
Community Policing Without the Police? The Limits of Order Maintenance by the Community

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The proper role for the police in combating disorder has sparked controversy for as long as the police have existed. Recently much of this debate has been about whether “public order” is a worthwhile goal at all,* but the debate also raises a different question: If we want our public spaces to be orderly, who should have the responsibility for maintaining that order? In principle, the police are not the only possible answer to this question, since a variety of other community institutions might take responsibility for order maintenance. It is in that context that I mean to examine the wisdom of community policing without the police.

This question may appear unimportant simply because much of the recent criminological literature has been skeptical about the importance of public order. If order is not an important goal, there is no point in asking who should have responsibility for it. In the end, however, this skeptical position is untenable. Disorderly behavior such as verbal harassment of women, obstruction of busy thoroughfares, noise pollution, flagrant public urination, and deliberate intimidation make unfair use of public spaces. Even if it turned out that these actions do not contribute to a feeling of lawlessness

* Most of that debate, in turn, has focused on the question of whether order maintenance prevents serious crime down the road. I have criticized this preoccupation elsewhere (Thacher, 2004; Harcourt & Thacher, 2005).

that emboldens more serious criminals (Wilson & Kelling, 1982),* they are still wrong, and our public spaces would be better off without them. Without any attempt to regulate disorder, the very existence of shared public spaces becomes precarious, as city dwellers disengage from the world around them and retreat into segregated environments where they will not encounter conflict in the first place (Milgram, 1970; Lynch, 1984, p. 214).

Despite appearances to the contrary, even the most radical critics of police order maintenance concede that disorder should be regulated. Richard Sennett's *Uses of Disorder*, for example, is not really a defense of disorder. It is an argument that neighborhood residents rather than government officials ought to regulate it. Sennett worried that modern society insulates us too well from the need to deal with conflict, so that personality development remains stuck in a self-centered adolescence in which we ignore the concrete demands made by other people. As treatment for this modern personality disease, Sennett did prescribe more exposure to a "challenging social matrix," and this is the sense in which he "wants more disorder" (Skogan, 1990, p. 8). Simply experiencing disorder, however, was not enough for Sennett; he believed that true personality development requires actual engagement with conflict through attempts to resolve it. Thus, what was needed was "not simply ... places where the inhabitants encountered dissimilar people; the critical need is for men to have to deal with the dissimilarities" (1970, p. 138). To accomplish that goal, Sennett believed that state regulatory bodies (including police but also other agencies, like land use authorities) should step aside to allow neighborhood residents to cope with conflicts themselves:

If the kids were playing records loudly, late at night, no cop would come to make them turn the record player off—the police would no longer see to that kind of thing. If a bar down the street were too noisy for the children of the neighborhood to sleep, the parents would have to squeeze the bar owner themselves, by picketing or informal pressure, for no zoning laws would apply throughout the city. (Sennett, 1970, p. 144)

Sennett sought to ensure that "men and women must deal with each other as people" in order to block "the flight into abstraction" that allows personality development to stall in adolescence (1970, p. 154).

Less elaborate considerations have led other critics to support some form of community-based order maintenance. In keeping with his "left realist" emphasis on the importance of public safety to the urban poor, Roger

* In putting the point this way, I do not mean to concede the criminological criticisms of the broken windows hypothesis (which I discuss in Harcourt & Thacher, 2005). I simply find that way of analyzing order maintenance policing unpromising—even irrelevant (Thacher, 2004).

Matthews acknowledges that public order is important, but he insists that the ambiguity surrounding the proper meaning of disorder makes it unwise for police to play a role in regulating it, since the task will draw them into conflicts among different community factions and thereby risk “alienating sections of the community” (Matthews, 1992, p. 35). More simply, police order maintenance is like swatting flies with heavy armor: Mobilizing a “heavy handed, truncheon-wielding army of police officers” to regulate disorder is simply an overreaction (Matthews, 1992, p. 37). In place of the heavy hand of the police, Matthews advocates a larger role for community institutions in order maintenance, pointing to recent disorder reduction initiatives where police played a subordinate role or no role at all (Matthews, 1992, p. 38).*

Community as Police

It is not always clear what alternative to police order maintenance these critics have in mind. Sennett apparently envisions an anarchistic form of self-help—a world in which neighbors resolve their own disputes (in unspecified ways) rather than invoking the police or land use authorities.† Urbanologist William Whyte similarly advocates self-policing by the users of public space, who may, for example, admonish a pedestrian who throws trash on the ground (1990, pp. 158–159). Others advocate for more formal interventions. Matthews, for example, points to a recent resurgence of “various ‘intermediary’ agencies in regulating social (mis)behaviour,” including “park-keepers, station guards ... working mens’; clubs, trade union associations, church organizations” (1992, p. 39); he goes on to mention unemployed adults enlisted as “transport officers” in a Dutch transit system (p. 39) and “concierges or receptionists” in British council estates (p. 40). Bernard Harcourt similarly highlights the role that social workers, transit workers, and even publicly hired mimes can play in combating disorderly conduct (2001, pp. 221–224; Harcourt & Thacher, 2005), and Whyte emphasizes the importance of the informal “mayors” who occupy many public spaces—people like newsstand operators, building guards, and food vendors who have a long-term presence in a space that gives them the contextual knowledge and sense of ownership that order maintenance requires (Whyte, 1990, p. 160). Grabosky

* Other critics who ultimately concede the importance of public order but argue that someone other than the police ought to take responsibility for it include Whyte (1990, pp. 158–162) and Harcourt (2001, pp. 221–224).

† It is hard to understand why the result would be tolerable. Sennett asserts with little argument that these confrontations will not erupt into violence (1970, p. 147), and his suggestion that the unregulated city would attract racial and economic diversity (1970, p. 143) flies in the face of his own observations about the temptation to retreat to the safety of segregation when confronted by conflict (Sennett, 1970, 1976).

(1992, p. 255) mentions civilian “wardens” in New Zealand who respond to public drunkenness and other forms of disorderly conduct (though he does not necessarily advocate this model).

The advocates for these alternative forms of order maintenance often emphasize the role these actors can play in preventing disorder, rather than their role in responding to it once it has occurred (especially Harcourt, 2001; Matthews, 1992). In general these proposals are uncontroversial: If it is possible to prevent subway fare beating through better turnstile design (Harcourt & Thacher, 2005), few would oppose that strategy; indeed, leading advocates for a robust police role in order maintenance have endorsed it (e.g., Kelling & Coles, 1996, p. 136).^{*} But the question remains: What should be done when unacceptable disorder occurs despite society’s best efforts to prevent it? Should the police play a role in regulating it? Should the task be left to other community institutions, or to no one at all? The real debate about the responsibility for order maintenance is primarily a debate about who, if anyone, should respond to various kinds of disorder when they actually occur—as they inevitably will, despite the vigorous preventative efforts that almost everyone endorses.

Disorder and the Function of the Police

The question of who should respond to disorder cannot be separated from the question of what types of response would be legitimate. Outright physical coercion is almost entirely the province of the police.[†] If a man continually accosts passing women with epithets like “You’re just a piece of meat to me, bitch” (Bowman, 1993, p. 523) and refuses to stop when passers-by or Whyte’s informal mayors scold him, the passers-by and the mayors have no legal authority to force him to stop. If anyone does (q.v. Bowman, 1993), it is presumably the police, who largely monopolize the legitimate use of coercive force in our society. If we conclude that it is legitimate to physically

^{*} Though Whyte (1990, pp. 157–158) notes how prevention through physical design can make public spaces uninviting to regular users, and Carr, Mark, Rivlin, and Stone (1992, p. 267) argue that preventative design sometimes comes at the cost of segregation, truly integrated spaces (which are not only socially valuable but also efficient users of scarce land) require a commitment to managing the conflicts that inevitably arise in them.

[†] This account of the police role is of course Egon Bittner’s. “Like everybody else patrolmen want to succeed in what they undertake. But unlike everybody else, they never retreat. Once a policeman has defined a situation as properly his business and undertakes to do something about it, he will not desist till he prevails. That policemen are uniquely empowered and required to carry out their decisions in the ‘then and there’ of emergent problems is the structurally central feature of police work” (1990, p. 254). Thus, “the policeman, and the policeman alone, is equipped, entitled, and required to deal with every exigency in which force may have to be used” (1990, p. 256).

restrain a man who behaves in this way after he defies less authoritative interventions, then the police are the only institutional vehicle available.

The question of whether the police ought to play a role in regulating disorder, then, is equivalent to the question of whether there are any types of disorder that fall into the category of things that it would be legitimate to put a stop to by resorting to coercive authority after other interventions have failed (Bittner, 1990, pp. 249, 256).^{*} To conclude that there are does not imply that police should always arrest the disorderly. It simply means that if less authoritative intervention fails, coercive action would be justified (Bittner, 1990, pp. 242, 252, 256).[†] The police are society's "or else" (Bittner, 1990, p. 10), and if there is any form of disorder that justifies such a threat, then it is properly the business of police. (Bittner himself apparently believed that there was [Bittner, 1967].)

AU: In note, is "patients" correct, or is "parents" meant?

Managing Disorder

Police and community members alike may try to regulate disorder without forcibly restraining the perpetrators—for example, by cajoling or shaming the disorderly (Harcourt's publicly hired mimes who mock jaywalkers are one illustration) or by trying to persuade them to desist (Whyte's mayors typically seem to rely on this sort of remonstrance). Again, community members ultimately have no legitimate recourse other than these informal interventions. Despite their arrest powers, however, even police often do not use them to maintain order (Thacher, 2004, pp. 392–393; Kelling, 1999, p. 50).[‡]

The noncoercive interventions that police and community members alike use to maintain order can take many forms. At the informal extreme, Erving Goffman has described the social sanctions that all of us apply in everyday life to people who violate norms of public decorum (such as the ironic sanction of staring down someone who rudely stares) (Goffman, 1966,

^{*} Bittner's examples of this category deserve repeating because they clearly have little to do with serious crime: "I have seen policemen helping a tenant in arrears gain access to medication which a landlord held together with other possessions in apparently legal bailment, I have seen policemen settling disputes between patients as to whether an ill child should receive medical treatment, I have seen a patrolman adjudicating a quarrel between a priest and an organist concerning the latter's access to the church" (1990, p. 250).

[†] "I am *not* saying that police work consists of using force to solve problems, but only that police work consists of coping with problems in which force *may have to be used*" (Bittner, 1990, p. 256).

[‡] Compare Bittner's observation that "the police were developed as a distinct institution with a monopoly over coercive force precisely in order to minimize and regulate the use of such force.... The skill involved in police work, therefore, consists of retaining recourse to force while seeking to avoid its use, and using it only in minimal amounts" (1990, pp. 257–258, 262).

p. 88). In practice, however, these least formal social sanctions are not really viable tools for order maintenance because much of the disorderly behavior at the center of recent debates about public order would not occur in the first place if the person who engaged in it were sensitive to normal social pressure. (Goffman [1972, p. 141] mentions “the drunk and the costumed” as illustrations of the idea that insulation from social pressure facilitates disorderly conduct.) If disorder arises precisely when the ordinary sanctions that underwrite everyday social interactions have broken down, some other means of controlling it will be necessary.

One possibility is the more deliberate efforts to exert social pressure that authors like Matthews, Whyte, and Harcourt have emphasized—the sustained and overt reprimands of disorderly conduct by food vendors, shopkeepers, security guards, and even mimes. These interventions are not authoritative in the way that police interventions are: If the person harassing women, blocking pedestrians, or flagrantly urinating refuses to stop, the vendor or shopkeeper cannot force him to. All the same, the forms of social pressure available to people other than the police can certainly be powerful.

They are most powerful, however, when they are backed up by the implicit threat of calling the police. During the 1970s and 1980s a large body of research examined the possibility of community-based crime prevention. A major conclusion of that literature was that informal social control works best when the threat of invoking formal authority backs it up. When that threat is perceived to be idle, informal control breaks down (Foster, 1995; Hope, 1995; Yin, Vogel, Chaiken, & Both, 1976). It is precisely because the police would be authorized to take definitive coercive action (and because everyone involved knows they would) that many informal sanctions succeed. One study that reached this conclusion focused on the Priority Estates Project in Britain, which Matthews cites as a model of community-based order maintenance (Matthews, 1992, p. 40). One of ethnographer Janet Foster’s interviewees in that research put the matter succinctly: “Community works in a lot of cases but obviously in some circumstances ... [tenants] like to put the onus on the council or some legal authority” (Foster, 1995, p. 580). In this respect, community-based order maintenance is not an alternative to police order maintenance but a complement to it.

Regulating the Regulators

All of this said, it remains true that a variety of community institutions might be effective at maintaining order to some important degree. They lack the “or else” power of the police, but the informal sanctions they do control can be powerful. Should we encourage them to use those sanctions more

vigorously? The possibility seems attractive because it provides an alternative to state authority, which should always be used reluctantly.

We should be wary of governmental coercion, but we should be equally wary of the less authoritative forms of coercion wielded outside of government. One early warning about the apparently gentle control exercised by actors in civil society came from John Stuart Mill:

When society is itself the tyrant—society collectively, over the separate individuals who compose it—its means of tyrannizing are not restricted to the acts which it may do by the hands of its political functionaries. Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practices a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. (1978, p. 4)*

For this reason, Mill insisted that defenders of liberty should worry about community-based control as well as governmental coercion. “Protection ... against the tyranny of the magistrate is not enough: there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them” (1978, p. 4).

This analysis shaped the task that Mill set himself in *On Liberty*. Mill concluded that the defense of freedom could not be accomplished by relocating the *locus* of social control from “rulers” to “the people.” It could only be accomplished by defining and enforcing clear limits to all forms of social control, regardless of who exercised them. “There is a limit to the legitimate interference of collective opinion with individual independence,” he wrote, “and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs as protection against political despotism” (1978, p. 5).

All of this is to say that what ultimately matters is the *what* of social control rather than the *who*—what kinds of conduct can legitimately be regulated, not who should do the regulating. The order maintenance function raises this question as sharply as any, since the line between legitimate order maintenance and intolerant fussiness about the bustle of city life is clearly a delicate one. Among the many actions sometimes viewed as disorderly, which of them really qualify as wrongful conduct that society has the right to

* Since Mill wrote these lines, Michel Foucault and others have elaborated this basic insight at length, describing the many mechanisms of community-based social control and analyzing the danger they pose to personal liberty (e.g., Foucault, 1977).

control? This question cannot be answered once and for all with simple intuitive principles. It requires a continuing effort to refine our understanding of disorder as we encounter new kinds of social conflict in our public spaces (Thacher, 2004, pp. 397–398).*

Although what to control ultimately matters more than who should do the controlling, the *who* still matters indirectly. It matters because the *who* has implications for the *what*. Not all institutions have the same capacity for defining and enforcing the type of complex moral boundary that separates legitimate order maintenance from illegitimate harassment.

The professionalization of social control has gotten a bad name, but it has important advantages. Duties assigned to formal roles (such as the role of accountant, doctor, or police officer) can be far more complex and demanding than duties assigned to laypeople who do not specialize in the task. We can only expect laypeople and nonspecialists to be familiar with a few broad and intuitively understandable principles of common morality. By contrast, we can expect much more from the occupants of clearly defined roles: It is easier to educate them about the subtle distinctions contained in detailed codes of ethics, and it is easier to establish oversight structures that can monitor their compliance with those duties. None of this means that professionals are more moral than laypeople. It just means that the kinds of moral duties that society can fairly assign to professionals are different from the kinds of duties it can fairly assign to nonspecialists operating outside of the support structures provided by organizations and professions (for example, to people operating as private individuals in civil society). This idea is a core principle underlying the enterprise of professional ethics, and it is echoed in the civil law, which regularly assigns more stringent duties to people acting on behalf of an institution than to private individuals acting alone.

These considerations suggest a major advantage of police order maintenance. As a formal institution, the police potentially have the capacity to develop and enforce a relatively complex moral framework defining the scope and limits of order maintenance. No comparable capacity is available to nonspecialists in civil society. How will William Whyte's food vendors and shopkeepers develop an appropriate understanding of the distinction between legitimate order maintenance and illegitimate control of merely eccentric behavior? Who will enforce that line when one of them crosses it?

I am not claiming that the institutional context in which the police operate guarantees that they will carry out tasks like order maintenance

* In this essay I cannot fully consider how Mill's own analysis of the limits of legitimate state action might apply to order maintenance. One important principle underlying "disorderly conduct" statutes is the so-called "offense principle" (Thacher, 2004, pp. 404–408), which Mill apparently endorsed (Feinberg, 1985). I have come to believe that the fundamental idea underlying the concept of disorder is not *offense* but *unfair use of public spaces*. That, however, is a subject for another essay.

honorably. That would be an absurd claim. Individual police officers, despite the formal training and oversight that surrounds them, continually overstep their legitimate authority. Indeed, their own history of abuses best illustrates the dangers posed by the order maintenance role.

Caleb Foote called attention to those abuses more than 50 years ago in his ethnography of the administration of vagrancy-type law in Philadelphia magistrates' courts. Foote himself framed his research as a case study of the administration of justice in a context where meaningful procedural and constitutional safeguards did not exist (Foote, 1956, p. 604). At the time, defendants in disorderly conduct cases generally lacked the right to counsel, and the courts had developed almost no case law defining the legitimate scope of the order maintenance function. Five decades later, legal and administrative guidelines regulating order maintenance have proliferated, but in the meantime, Foote's research illustrated the kinds of abuses that order maintenance can lead to in the absence of structured guidance and formal oversight.

Here is one sample of what Foote observed:

A number of defendants were discharged with orders to get out of Philadelphia or to get out of the particular section of Philadelphia where they were arrested. "What are you doing in Philadelphia?" the magistrate asked one of these. "Just passing through." "You get back to Norristown. We've got enough bums here without you." Another defendant whose defense was that he was passing through town added, "I was in the bus station when they arrested me." "Let me see your bus ticket," the magistrate said. "The only thing that's going to save you this morning is if you have that bus ticket. Otherwise you're going to Correction for sure." After considerable fumbling the defendant produced a Philadelphia to New York ticket. "You better get on that bus quick," said the magistrate, "because if you're picked up between here and the bus station, you're a dead duck."

In discharging defendants with out-of-the-central-city addresses, the magistrate made comments such as the following:

"You stay out in West Philadelphia."

"Stay up in the fifteenth ward; I'll take care of you up there."

"What are you doing in this part of town? You stay where you belong; we've got enough bums down here without you."

Near the end of the line the magistrate called a name, and after taking a quick look said, "You're too clean to be here. You're discharged." (Foote, 1956, pp. 605–606)

Today many attacks on order maintenance seem to be motivated by a concern that it amounts to a systematic campaign to eject undesirable people—particularly the homeless—from parks and sidewalks in desirable neighborhoods. Foote's case study illustrates that concern as vividly as any I am aware of. In the exchanges he documented, it becomes clear that police

and the courts used the vagrancy and disorderly conduct laws to keep undesirables in their places. In Foote's own words, "unwanted drunkards, panhandlers, gamblers, peddlers, or paupers are committed or banished" (1956, p. 614). Even among the acquitted, a common defense was "I have a bus ticket out of Philadelphia," or at least a promise to stay out of the central business district. The cases that reached the magistrates' courts—decided by the dozens every 15 minutes—show no evidence of any serious inquiry into the specifics of the defendants' conduct. There is no evidence that police or the magistrates drew any distinction at all between conduct that could legitimately be prohibited and conduct that could not. Indeed, most of the "disorderly conduct" and "vagrancy" statutes at the time cast a remarkably broad net, and many of the cases Foote observed involved the "offense" of being a certain type of person (such as a vagrant or a habitual drunk) rather than behaving in a specific manner.

Partly because of exposés like Foote's, and partly because of abusive use of public order laws to harass civil rights and antiwar demonstrators during the 1960s, the courts have substantially restricted order maintenance authority in the half century since he wrote. The resulting case law has, for example, stressed that police must tread cautiously in regulating even offensive public speech, that they may not arrest anyone simply because of his status (e.g., because he was a habitual drunk or vagrant), and that disorderly conduct statutes must be specific enough to provide fair notice of what is prohibited (Amsterdam, 1967; Livingston, 1997, pp. 595–608). At the same time, the American Law Institute developed a detailed disorderly conduct statute in its Model Penal Code that took these legal developments into account, and many jurisdictions adopted the proposal. All of these newly articulated legal constraints and guidance sought to define *disorder* more precisely in order to guard against the danger that police would exercise their authority capriciously and overzealously.

These legal reforms have fundamentally changed the landscape of police order maintenance. Most obviously, they have dramatically reduced police arrests under the major order maintenance statutes. (According to the Uniform Crime Reports, the share of all arrests associated with the charges of drunkenness, disorderly conduct, and vagrancy fell from 44% in 1965 to 9% in 2005.) The arrests that remain are made within the more tailored public order statutes that survived the reforms of the 1960s and 1970s, which exclude (at least as a matter of law) the most serious abuses documented in studies like Foote's. For example, today it is simply illegal to arrest a man for the status of being homeless.

Despite these reforms, there clearly remains considerable potential for abusive order maintenance, as there is in all areas of law enforcement. (Despite decades of legal reform focused on criminal interrogation, abuses continue to occur, but no one argues that police should stop questioning suspects.)

Today the frontier for improving police practice in this area is administrative rather than legal. There are limitations to the guidance and constraints that the law can provide, since so many order maintenance judgments require a level of detail and attention to context that the law cannot provide. The value of additional legal controls was much larger in Foote's time, when order maintenance practice was so crude that even the blunt tools available to the courts could play a useful role in reshaping it. Today, however, the best hope for improving order maintenance practice generally involves the development of administrative guidelines and training by police themselves, in dialogue with local government officials and community members. The possibility of this kind of development is illustrated in the most progressive police departments that have already developed nuanced guidelines for order maintenance practice (Livingston, 1997; Kelling, 1999; Thacher, 2004).

Very few police departments have given this task the attention it deserves, so their practice undoubtedly remains imperfect in many respects. Proponents of police order maintenance should view further progress in regulating street-level practice in this manner as the most important priority. In most departments the call should be for higher-quality order maintenance rather than higher quantity.

Nevertheless, the substantial legal evolution I have described—as well as the visible possibility of further progress based on the capacity for institutional learning that any complex organization potentially has—already highlights a central advantage of formal institutions like the police for cultivating the kind of nuanced practice that order maintenance requires. The resources embodied in a continuing institutional system (such as the body of case law that courts collect and enforce or the body of guidelines and training practices developed by the most progressive police departments) make it possible to develop a more refined understanding of a normative concept like disorder over time. At any moment in time any institution will fall short of ideal practice, but healthy institutions have the capacity to make continual improvements.

To defend the possibility of community-based order maintenance, its advocates must show either that the kind of institutional structures that surround the police can be developed in the community or that these structures are not a necessary precondition for the legitimate exercise of the order maintenance function. I find both possibilities dubious. Informality and freedom from institutional routine are precisely the advantages of community over bureaucracy (McKnight, 1988). Those features impart immense advantages to community-based action in many contexts, but they raise serious concerns in this one. If the relatively unregulated police in Caleb Foote's time engaged in such a crude form of order maintenance, why should we expect better performance from actors in the community who are even less regulated? The idea that society should entrust one of its most delicate social

control functions to unregulated nonprofessional community actors is at best counterintuitive.

There is so little documented experience with true community-based order maintenance that it is impossible to say whether these concerns have been realized in practice. One extended example, however, suggests reason for pessimism.

In the 1970s New York City began to award height bonuses to developers who agreed to provide publicly accessible spaces on their property. These spaces include some of the most well-known public plazas in Manhattan. The zoning law that encouraged them generally required that these spaces allow unrestricted access and free use by the public,* but it assigned responsibility for maintaining these spaces to the property owner. That responsibility typically encompassed order maintenance as well as physical maintenance. In this respect, New York City's privately owned public spaces provide the most sustained example of community-based order maintenance that I am aware of.

Lawyer Jerold Kayden has provided by far the most extensive analysis of how these spaces have functioned in practice. Based on a comprehensive review of all 503 spaces developed over a 39-year period, Kayden concluded that a very large share of these spaces have violated both the law and the spirit of the zoning act that created them—particularly by restricting public access and infringing on free use of the spaces (Kayden, 2000, p. 55). It is, of course, very difficult to document the essentially invisible day-to-day order maintenance performed by building representatives, but some of Kayden's observations are suggestive:

Building superintendents and guards incorrectly inform users that a public space is not "public", or impose unreasonable rules that lessen public enjoyment.... Plaques intended to identify the space as "public" are strategically located behind fast-growing vines or trees, or are not installed at all.... A doorman, security guard, or superintendent informs the user, incorrectly, that the space is not a public space and that the user may not enter, or must vacate, the space. When the management representative is a security guard accompanied by a large dog, the warning becomes all the more compelling. Sometimes, management tells the user that the space is private, but that the user may stay as a guest of the building. In several instances during field surveys, after being told that the space was private, the surveyor would inform the buildings representative that the space was on an "official" public space list. The building representative would then reverse himself and confide that his supervisor had instructed him to inform the public that the space was private.... Amenities are rendered dysfunctional through an intentionally disabling act. Ledges and

* There are minor exceptions. For example, a property owner may apply to the city planning commission for permission to close its public space at night.

benches become useless when they are decorated with the spiked railings and small fences that have proliferated in the city over the past 20 or so years. (2000, pp. 56–59)

Some of these exclusionary tactics cross over into physical design rather than direct regulation of behavior. In other cases space managers post explicit behavioral rules prohibiting activities like loitering and sitting on benches for an extended period that police could not legally enforce (Kayden, 2000, p. 315). As Kayden notes (p. 38), it is unclear whether it is legal for private space managers to enforce these rules because

the Zoning Resolution is silent ... when it comes to the owner's "management" of use by members of the public.... To what extent may an owner craft and apply its own rules of conduct for members of the public?... The Zoning Resolution requires privately owned spaces to host "public use", but never expressly defines what limits, if any, an owner may impose upon such public use. (2000, p. 38)

Perhaps this experience is unique. The New York public spaces are certainly idiosyncratic, particularly since private landowners have the responsibility for maintaining order in them with little input from the spaces' users. In other words, only a narrow slice of "the community" managed the spaces, so it isn't surprising that order maintenance took discriminatory forms. As Kayden puts it: "Privately owned public space introduces an axiomatic tension between private and public interests. After the euphoria of receiving the floor area bonus has faded, the owner is left with a space whose public operation may not necessarily please the building's occupants or otherwise serve profit-oriented interests" (2000, p. 55). From this perspective, the narrow interests of the specific "community actors" who manage these public spaces distort the way they perform the order maintenance role.

Undoubtedly this objection contains an element of truth, and more broadly diffused order maintenance responsibility would respond to a broader range of community interests. At the same time, it must be acknowledged that insofar as any community actors are likely to take responsibility for order maintenance, property owners and their agents are among the most probable candidates. (Indeed, Whyte and Matthews pay special attention to shopkeepers, property managers, groundskeepers, and security guards as possible community-based place managers.)

More important, although any particular example of community-based order maintenance may be criticized on the grounds that it is not truly responsive to the *whole* community, there are reasons to believe that the ideal itself is problematic. Urban designer Kevin Lynch has written lucidly about the relevant limitations of community-based place management. Lynch begins by defining the principle of *congruence*, which is "the extent to which the

actual users or inhabitants of a space control it, in proportion to the degree or permanence of their stake in it” (Lynch, 1984, p. 208). To a point, this principle captures an important ideal for the management of spaces. But Lynch immediately notes its complications:

In the first place, it should somehow be expanded to take account of future and potential users, as well as actual ones. User control must not deny others the basic opportunities that the owners themselves enjoy. Regulation by present users often entails the exclusion of those who are elsewhere, but who may have a legitimate interest in the use of the place or of some similar space. (1984, p. 208)

This concern is very salient in the present context, since this kind of exclusion lies at the heart of the concerns that have actually been raised about order maintenance. The trouble, as Lynch’s analysis suggests, is that the “entire public” whose interests ought to be taken into account in place management is not a tangible group of people at all. “The public” is an abstraction, not an identifiable group of people whose involvement we could enlist if we only invited their participation more energetically. For that reason, when the interests of absent and future publics need to be taken into account, we typically assign that responsibility to government officials charged with promoting the public interest. Thus, Lynch himself writes that “some external authority representing potential users must determine how outsiders may have access to a place, and how they may join in its use and control,” and he goes on to repeat the sentiment with respect to future users (1984, pp. 208–209).

These considerations suggest why the laudable desire to ensure that policing authority is exercised in the public interest cannot be accomplished entirely through direct community control of the order maintenance function. At some point the ability to directly involve the relevant community members gives out, and public officials must themselves represent the necessary commitment to the unavoidably amorphous concept of the “public interest” (Thacher, 2001). That commitment, in turn, is safeguarded by dual oversight from elected representatives and the judiciary, as well as the ideals of public service embraced by civil service professions.

Conclusion

When pressed, no one really denies that public order is important, though many people do disagree about what disorder is. Those disagreements themselves may be the most important argument for a large police role in maintaining order. As compared with informal actors in civil society, ongoing

public institutions like the police can potentially develop the kind of complex, continually evolving, and democratically accountable conception of disorder that defensible order maintenance demands. No institution is perfect, but the police are usually far better positioned than food vendors, shopkeepers, mimes, groundskeepers, and passers-by to safeguard the legitimacy of this delicate regulatory function. Moreover, they have a unique responsibility in our society for the legitimate exercise of coercive force, and that capacity provides an indispensable foundation for the success of whatever level of supplementary informal social control society ought to encourage.

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