional manager it is someone who "naturally" feels and thinks as a "professional" police officer, whereas for the remedial reformer it is someone who follows closely a set of bureaucratic rules. At the heart of this debate are differing conceptions of what professionalism entails.

#### **5.6 Embedded Control**

Foucault's vision of the new forms of disciplinary power is subtle and complicated and involves the embedding of restraint and supervision in the very fabric of social life. The approach of the remedial reformers fits within the general Foucauldian framework by seeking to structure the details of police officers' activity. Thus, for the remedial reformers, what professional policing requires is:

1. clear rules;
2. knowledge of the rules;
3. willingness to follow the rules;
4. capacity to do so; and finally
5. opportunities that will give this capacity expression.

This approach can be illustrated through the analogy of a computer and a computer programme. The actions of a computer are the product of instructions or rules that come from the programmes and that are loaded into memory. To get a computer to respond in the appropriate way one has to ensure that the right programme is loaded in, that there are no other programmes in memory to cause problems and that it has sufficient capacity available to run these programmes. When a computer does not do what is required one does not blame or punish it. Instead one takes a remedial approach that seeks to find the source of the problem and correct it. In the case of a computer doing word-processing, for example, one would check to see that the opportunities for performance are all in order by verifying that the printer is turned on and that the cable linking the computer to the printer is properly attached. If this did not solve the problem one might then look to see if there are other programmes running at the same time that are providing conflicting sets of directions. If everything was in order on these two counts one might then look to see if the programme was properly loaded into memory.

In resisting the remedial approach to police discipline traditional police managers are doing two things. They are resisting this computer-like conception of the "bureaucracy problem" by arguing that police officers are not computer-like entities but are rather human subjects constituted via symbolically charged forms that create identities out of which action flows. They resist the notion that rules can ever guide action completely and insist that action will always be the product of judgments made in concrete situations that cannot be submitted to rules.<sup>147</sup>

What they seek to do by means of traditional strategies is to construct an identity or a way of being in the world that will internally regulate the police officer, in other words, that is "performative" in the sense that it promotes a style of action.<sup>148</sup> For them, rules are guides for assessing the appropriateness of previous police actions rather than a reliable basis for action itself.

## **5.7 Control Through the Construction of Identity**

For traditional managers the way to control the actions of police officers is by a process in which symbolically charged events are used to shape the consciousness of those who witness it. The control strategies that they see as effective are ones involving displays of authority which are used to shape subjects who will then not require close direction or supervision because they will have "become" good police officers.

Punishment and the quasi-legal rituals through which blame is assessed are, for traditional managers, critical vehicles for creating experiences both for the persons involved and for their peers. These dramas, like the dramas of criminal justice they echo, symbolically identify sources of authority and submission to authority.

Although these managers privilege punishment and the ceremonies associated with it as valuable strategies in creating an appropriate basis for judgment, these are not, as we have seen, the only rituals they employ and regard as important. For them, the business of shaping the recruit is accomplished through a variety of means that construct a particular mentality or subjectivity, that are in fact, to use Althusser's terminology, effective in "hailing" out a "subject".<sup>149</sup>

In addition to the dramas of blame and punishment, the rituals of drill compel officers to act in ways that constitute particular forms of authority and the values associated with them, as well as the individuals who respect those authorities. Every salute and every form of address that includes a statement of rank, is charged with meaning and symbolism. Each "Yes Sir!" is an act and a symbol of submission to authority that seeks to "hail" out a particular sort of person.

As noted earlier there is virtually no analysis of the rituals of punishment and drill within the police professional literature. This absence has effectively denied traditional police managers a voice in which to express their understandings of these practices. To discover some insights about this issue one has to turn to other literatures, for example that on law as a "culture of argument"<sup>150</sup> and the literature focusing on the use of language to construct subjectivity.<sup>151</sup>

In the police culture one finds practices that create an identity or a subject who will reproduce a style of action "naturally" because they are simply expressing what they have become. Like traditional management strategies, the police culture does not maintain itself by constructing a recipe book of rules but operates through imagery. Entering into the street culture of rank-and-file officers is a form of conversion in which what is at stake is the very being or identity of the recruit. What recruits learn in and through their exposure to the police culture is how to see the social world of the police and how to act in it. Here too the focus is on the recruit's inner being. What is being created is a person who will be a reliable partner, with whom one can face the uncertainty of the world that is to be policed, and who will cover for one in dealing with superiors.

In looking to the symbols of service court and the symbolic meanings of drill, police managers are engaged in a symbolic contest with the police culture over the state of mind that defines and produces the police identity.

## **5.8 Rehabilitating Traditional Police Management**

The conclusion I draw from this is that the resistance to change on the part of traditional police managers is not simply a blind, thoughtless clinging to the known and familiar, nor is it an attempt to embrace punishment for its own sake. Rather it is a statement that the business of management must be concerned with enabling managers to control rank-and-file members at a distance by shaping the inner being of the officers who will be making discretionary decisions. Seen from this perspective, the resistance of traditional managers to the remedial approach is a claim that policing conditions require a style of management that focuses on the identities of rank-and-file officers as "regulatory regimes" that can be used to control the exercise of discretion.

## **5.9 Understanding the Criticism of the Remedial Reformers**

What this suggests is that there are no grounds for dismissing the traditional response to the bureaucracy problem. Yet, this is precisely what the advocates of a remedial approach have been inclined to do. Why.?

The nub of the reformers' concerns is not with the utility of punishment and drill but rather stems from their views about the ethical propriety of these strategies in today's world. The reason for the attack on the traditional police management strategies is not to be found in the criticism for lack of effectiveness featured in the police management literature itself but in what Garland calls the "voice of sensibility".<sup>152</sup> Decisions about effectiveness are always, he argues

taken against a background of mores and sensibilities which, normally at least, set limits to what will be tolerated by the public.... Such sensibilities force issues of "propriety" upon even the most immoral of governments, dictating what is and is not too shameful or offensive for serious consideration.<sup>153</sup>

What lies behind the move away from punishment is just such a change of sensibility that increasingly views its use in the context of management-labour relations as inappropriate. In responding negatively to the military model, the reformers are rejecting both the use of punishment as a means and the employment of ritualistic displays of respect and submission because they jar contemporary sensibilities, not because they are ineffective.

This response has become a rejection, however, not simply of punishment but of the whole process of "hailing" out a subject, or of constituting a consciousness, through the use of symbols and meaning. That is, they have ignored the phenomenon of what Stenning *et al.*<sup>154</sup> have elsewhere termed "symbolic ordering", because they are offended by the particular symbols employed and the specific subjectivity that these symbols have been used to construct. The result is that they have thrown out the "good with the bad".

In rejecting the use of punishment and the construction of submissive subservient subjects through both spectacle and forms of drill, these reformers are reflecting important changes in Western political sensibilities and associated ethical judgments about the use of violence and the value of submissive relationships. In rejecting, along with this, the use of symbols and the meanings they create and express to shape conduct, they have neglected a very significant basis for promoting the compliance required for a police force that is "professional" in precisely their own sense of the term.

By taking this stance they have followed in the footsteps of Foucault, who argued that a shift from punishment to surveillance had occurred. However, he further argued, incorrectly,<sup>155</sup> that there had been a shift away from the use of spectacle as a form of control to more embedded strategies. Despite this inaccuracy, Foucault was alive to the way in which symbols operated through language and imagery to become a source of power in the contemporary world.<sup>156</sup> This is something that police reformers must come to recognize if they are to create a professional police whose discretion is exercised in ways that reflect the central values of our society. This, as the traditional police

managers correctly recognize, will only take place though the constitution of habits of mind that express those values.

To achieve this, reformers need to pay much more attention to the literature that has developed on the relationship between "discourse", subjectivity and action and they should be much more sensitive to, and appreciative of, the fact that the traditional managers whose style and approach they denigrate in fact understand a great deal about this relationship.

Lest there be any misunderstanding about what is being advocated, I am not proposing an approach to police management that celebrates punishment and submission. On the contrary, I am arguing that if these military features of police management are to be brought in line with contemporary sensibilities then it is important that their rejection is not coupled with discarding the importance of symbols and meanings as a solution to the bureaucratic problem of achieving a professional force.

### **5.10 The Challenge for the Modern Police Manager**

Looked at in this context, the lessons of the Japanese police seem somewhat different from those that police reformers tend to draw. What Bayley's insightful description of the Japanese police suggests is not a lack of concern with the symbolism of ceremony and drill but rather an abiding attention to it.<sup>157</sup> What is central to the Japanese police and their management style is not rule-following, as those who use them as evidence for the success of a professional rule-oriented police suggest. Rather what is crucial is the attention they give to the creation of a mentality and associated habits that reflect and express organizational objectives.

What is also striking about Japanese police management is the way in which it has integrated features of the traditional and more contemporary managerial approaches. That is, they have integrated the symbolic understandings of traditional managers with the instrumental insights of the remedial reformers. The lesson for North American police is that the challenge is not how to promote a move from a traditional to a remedial approach but to understand and integrate the strengths of both in ways that are consistent with, and reflect, contemporary sensibilities. Thus, in Japan, as Bayley notes, "[b]eing a policeman is not just a job", it is, as it used to be within the RCMP, "a way of life".<sup>158</sup> What this means is that:

Duty is personal; it is part of belonging. Failure to act properly is an act of disloyalty against one's brothers rather than an offense against codified rules.<sup>159</sup>

This "way of life" is constantly being "hailed" by rituals and symbols of all kinds. Thus,

Japanese policemen constantly exhort one another to live up to the ideas of the organization. Signs are hung in every station, often framed in glass, bearing mottoes about conduct. The year's slogan in one prefecture was "Create a grassroots police." The motto was not hung and forgotten, an empty ritual, but was continually referred to by all ranks of officers. Superiors seize every opportunity - inspections, shift-meetings, athletic tournaments -- to deliver short lectures about duty and responsibility. There is a great deal of talk about the "police spirit" -- attributes all policemen should display. Policemen pridefully say they are not "sarariman" (salary-man), working only for a wage. They are the new samurai, infused with "Nihon damashii" -- Japanese spirit. The constant inveighing about duty and spirit sounds forced and artificial to an American, more appropriate to a Boy Scout meeting or a Sunday School class than to seasoned police officers. To the Japanese it is part of the style of the organization, as unremarkable as the air they breathe.<sup>160</sup>

These activities would not, I suspect, have sounded all that forced and artificial to Commissioner Herchmer. The challenge for the modern police manager is to discover rituals and symbols that do not sound forced today. Anyone who knows anything about the power of the visual images of "popular culture" knows that this is possible. What modern police managers must learn to do is find rituals and symbols that are "as unremarkable as the air they breathe".

## ENDNOTES

1. See RCMP External Review Committee, Sanctioning Police Misconduct - General Principles, Discussion Paper 8 (Ottawa; Minister of Supply and Services Canada, 1991) at 44, [hereinafter Police Misconduct].
2. M. Foucault, Discipline and Punish: The Birth of the Prison (New York: Pantheon, 1977).
3. D. Garland, Punishment and Modern Society: A Study in Social Theory (Oxford: Oxford University Press, 1990) at 136.
4. *Ibid.* at 145.
5. D.E.J. MacNamara, "Discipline in American Policing" in A. Blumberg & N. Niederhoffer, eds, The Ambivalent Force: Perspectives on the Police (New York: Holdt, Rinehart & Winston, 1985) at 131.
6. R.S.C., 1985, c. R-10, as am. R.S.C., 1985, c.8 (2d supp.).
7. Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedure Within the Royal Canadian Mounted Police, Report (Ottawa: Information Canada, 1976) (Chairman, Judge Marin) [hereinafter Marin Commission Report].
8. See Police Misconduct, *supra*, note 1 at 31-32; C.D. Shearing, Post-Complaint Management: The Impact of Complaint Procedures on Police Discipline, RCMP External Review Committee Discussion Paper 4, (Ottawa: Minister of Supply and Services Canada, 1990).
9. The term "practical knowledge" is taken from Anthony Giddens. For an explanation of his use of the term and its application to police practice see C.D. Shearing & R.V. Ericson "Culture as Figurative Action" (to be published in 1991).
10. This argument parallels Foucault's, *supra*, note 2, insistence that the apparent failure of the prison be questioned and his argument that its persistence is motivated by at least an implicit recognition of its utility as a control strategy: see Garland, *supra*, note 3 at 5, 149-50, 160. The position taken in this report, however, accepts Garland's critique of Foucault's focus on the instrumental consequences of punishment and his neglect of its symbolic aspects: see Garland, *supra*, note 3 at 162-4.
11. Shearing, *supra*, note 8.
12. Garland, *supra*, note 3 at 214.
13. See P.C. Stenning & C.D. Shearing, "Policing" in J. Gladstone, R.V. Ericson & C.D. Shearing, eds., Criminology: A Readers Guide (Toronto: Centre of Criminology, 1991) at 125.

14. M.K. Brown, Working the Street: Police Discretion and the Dilemmas of Reform (New York: Russell Sage Foundation, 1988) at 39.
15. R. Reiner, The Politics of the Police (Brighton, Sussex: Wheatsheaf Books, 1985) at 1.
16. *Ibid.* at 2
17. Policing may also be political in the sense that it is concerned with the "control of overtly political behaviour", *ibid.* In this form of policing, that Brodeur has nicely dubbed "high policing," it is the political process itself that is being safeguarded: see J.-P. Brodeur, "High Policing and Low Policing: Remarks About the Policing of Political Activities" (1983) 30:5 Social Problems 508; see also T. Bunyan, The Political Police in Britain (London: Quartlet Books, 1977), A. Turk, Political Criminality (Beverly Hills: Sage, 1982).
18. Reiner, *supra*, note 15 at 46.
19. See C. Dandeker, Surveillance, Power and Modernity: Bureaucracy and Discipline from 1700 to the Present Day (Oxford: Polity Press, 1990); Foucault, *supra*, note 2.
20. W.R. Miller, "London's Police Tradition in a Changing Society" in S. Holdaway, ed., The British Police (London: Edward Arnold, 1979) 14 at 15. See also G.P. Alpert & R.G. Dunham, Policing Urban America (Prospect Heights, Ill.: Waveland Press, 1988) at 21.
21. R.M. Fogelson, Big-City Police (Cambridge: Harvard University Press, 1977) at 49.
22. See J.M. Jones, Organizational Aspects of Police Behaviour (Guildford, Surrey: Gower, 1980) at 8; M. Punch, Conduct Unbecoming: The Social Construction of Police Deviance and Control (London: Tavistock Publications, 1985) at 75; J. Rubinstein, City Police (New York: Farras, Straus & Giroux, 1973).
23. See D. Bradley, "Some Key Issues Facing Police Management" in I. Freckelton & H. Selby, eds., Police in Our Society (Sydney: Butterworths, 1988) 175, at 177-8; J. Wilson, Varieties of Police Behaviour (Cambridge, Mass.: Harvard University Press, 1968) at 8, 72. There is a socio-legal as well as a space-time dimension to this distance of police officers from supervision that arises from an acceptance of the idea of "police independence", a legal device used to help establish police independence from political influence: see P.C. Stenning, Legal Status of the Police: A Study Paper prepared for the Law Reform Commission of Canada (Ottawa: Minister of Supply and Services, 1982). Thus:

The problem of ensuring compliance with management policy is a common feature of all work situations, however for the police there are special difficulties. The police force as an organisation is able to make and enforce all kinds of administrative and bureaucratic rules, however it is far more difficult to control the actual delivery of the

police service to the community. The constitutional independence of the office of constable severely restricts the force's ability to make rules which limit the exercise of a police officer's discretion in law enforcement activities.

A.J.P. Butler, Police Management (Aldershot: Gower, 1984) at 107.

24. Brown, *supra*, note 14 at 90.
25. See Dandeker, *supra*, note 19.
26. The situation of the police officer is very different from that, for example, of factory workers who may not only be directly supervised but who may also be "disciplined" by the machinery with which they work. This machinery may, among other things, set the pace of work. As Lea notes:

With the fusion of worker and machine, discipline is built into the design and pacing of the machinery. The worker's actions are set out in advance as a part of the structure and process of the machine, quite irrespective of the authority of capital.
- J. Lea, "Discipline and Capitalist Development" in B. Fine *et al.*, eds., Capitalism and the Rule of Law (London: Hutchinson, 1979) 76, 85.
27. Brown, *supra*, note 14 at 44.
28. See Fogelson, *supra*, note 21 at 21.
29. Brown, *supra*, note 14 at 38.
30. See D. James, "Police-Black Relations: The Professional Solution" in Holdaway, ed., *supra*, note 20, 66 at 69.
31. Brown, *supra*, note 14 at 46. This in no way diminishes the earlier point that the police act to realize interests. The question is whose interest is relevant and how is that interest legitimized. A professional police force that takes its direction from "administrative pressure" (Brown, *ibid.* at 46) rather than community pressure is one that acts as an instrument of the state and the alliances of interests that its institutions and procedures promote. A bureaucratic police is, thus, a strategy of power in the Foucauldian sense. Garland, *supra*, note 3 at 137, outlines this as follows:

Foucault stresses that his concept of 'strategy' is not to be understood as the game plan of any particular strategist. Rather it is a term that refers to a discernible pattern of institutional practices or political actions which operate across a number of sites. These practices or actions are structured and to some extent calculated, but they are not necessarily coordinated by any single decision-maker or agency.

32. MacNamara, *supra*, note 5 at 132.
33. D. Bayley, Patterns of Policing: A Comparative International Perspective (New Brunswick, NJ: Rutgers University, 1985).
34. See G. Marshall, "Police Accountability Revisited" in D. Butler & A. Halsey, eds., Policy and Politics (London: MacMillan Press, 1978). See also *supra*, note 23.
35. Brown, *supra*, note 14 at 43.
36. T. Jefferson, The Case Against Paramilitary Policing (Milton Keynes: Open University Press, 1990) at 46-7.
37. See R.G. Hann *et al.*, "Municipal Governance and Accountability in Canada: An Empirical Study" (1985) 9:1 Canadian Police Journal 1 at 43-47.
38. Wilson, *supra*, note 23 at 2-3. See also Jones, *supra*, note 22 at 2.
39. See P.K. Manning, "The Social Control of Police Work" in Holdaway, ed., *supra*, note 20, at 41-42.
40. Brown, *supra*, note 14 at 44.
41. *Ibid.* at 47.
42. See K.R. McCreedy, "The Changing Nature of Police Management: Theory in Transition" in A.W. Cohen, ed., The Future of Policing (London: Sage, 1978) 59, at 60-1 & 69. Plumridge summarizes the results of two studies by himself ("A Study of Police Management and Command Roles", 1988) and Males ("Police Management of Division and Sub-Division", 1983) which identified the characteristics of the military managerial culture and the "organizational profile" associated with it:
  1. The structure was rigid and much energy went into preserving roles, departments, rules, procedure, committees and tradition. It was hierarchical, valued deference and conformity, and adhered to the chain of command.
  2. The atmosphere was impersonal, formal, suspicious and very

action centred. Communication was restricted in its flow, was downward, and feelings were hidden and repressed.

3. Decision-making and policy-making stemmed from the top with little participation from below. Decisions were not to be argued with and there was a clear distinction between policy making and policy execution.

4. Management values and attitudes were concerned with controlling personnel through the sanctions of coercive power; caution towards risk and errors -- the latter were to be avoided and were punished ... [and] firmness and decisiveness were seen as essential.

M. Plumridge, "Management and Organisation Development in the Police Service: The Role of Bramshill" in P. Southgate, ed., New Directions in Police Training (London: HMSO, 1988) 112, 118.

43. I am grateful to Jean-Paul Brodeur for reminding me of the significance of "drill" as a disciplinary strategy.
44. See Fogelson, *supra*, note 21 at 53-60; A.J. Reiss Jr. & D.J. Bordua, "Environment and Organization: A Perspective on the Police" in D.J. Bordua, ed., The Police: Six Sociological Essays (London: John Wiley & Sons, 1967) 25, 48. This traditional militaristic structure is described by Kuykendall and Roberg as mechanistic. They identify five features of the "mechanistic model":
- (1) Specialization: The structure of organizational tasks and activities are specialized into clearly defined positions; members are concerned primarily with their own work and not that of the organization as a whole.
  - (2) Hierarchical: Interactions between members tend to be vertical (i.e. between superior and subordinate in nature), and relationships are governed by the instructions and decisions issued by superiors; status and rank differences are emphasized.
  - (3) Authority: The location of knowledge is inclusive only at the apex of the hierarchy where the final reconciliation of distinct tasks and assessment of relevance is made; prestige is internalized (i.e., personal status in the organization is determined largely by one's office and rank). Influence is derived from organizational position.
  - (4) Rule-oriented: The precise definition of rights, obligations, and methods of performance attached to each functional role guide member behavior; means (or the proper way to do a job) are emphasized rather than the product or service.
  - (5) Position-oriented: Accountability is based on job description and rewards are chiefly obtained through the precise following of

instructions from supervisors; loyalty and obedience to one's superiors and the organization are emphasized.

J. Kuykendall & R.R. Roberg, "Mapping Police Organizational Change" (1982) 20:2 Criminology 241. See also J.H. Auten, "The Paramilitary Model of Police and Police Professionalism" (1981) 4:2 Police Studies 67 at 68-9 where he outlines nineteen features of paramilitary organizations that apply to police organizations.

45. E. Bittner, The Functions of the Police in Modern Society (Washington, DC: US Government Printing Office, 1970).

46. Fogelson, *supra*, note 21 at 53. Auten, *supra*, note 44 at 68 notes that the development of police organization along military lines in the United States took place in two stages:

Apparently those examining the model liked what they saw for in the 1840's the British model of policing was brought to this country. Even though the model was adopted in the United States there was not exact duplication. As Walker (1976) points out, "While the American police were modeled after the London Metropolitan Police... the American police were far less centralized, less militarized, less "professional," and far more political than the London Police."

...

[As a result in] the early part of the twentieth century in the United States, police departments were part of the patronage system that was ingrained in urban politics. Corruption in many police departments was widespread and most agencies were grossly inefficient. Laxity in the adherence to departmental regulations was commonplace. To correct these deficiencies in organization and operations, police reformers turned to the military organizational model as the foundation upon which to establish police discipline and eliminate corruption. As a result, the legacy of the Peelian model has continued to dominate American policing; most notable are its distinctive quasimilitary features emphasizing discipline and hierarchical control. Thus began the long-standing tradition of paramilitary organizations within police departments within the United States.

47. Auten, *ibid.* at 67 comments on the military inspiration of the "new police" as follows:

The "modern" police era was ushered in with the creation of the London Metropolitan Police in 1829. Two commissioners, one a barrister and the other a former officer in the British army, were selected to oversee the organization and operation of the agency. ...[T]he agency was organized along military or paramilitary lines. In looking at the history of the early British police, one recognizes that the literal definition of paramilitary is an exact description of the organization founded by Sir Robert Peel in 1829. It is quite likely that this organizational structure

emerged for several reasons. The first of these is directly related to Peel himself. Not only did Peel create the Metropolitan Police Act of 1829-1830, but he also developed the principles that guided the organization and operation of the "new" police. In looking at these principles, we find that the initial one listed by Peel states, "The police must be stable, efficient and organized along military lines." Additionally, Peel singled out former non-commissioned officers in the military as being particularly suited for inclusion in the department.

The second reason relates to the fact that there was virtually no other organizational model to emulate. The various organizational and management theories that exist today did not exist in 1829. The only other organizational model in existence, other than the military, with a proven track record was the Roman Catholic Church or the Anglican Church. Even though the church is not a military organization in the strict sense of the term, one would be hard pressed to find a more paramilitary organization, then and today.

48. Fogelson, *supra*, note 21 at 54.
49. See P.C. Stenning, "Trusting the Chief: Legal Aspects of the Status and Political Accountability of the Police in Canada" (unpublished, Faculty of Law, University of Toronto, 1983); Hann *et al.*, *supra*, note 37.
50. Fogelson, *supra*, note 21 at 57.
51. The position taken by local politicians, which was discredited by those criticizing centralized political control as partisan, was quite different. Brown, *supra*, note 14 at 12 writes:

In contrast, local politicians, not all of them connected with political machines, emphasized the need for the use of police power to be tempered by the mores and values of a particular community. Control over police discretion was predicated on the idea that the police had to be part of the community rather than above it.
52. Fogelson, *supra*, note 21 at 59.
53. See T.A. Critchley, A History of Police in England and Wales: 900-1966 (London: Constable, 1978).
54. Great Britain, Royal Commission on the Police. Final Report (London: HMSO, 1962); L. Lustgarten, The Governance of the Police (London: Sweet & Maxwell, 1986); Hann *et al.*, *supra*, note 37.
55. L. Brown & C. Brown, An Unauthorized History of the RCMP (Toronto: James Lewis and Samuel, 1973); Marin Commission Report, *supra*, note 7, Jefferson, *supra*, note 36.

56. Marin Commission Report, *ibid.*, at 16.
57. Brown, *supra*, note 14 at 56.
58. Jefferson, *supra*, note 36 at 47.
59. Jefferson, *ibid.*, in commenting on this claim, and the debate that surrounds it, has this to say:

This gap between the ideal (impartial) obligations imposed by the office of constable, and the actual (partial) decisions made every day by existing police officers took a long time to be acknowledged. When it was, the notion of police discretion was born. The conservative assumption that the exercise of this discretion was relatively benign enabled the belief in impartial law enforcement to survive more or less intact. But the growth of a radical sociology of policework, which emphasized the class-based outcomes of discretionary decision-making, exposed a hidden politics of policing.

60. In part this has occurred because of resistance by police associations and unions to the regimentation of drill and the way in which it extended police discipline into officers' private lives. In commenting on this resistance Reiner cites the comments of a uniformed constable in Britain:

The discipline code is rather out of date, and they've [the Police Federation] done nothing about that... You can't be a policeman and go about untidy or you won't command respect when you're in uniform. But how you command that respect is not for any piece of paper to say do it this way... They've got to be allowed a degree of freedom or they can't command any respect. You know, you get a student walking down the road -- I'm saying a student, because that's the easiest one to pick on. He looks at us and says 'he's' indoctrinated, he's got a tie and collar on!' Personally I like wearing ties and collars, but I don't like this attitude of 'you will wear a tie and look smart because you're a policeman'. You can't have no rules and regulations because then you'll always have the one individual who's going to go silly, start injecting himself with heroin, smoking pot and everything. But I'd like to see a little bit more freedom to what you can say and what you can do.

R. Reiner, The Blue-Coated Worker: A Sociological Study of Police Unionism (Cambridge: Cambridge University Press, 1978) at 72. Elsewhere, in commenting on the decline in the use of drill during the second half of this century, Reiner, *supra*, note 15 at 65, notes that:

The old emphasis on drill and discipline was also being eroded as a response to a growing ideology of 'man-management', and the need to match changing social fashions in order to attract recruits.

61. Significantly drill was at one point virtually synonymous with training. Bunyard's comments on the London Metropolitan Police at its inception are instructive:

It is noticeable that the only training initially given to policemen was military-style drill instruction; not until much later was it considered necessary to have formal courses in such subjects as handbooks and written instructions, aided by periods during which superintendents would "drill and instruct the officers and constables so assembled for one hour from the time of meeting, and read and fully explain to them the General Orders, together with the principal Rules and Regulations for their government and guidance."

R.S. Bunyard, Police: Organisation and Command (Estover, Plymouth: Macdonald & Evans, 1978) at 85.

62. Marin Commission Report, *supra*, note 7 at 19.
63. Reiner, *supra*, note 60 at 257.
64. R. Harris, The Police Academy: An Inside View (New York: John Wiley, 1973).
65. Brown, *supra*, note 14 at 88-9.
66. D. Bradley, N. Walker & R. Wilkie, Managing the Police (Brighton: Wheatsheaf, 1986) at 193.
67. I am grateful to Jean-Paul Brodeur for drawing my attention to the significance of minor violations to police discipline.
68. Brown, *supra*, note 14 at 89.
69. Reiner, *supra*, note 15 at 53.
70. W.R. Miller, Cops and Bobbies (Chicago: University of Chicago Press, 1977) at 40.
71. Jefferson distinguishes between direct and indirect supervision. The latter includes both training, as I have noted here, and record keeping. See Jefferson, *supra*, note 36 at 63 & 76.
72. See, for a British example, Jones, *supra*, note 22 at 29-30.
73. S.O. 1990, c.10, s.61.
74. These parameters are sometimes interpreted both by the civil and service courts in ways that make them less restrictive than a naive reading suggests: See D.J. McBarnet, "Arrest: the Legal Context of Policing" in Holdaway, ed., *supra*, note 20 at 24. There is some argument as to whether this means that such rules simply legitimate inappropriate police conduct without limiting it, or in fact do limit it. In other words, there is some disagreement as to whether these rules are in point of fact "rules for police deviance": See McBarnet, *ibid.*; R.V.

Ericson "Rules for Police Deviance" in C.D. Shearing, ed., *Organizational Police Deviance: Its Structure and Control* (Toronto: Butterworths, 1981).

75. See H. Goldstein, *Policing a Free Society* (Cambridge, Mass.: Bollinger, 1977). See also A. Blumberg & F. Niederhoffer, eds., *supra*, note 5 at 141; R.V. Ericson, *Making Crime: A Study of Detective Work* (Toronto: Butterworths, 1981); R.J. Lundman, *Police Behaviour: A Sociological Perspective* (New York: Oxford University Press, 1980) at 241-53; Shearing, ed., *ibid.*; J.H. Skolnick, *Justice Without Trial* (New York: J. Wiley and Sons, 1966) at 219. Butler, *supra*, note 23 at III outlines this conflict as follows:

The root of the alienation experienced by constables appears to be the result of operational officers, constables and probably some first line supervisors, believing they have different objectives to their senior officers. The constables' orientation is towards the street police philosophy of action, relatively unimpeded discretion, with experience of the past as a guide for decision making. This is seen to conflict with the apparent objectives of senior officers for administrative orderliness and adherence to rules and procedures as ends in themselves. It is a conflict between the inherent risk taking of street policing with the ultra caution of the bureaucrat. This alienation between the street police culture and senior officers appears to occur relatively soon after a recruit joins the force.

76. M. Finnane, "Police Corruption and Police Reform: The Fitzgerald Inquiry in Queensland, Australia", (1990), *Policing and Society* 1:159-171.
77. Brown, *supra*, note 14 at 92.
78. Punch, *supra*, note 22 at 1-20. Order is very often a product of struggle in which different ways of doing things are contested: Stenning & Shearing, *supra*, note 13. This is particularly true in the case of employer/employee relations: see, for example, P.K. Edwards & Scullion, "Deviance Theory and Industrial Praxis: A Study of Discipline and Social Control in an Industrial Setting" (1982) 16:3 *Sociology* 322-40. In commenting on this Punch, *ibid.* at 181, writes:

In every organization there exists an informal organization -- a shadow organization in which dramas of power are played out... (Kanter, 1977:164)

With reference specifically to the response to police behaviour causing the organization public embarrassment Punch writes that:

In the face of scandal there are two levels of counter-strategies to the deviant labelling; the top, in order to keep the organization from being labelled deviant, endeavours to individualize the issue, to scapegoat, and to espouse the "rotten apple" theory; but the bottom mounts a counter-intelligence of black propaganda that pushes the label back up the hierarchy, suggesting that the deviance is widespread. The

organization treats the lower orders as disloyal whereas they perceive themselves as the genuine defenders of the true ends of the organization and believe that they are being accused of precisely what the organization demanded of them.... The "workers" in the police bureaucracy are not deferential and servile actors but, rather, they actively and energetically defend their definition of the situation and their concept of self and are prepared to take on the hierarchy of authority when it loses legitimacy. Feeling betrayed by the organization the lower ranks may feel no compunction about "stirring the shit" both as defence and as revenge.

79. Brown, *supra*, note 14 at 286.
80. See Bittner, *supra*, note 45 at 60; Marin Commission Report, *supra*, note 7 at 116-117; C.D. Shearing, "Subterranean Processes in the Maintenance of Power" (1981) 18:3 Canadian Review of Sociology & Anthropology.
81. See C.D. Shearing, "Deviance and Conformity in the Reproduction of Order" in Shearing, ed., *supra*, note 74; Shearing & Ericson, *supra*, note 9.
82. Brown, *supra*, note 14 at 49-50.
83. Shearing, *supra*, note 80.
84. See McBarnet, *supra*, note 74; Ericson, *supra*, note 74.
85. Brown, *supra*, note 14 at 50.
86. See Shearing, *supra*, note 81.
87. See Shearing, *supra*, note 8.
88. R.A. Duff, Trials and Punishments (Cambridge: Cambridge University Press, 1986) at 233-34.
89. Garland, *supra*, note 3 at 136.
90. N. Machiavelli, The History of Florence and the Prince, rev'd ed. (London: Henry G. Bohn, 1854) at 457.
91. Marin Commission Report, *supra*, note 7 at 133.
92. Bunyard, *supra*, note 61 at 348-49.
93. Bittner, *supra*, note 45 at 59-60.

94. *Ibid.* at 61.
95. *Ibid.* at 62. Bittner also regards the military model as having served to impede rather than create a truly professional police by encouraging the development of rank and file resistance. Thus, at 67-8 he states:

It is part of the pathological influence of the military bureaucratic approach to the "professionalization" of the police that it actually strengthens tendencies towards the combination of occupational individualism and defensive fraternal solidarity even though it is opposed in principle. The proliferation of formal regulation and the single-minded care that is given to their enforcement -- even if only in appearance -- creates a flow of communications that moves almost exclusively downwards through the chain of command. Though most of this communication does not actually relate to the realities of police work, or relates to it only in the most superficial way, it floods, so to speak, all the channels to capacity. Despite the fact that police departments depend almost entirely on the perceptiveness and judgement of their individual members to get the work of policing done, despite the fact that citizens who solicit police intervention always deal with individual officers whose decisions about the merits of the case are final, there is virtually no feedback to the institution beyond the kind of record keeping that barely serves statistical purposes. Even if personnel would not have reasons of their own to deny the department vital information, the system would continue to encourage it because it contains no routinely open channels for return communication. This is not to say that those in command positions would not like to know what their subordinates know. Quite the contrary, they decry secretiveness. But they don't seem to realize that they cannot expect an upward flow of communications of any kind from the soldier-bureaucrat-policeman who is conditioned to respond to the incessant voice of regulation with "Yes, Sir!" and who will inevitably reply to even the well meant question, "What do you think?" with an obligatory "Whatever you say, sir!"

96. Marin Commission Report, *supra*, note 7 at 133.
97. *Ibid.* at 134.
98. *Ibid.* at 135.
99. P. Schuck, Suing Government: Citizen Remedies for Official Wrongs (New Haven, Conn.: Yale University Press, 1983) at 3.
100. See J. Huberman, "Discipline Without Punishment" (1964) 42 Harvard Business Review 62.
101. Henry, in a critique of C.D. Shearing & P.C. Stenning, "From the Panopticon to Disney World: the Development of Discipline" in A. Doob & E. Greenspan, eds., Perspectives in Criminal Law: Essays in Honour of John LI. J. Edwards (Aurora, Ontario: Canada Law

Book, 1985) 335 (who had identified a shift in corporate policing to an instrumental focus on remedy), proposes three alternatives to the punitive approach within the corporate sphere: "corrective-representative discipline", "accommodative-participative-discipline" and "celebrative-collective-discipline": S. Henry, "Disciplinary Pluralism: Four Models of Private Justice in the Workplace" (1987) 35 The Sociological Review 279. The remedial approach as it is outlined in this report incorporates themes from each of these alternatives.

102. See V.A. Leonard & H.W. More, Police Organization and Management (Mineola, N.Y.: The Foundation Press, 1982); S. Souryal, Police Organization and Administration (Cincinnati, Ohio: Aggrimage, 1985); E.A. Thibault, L.M. Lynch & R.B. McBride, Proactive Police Management, 2d ed. (Englewood Cliffs, NJ: Prentice Hall, 1990).
103. See President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Police (Washington, D.C.: US Government Printing Office, 1967) at 42-44; P.M. Whisenand & R.F. Ferguson, The Managing of Police Organizations (Englewood Cliffs, NJ: Prentice Hall, 1973) at 201. By now, of course, the corporate model itself had changed as management theory had begun to challenge the traditional bureaucratic approach and what Henry terms "punitive authoritarian discipline" within the work place: Henry, *supra*, note 101 at 281. Stinchcombe summarizes this larger debate as follows:

[T]he classical bureaucratic model has come to dominate every facet of our lives - to the point where it has almost become accepted as the "status quo". But somewhere along the way to becoming irrevocably institutionalized, bureaucracy was confronted with a new spirit of individuality which challenged the "bigger is better" premise upon which it had grown and flourished. The structure that had once been acclaimed for its efficiency was suddenly being criticised as cumbersome; the rules and regulations that had once been praised as the essence of impartiality were coming to be viewed as arbitrary and discriminatory; and perhaps most importantly, once-docile employees were rising up like sleeping giants to unite in opposition against the dehumanizing effects'of bureaucratic control.

J.B. Stinchcombe, "Beyond Bureaucracy: A Reconsideration of the 'Professional' Police" (1980) 3:1 Police Studies 49 at 49.

104. R.J. Marin, "Police Management Issues Under Financial Restraint" (1984) 8:1 Canadian Police College Journal 1.
105. Police Misconduct, *supra*, note 1.
106. J. Redeker, Discipline: Policy and Procedure (Washington: Bureau of National Affairs, 1983).
107. Police Misconduct, *supra*, note 1 at 6.

108. For an earlier statement of the principles of "affirmative discipline" see Huberman, *supra*, note 100 at 65-67.
109. Cited in Police Misconduct, *supra*, note 1 at 7.
110. See A. Goldsmith, "Taking Police Culture Seriously: Police Discretion and the Limits of Law" (1990) Policing Society 91 at 97-100; Bunyard, *supra*, note 61 at 209.
111. Marin, *supra*, note 104 at 9.
112. Police Misconduct, *supra*, note 1 at 8.
113. G.W. Adams, Grievance Arbitration of Discipline Cases: A Study of the Concepts of Industrial Discipline and their Results (Kingston, Ontario: Industrial Relations Centre, Queen's University, 1978) at 2. See also P. Barnacle, Arbitration of Discharge Grievances in Ontario: Outcomes and Reinstatement Experiences, Research and Current Issues Series No. 6, (Kingston, Ontario: Industrial Relations Centre, Queen's University, 1991). Police Misconduct, *supra*, note 1 at 3 is even more forceful:

The problem with discipline as punishment is that it is a relatively ineffective method of teaching or achieving socially desirable behaviour. We have known this, as a matter of common sense and experience, for centuries. More recently behavioural psychologists and others who systematically study principles of learning have confirmed what we already knew -- that various methods of positive reinforcement and modelling are far more effective than adversive conditioning (punishment) in achieving behaviour control.

114. Adams, *ibid.*
115. W.G. Archambeault & C.R. Fenwick, "A Comparative Analysis of Japanese and American Police Organizational Management Models: The Evolution of a Military Bureaucracy to a Theory Organization", in (1983) 6:3 Police Studies 3. See also W. Ames, Police and Community in Japan (Berkeley: University of California Press, 1981) and Police Misconduct, *supra*, note 1.
116. Archambeault & Fenwick, *ibid.* at 6.
117. W. Westley, Violence and the Police: A Sociological Study of Law, Custom and Morality (Cambridge, Mass.: The MIT Press, 1970).
118. See Brown, *supra*, note 14; Shearing, *supra*, note 80.
119. D. Bayley, Forces of Order: Police Behavior in Japan and United States (Berkeley: University of California Press, 1976).

120. See Bittner, *supra*, note 45; Stinchcombe, *supra*, note 103 at 53.
121. Archambeault & Fenwick, *supra*, note 115 at 6.
122. Stinchcombe, *supra*, note 103 at 60.
123. See, e.g., Bunyard, *supra*, note 61 at 346-47.
124. This idea of commitment to rules is very clear in Redeker's proposal of affirmative discipline as comprising a progressive process of reinforcing a bond between the individual and organizational rules:
  1. Initial Employment -- Considerable time is spent with the employer making sure that the employee understands all the rules of the workplace and why those rules are necessary and important. The employee formally signs a statement of assent and commitment to those rules of conduct.
  2. Period of Probation -- Upon expiry of any period of probation, the employee is asked whether he or she wishes to become a permanent employee, recognizing that permanent employment involves an assent and commitment to the company's or organization's rules. If the employee accepts the offer of permanent employment the employee's supervisor will explain again the company's policies and rules and the employee will once again formally sign a second statement of assent and commitment. This second affirmation emphasizes the importance of the rules and policies and builds a consensual bond between the employee and the supervisor; it gives the supervisor a personal interest in seeing the employee succeed and allows the supervisor to feel more comfortable in confronting the employee about any possible infraction.
  3. First Violation -- Assuming it is not a major violation the supervisor meets with the employee, discusses the violation and obtains a verbal assurance from the employee that he or she understands the rule and his or her commitment and obligation to follow the rule. The details of this meeting are then confirmed in writing to the employee.
  4. Second Violation -- The employee is once again counselled by his or her supervisor and this time is required to reaffirm his or her desire for permanent employment by signing a special reaffirmation of company rules and policies. This special affirmation is intended to emphasize in a forceful way that both parties recognize that their voluntary association or contract of employment is premised on an acceptance of the rules of the workplace. The employee is not left with the impression that he or she is being punished but rather with a feeling of having failed to live up to an important personal commitment.
  5. A Third or Subsequent Violation -- At this stage the supervisor will ask the employee directly: "Do you wish to continue your employment?" If the employee does, the supervisor will ask the employee to sign a statement

- (a) acknowledging violation of a rule,
- (b) indicating a desire to remain employed,
- (c) reaffirming assent and commitment to the company rules, and
- (d) recognising that another similar violation will constitute a lack of desire to remain employed and will constitute a voluntary termination of employment.

Cited in Police Misconduct, *supra*, note 1 at 7-8.

- 125. This position resonates with sociological theory of the 1950's and 1960's which saw conformity and deviance in terms of bonding to internalized rules and opportunities for acting in conformity with their directions: see T. Hirschi, Causes of Delinquency (Berkeley: University of California Press, 1969).
- 126. This concern with rules and impartiality is consistent with Weber's notion of bureaucracy: see H.H. Gerth & C.W. Mills, eds., From Max Weber: Essays in Sociology (New York: Oxford University Press, 1946) 16 at 196-204. Dandeker, in commenting on changes in power relations, identifies four "shifts in the relations connecting central authorities, subject populations and intermediate officials in systems of administrative power" as features of modern systems of control: Dandeker, *supra*, note 19 at 196. The first of these shifts concerns rules and the process of bureaucratization identified by Weber.
- 127. Brown, *supra*, note 14 at 292.
- 128. See R.V. Ericson & C.D. Shearing, "The Scientification of Police Work" in G. Bohne & N. Stehr, eds., The Knowledge Society. Sociology of Science Yearbook, Vol. 10 (Dordrecht: Reidel, 1986).
- 129. See Shearing, *supra*, note 8.
- 130. Brown, *supra*, note 14 at 88.
- 131. Auten, *supra*, note 44.
- 132. See M.R. Chatterton, "The Supervision of Patrol Work Under the Fixed Points System" in Holdaway, ed., *supra*, note 20, at 83.
- 133. J.H. Skolnick & D.H. Bayley, The New Blue Line: Police Innovation in Six American Cities (New York: The Free Press, 1986) at 7.
- 134. D.K. Das, "Military Models of Policing: Comparative Impressions" (1986) 10:4 Canadian Police College Journal 267 at 267.
- 135. Punch, *supra*, note 22 at 195. The resistance to change comes as much from police

associations as it does from police managers. While police management and the representatives of rank and file officers disagree about many things, such as the conditions of employment and the extent to which the disciplinary process includes adequate protections for members, they do not tend to disagree over the value of a military model: see Reiner, *supra*, note 60 at 88-92.

136. See Police Misconduct, *supra*, note 1; McCreedy, *supra*, note 42 at 70. This response is consistent with the observation that organizations typically "resist innovations": see H. Kaufman, The Limits of Organizational Change (University, Alabama: The University of Alabama Press, 1971) at 11. At 39-40, Kaufman states that:

A host of forces ... tend to keep organizations doing the things they have been doing in the recent past, and doing them in just the way they have been doing them. The generally recognized collective benefits of stability and the opposition to change based on calculations of prevailing advantage, protection of quality, and the costs of modification furnish a thought-out foundation for resisting all efforts to reshape organizations or alter their behavior.

137. Bradley, *supra*, note 23 at 180 & 184.
138. Foucault, *supra*, note 2.
139. C. Smart, Feminism and the Power of Law (London: Routledge, 1989) at 14.
140. See S. Cohen, "Taking Decentralization Seriously: Valves, Visions and Policies" in J. Lowman, R.J. Menzies & T.S. Palys, eds., Transcarceration: Essays in the Sociology of Social Control (Aldershot: Gower, 1987) 358; Garland, *supra*, note 3; T. Mathiesen, "The Eagle and the Sun:  
On Panoptical Systems and Mass Media in Modern Society" in Lowman, Menzies & Palys, eds., *ibid.* at 59. I am grateful to Alan Hunt for making available to me an unpublished paper which critically examines Foucault's understanding of law and power.
141. Smart, *supra*, note 139 at 14.
142. Duff, *supra*, note 88 at 233.
143. Marin Commission Report, *supra*, note 7 at 19.
144. See Shearing & Ericson, *supra*, note 9.
145. Foucault, *supra*, note 2.
146. Garland, *supra*, note 3 at 143.

147. In taking this position they are adopting an argument that is well established within the literature on rules. For a review see Shearing & Ericson, *supra*, note 9.
148. See J. Butler, Gender Trouble: Feminism and the Subversion of Identity (New York: Routledge, 1990) at 1-5 and 140-191.
149. See C. Weedon, Feminist Practice and Poststructural Theory (New York: Basil Blackwell, 1987) at 30.
150. See J.B. White, Justice as Translation: An Essay in Cultural and Legal Criticism (Chicago: The University of Chicago Press, 1990).
151. See Weedon, *supra*, note 149.
152. Garland, *supra*, note 3 at 214.
153. *Ibid.*
154. P.C. Stenning *et al.*, "Controlling Interests: Two Conceptions of Order in Regulating a Financial Market" in M.L. Friedland, ed., Securing Compliance: Seven Case Studies (Toronto: University of Toronto Press, 1990) 88.
155. See Mathiesen, *supra*, note 140.
156. See M. Foucault, The History of Sexuality. Vol. 1: An Introduction, trans. R. Hurley (New York: Random House, 1978); M. Foucault, "The Order of Discourse" in R. Young, ed., Untying the Text: A Post-Structuralist Reader (London: Routledge & Kegan Paul, 1981).
157. Bayley, *supra*, note 119.
158. *Ibid.* at 72.
159. *Ibid.* at 71.
160. *Ibid.* at 72.

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## NOTES