

“Limits to Reforming Police Governance in Canada”

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Abstract

As with many jurisdictions across North America, public policing in Canada is experiencing an ongoing crisis of legitimacy, which has emerged on numerous fronts largely rooted in the policing of marginalized and racialized communities. This has led to significant government response, including two independent reviews (of police oversight and the practices of street checks, or carding), and the introduction of new legislation for police governance (The Safer Ontario Act). However, it will be argued that these reforms are framed as ways to achieve more democratic policing within a "policing by consent" framework. They will inevitably fall short because this model does not reflect the essentially coercive nature of police work and the colonial roots of public policing in Canada.

Thank you for attending today's session on "Reforming Police Forces". These are issues, I believe, of critical importance

My particular interest is in police governance and accountability, which, I will argue, cannot be considered apart from other initiatives to reform the police. Many have been particularly troubling in my home province of Ontario, indeed across Canada. It seems that, after literally decades of attempts at reform, little headway has been made, particularly in the areas of police governance and accountability.

Policing

I will not start by enumerating the reviews, reports and inquiries that deal with the relationships between police governance bodies and the police themselves. There are many. For the most part, they are looking at relationships between different governance agencies and EITHER the police as an institution OR individual officers. The goal is generally to find that balance between the police (again, either at the level of the institution or individual officers) and those who would control, monitor, or otherwise hold them to account. It is, for all intents and purposes, an administrative or bureaucratic approach within a governance framework. However, what is generally missing from most governance models is a deeper consideration of policing. In the literature and in practice we perceive "policing" separate from "governance" and this, I would argue, is the problem. I will argue that one of the hallmarks of democratic governance of the police, that of independence, is perhaps one of the contributing factors to the stalemate in police reform. It is the principle of independence which permits the reproduction, indeed, the tacit stamp of approval, of problematic policing of communities.

As I mentioned, there have been MANY reports in Ontario since at least the 1970s which have looked at different arrangements for policing the police. A closer look at them reveals how they have either explicitly or implicitly considered the task of "policing" - it is generally brief, and typically asserts the Peelian principals that "the police are the public and the public are the police". Peel's principles themselves are, we are told, based on the notion of policing by

consent. By way of instruction, we are referred to the Metropolitan Police in London (1829?), the main historical reference to modern public policing: that is, policing carried out at the local level, by members of one's own community, and carried out largely by consent. Rob Reiner (2013) asserts that the main goal of the Metropolitan Police was crime prevention, which relied heavily on public consent and cooperation; indeed, he suggests that if coercion or law enforcement had to be used, the police had failed. In contemporary times, this model is assumed to be the pan-police model in Canada with perhaps the notable exception of the policing of Indigenous communities.

In these reviews, colonial models of policing, generally rooted in the Royal Irish Constabulary, are inserted as a point of contrast except, perhaps as I mentioned, in the case of Indigenous peoples. Monaghan (2013) notes that continuous intensification of settler colonial practices against Indigenous people (p 123), with the NWMP as the primary tool, were "paramilitary inspired". "Modelled on the Royal Irish Constabulary, ... the NWMP was created as an armed paramilitary organization staffed almost exclusively with members who were 'lifted out' of their localities and transplanted to impose colonial authority over a subject population...The NWMP exemplified the symbolic and material expansion of settler colonial authority into the North-West" (Monaghan, 2013, p. 126)

It appears, though, that with respect to the policing of non-Indigenous communities, coercive, non-consensual models of policing have been underemphasized. Interestingly, Lenz and Chaires (2006) have looked at how Peel's principles of the New Police were presented in policing textbooks, the source of much, if not most, references to Peel. They found that most refer only to other texts, and none were found to have gone back to primary sources. Indeed, they refer to Peel's principles as "an invention of the 20th century policing textbook" (p. 70), which has become idealized, and a "Whiggish perspective, one that largely viewed English history as a linear story of progress" (p. 74). Importantly, they found that police histories tend to under-scrutinize the military structures of the "new police" suggesting that perhaps even the most basic of Peel's Principles were overlooked (p 76). Again, Monaghan (2013) has outlined the

imposition of colonial police and policing practices in many communities, not just Indigenous communities. Marquis (1997) shows how the Royal Irish Constabulary was infused in most police forces imposed by the British in some way, especially where uprisings, treason and sedition were perceived to be legitimate threats. He found this to be the case in Quebec, Newfoundland and Victoria (regionally), and in urban vs rural tensions (across the country but especially in the east).

We need, at this point, to transport our analyses into more contemporary times. We cannot see the colonizing effects of the policing of Indigenous peoples as an historical artifact or only relevant on reserve or contested land. Nor can we only point fingers at the RCMP. It is one of many colonial institutions that are responsible for the over-policing and over-incarceration of Indigenous people in Canada, Starlight tours (where Indigenous men have been driven to the outskirts of town in the middle of the Canadian winter and left to find their way back to safety and which has resulted in many deaths due to exposure), as well as the removals of Indigenous children from their homes. As my colleague Pam Palmater (2016) points out, the public police across the country have also contributed to the crisis of missing and murdered Indigenous women. She “...highlight[s] the lesser-known problem of police-involved racialized and sexualized abuse and violence against Indigenous women and girls as a root cause of the large numbers of murdered and missing Indigenous women and girls in Canada.” (abstract). Indeed, she says “...police actions as the instigators, perpetrators, and/or enablers of the phenomenon have been overlooked” (p. 255).

That said, the reviews and reports on police governance have acknowledged that there is currently widespread dissatisfaction, even hostility, toward public policing agencies and those that govern them, that extends far beyond Indigenous people and much deeper into many communities in Canada. To some extent, that is to be expected because most reviews are generated out of specific, sometimes repeated incidents of a similar nature. They range from the most extreme cases of shootings of unarmed mentally ill or racialized men, to offensive posts on social media. But there is invariably profound unhappiness with the outcomes of

investigations, regardless of which governance or oversight body conducts them. The communities are typically described as ‘distrustful’ of the police, and the answer is typically a rearrangement of the administrative relationships among governing bodies. At best, they recommend reforms to training, education and police-community relations, rather than reforms which would result in a fundamental shift in the institution itself. And so to date, little has really changed. We still have profound concerns with respect to racist policing practices, excessively coercive police responses, and deep resistance from communities to cooperate with the police.

Governance

I turn now to a consideration of the guiding principle of police governance, which, as I have already suggested, I believe to be one of the main roadblocks to reforming the police. Independence, which is operationally and conceptually defined as arm’s length, dispassionate, and non-interventionist, is a defining feature in democratic policing. Its goals are laudable – to prevent political interference with the smooth, professional and objective operations of the police. Indeed, under such a model, the Chief and senior command are the experts in policing and have complete and unfettered control over “operations”, the deployment of resources, and determining the context for communities to engage with the police, in both formal and informal ways. Interrupting, disrupting or otherwise interfering with this business is considered undesirable, undemocratic and potentially corrupting.

And yet “independence” may not be desirable, at least in the way it has played out in current frameworks. Clearly, it is not possible to have complete independence from the police because governing bodies are administratively linked with the police so they can do their jobs. This means, in effect, that independence from the police is not equitably distributed, for the social and political distance between governance bodies and communities is far greater than it is between governance bodies and the police; communities do not have the institutional, social or political capital to have an equal presence, equal access or equal influence in governance

matters. In addition, the appointees to these bodies come from very different communities than the policed communities; indeed, they likely have more, if not a lot, in common with the members of police forces. In fact, I would argue that the way in which independence currently plays out has been more “exclusionary” than independent and has contributed to the continued marginalization and demoralization of subject/policed communities. Independence of governance bodies further marginalizes communities while buying into a model of police governance that does nothing toward reform.

We have seen, too, how the uncontested notion of democratic policing has also been problematic. Canada is not alone in experiencing attacks on democratic rights by police themselves; the policing of the G20 in Toronto in 2010, the spying on peaceful activists, and journalists, and widespread over-policing of certain marginalized communities such as the homeless, members of the LGBTQ2 communities, Indigenous peoples and racialized men in general, are more than a few examples. One would be hard pressed to assert that these communities are “at one” with the police. And yet, as Pam Palmater notes the institutional protections afforded to police officers, such as union protections, publication bans with respect to their law breaking, and secrecy around internal disciplinary proceedings, mean they almost never have to take responsibility for their actions. And they are, except in isolated circumstance, out of the reach of external, independence governance bodies.

Again, I turn to the wise words of Rob Reiner (2013), correct in offering caveats regarding “democracy”, which is generally defined solely in terms of voting, regardless of the “tyrannies of the majority”. Police policies, and especially practices, are rarely developed through meaningful, consensual community engagement. “There can be no doubt that in a democracy policing functions and priorities, like other policy areas, should be determined ultimately by democratic processes, and not by expert, professional or government fiat. How to achieve a model of police governance that is democratic has long been a vigorously disputed issue” (Reiner, 2013, p. 169)

If we accept that policing was imposed under different models than that attributed to Peel, we can more readily accept that they were never meant or designed to accommodate members of the public equally. I am not suggesting that policed communities want nothing to do with the police. Surely they do - but different police and different policing. Independence has been used to prevent policed communities from having full impact on significant transformation of policing.

References

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