

1970

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### Recommended Citation

Arnold Sagalyn, Danger of Police Overreaction, 60 J. Crim. L. Criminology & Police Sci. 517 (1969)

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## DANGER OF POLICE OVERREACTION\*

ARNOLD SAGALYN

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Law and order is in the news. Since the term often means different things to different people, it is important to try to define what we mean by *law and order*.

To begin with it is essential to recognize that the words "law" and "order" are linked together. That is absolutely vital since the two words are inseparable in the context of their meaning and application. Law alone can prove a false protection, while order without law can be oppressive and tyrannical. That is the essence of our constitutional system of government and the strength of our democratic society: We are a government of laws and not of men.

This distinction was carefully emphasized by the Kerner Commission in its report on civil disorders in 1968. After pointing out that preserving civil peace is the first responsibility of government and that without the rule of law there can be no social or economic progress, the Commission stated:

In maintaining the rule of law we must be careful not to sacrifice it in the name of order.

In our concern over civil disorder, we must not mistake lawful protest for illegal activities. The guardians of the law are also subject to the law they serve.

Public officials who have the responsibility for preserving civil peace face a recognizably difficult control problem of how to maintain order without sacrificing justice. History has shown that order achieved by employing methods of force which are excessive or inappropriate in their nature is likely to be won at too high a price in terms of divided and bitter citizenry and an unstable civil peace.

\* This article is based on a talk made before the Federal Bar Association's Council on Constitutional Law and Civil Rights in Washington, D. C., September 1968.

The self-defeating effect of force which the community regards as excessive or unjustified has been demonstrated over and over again. This has been true not only in this country but abroad as well. It was the brutal physical force used by the Paris riot control forces against rebellious students that mobilized public sympathy and support and turned a relatively minor riot into a major national disaster that paralyzed all France last year. It was the excessive use of police force and the failure to discriminate between innocent and guilty parties during the 1968 Chicago incidents that led to a public outcry.

This does not mean that the civil government should not act promptly and decisively against violations of its laws. As the President's Commission on Civil Disorders also stated:

Individuals cannot be permitted to endanger the public peace and safety, and public officials have a duty to make it clear that all just and necessary means to protect both will be used.

There is no question that the police in the recent Chicago disorders—and this has also been true in many other cities—were subjected to intense provocation by some individuals ranging from vilification to a wide range of degrading and injurious missiles. The average person confronted by that kind of abuse would not be expected to continue to exercise good judgment and restraint. A police officer, however, by the very nature of his responsibility and broad power should not be provoked into reckless retaliatory action. The very essence of police professionalism—and all good police training programs, including Chicago's stress this—demands that a police officer remain calm and impartial despite intense provocation.<sup>1</sup>

<sup>1</sup> Preventing civil disorders is always easier than suppressing them. The police officer, by disciplining his emotions, recognizing the rights of all citizens, and

This kind of self-discipline is essential in dealing with any tension situation and especially in controlling a demonstration or a disorder.

The Kerner Commission noting that during a disorder officers are likely to suffer verbal abuse and to be the targets for rocks or bottles stated:

Nevertheless, police discipline must be sufficiently strong so that an individual officer is not provoked into unilateral action. He must . . . avoid panic or the indiscriminate—and inflammatory—use of force that has sometimes occurred in the heat of disorders.

In addition to the incidents in Chicago which led to charges of indiscriminate and excessive police force and the violation of the civil rights of many persons seeking to demonstrate peacefully, there are other danger signals that should concern us. They include the increasing demands by a number of the police representatives that the police not be held accountable under the law for how individual police officers see fit to exercise their broad police powers. They also involve the flagrant example of lawlessness by a group of vigilantes, reported to have been off-duty policemen, who took the law into their own hands and physically attacked and beat up a group of people standing in the corridors of a New York courthouse. These incidents and the trend they point to raise serious concern as to whether these police representatives and the general public understand the great dangers inherent in the attempts of the agents of the law to hold themselves above the law.

These recent events are particularly surprising and alarming because they are in opposition to the more recent development and trend seen towards more professional, responsible police forces. In the past few years, there has been a marked demonstration by police departments throughout the country of proper concern for the constitutional and civil rights of people, including those seeking to exercise their legitimate rights to dissent or to demonstrate lawfully. Chicago, for example, has had an outstanding record in this respect. Under former Superintendent of Police, O. W. Wilson,

conducting himself in the manner his office demands can do much to prevent a tension situation from erupting into a serious disturbance . . .

The officers making the arrest must not show partiality in any manner. They should not make indiscriminate or mass arrests. Above all, the officers must not become excited. Such an emotion can easily spread to the crowd and cause serious difficulty. The officers on the scene should display tact and constraint. The officers must be calm and act as a neutralizing agent.

From the Chicago Police Department Training Bulletin "Tension Situations", dated April 24, 1967.

the police performed with great distinction in protecting the right and personal safety of various groups to engage in lawful and peaceful protest and demonstrations. In Washington, D. C., the performance of the police in dealing with the Poor Peoples March was, by and large, handled in a highly responsible and professional manner.

If we are to have order with justice, however, we must recognize that the preservation of civil peace cannot and should not be regarded as merely a control problem and left to just the police. It is the responsibility of the entire community, in particular of its duly elected public officials. For the demonstrations and disorders which we are experiencing are manifestations of very deep and difficult social, political, and economic problems. They cannot be solved, much less long contained, by police power alone, no matter how enlightened and judicious that may be. Unless there is real and visible progress towards meeting the legitimate complaints of American citizens who are trying to protest under the law, the few radical extremists will be able to persuade these Americans that their only hope and recourse is to turn to violence and fight outside the law.

The failure of public officials—indeed all community leaders—to recognize the dangerous consequences of police overreaction in dealing with these issues could set off a chain reaction that would turn urban America into a nightmare of terrorism and horror, paralyzing the cities and driving this country into a police state.

Studies made of urban insurgencies in other countries have shown that it is very difficult to destroy an underground resistance in a divided country. The amount of ruthlessness which the police must employ to crush such an insurgency is beyond that which most governments can maintain for any period of time, even though the provocation consists of various forms of terror and sabotage that outrages responsible people. It was the brutal treatment of Irish rebels, for example, that led to a universal reaction against the Black and Tans and created popular support for the movement. It was the repressive measures employed by the French against the Algerian rebels that led to public revulsion in France, and enabled the Algerian revolutionaries to achieve their victory over superior French police and military forces. The provocative acts by a handful of radical extremists in Chicago and the outrageous attack on policemen in Cleveland, Ohio, and similar attempts in other cities to ambush and murder police officers

create a real danger that a handful of revolutionaries will succeed in provoking the police and civil officials into employing brutal and repressive measures which will alienate moderates in the community and create in this country the very kind of dangerous insurgency which other countries have experienced.

It is imperative that police and public officials avoid falling into this trap. The police must respond with the coolness and sound judgment they are expected and trained to exercise. They must discriminate between those relatively small number of individuals who instigate and engage in lawlessness and those who are innocent bystanders or are merely caught up in the emotion of the event. And, above all, they must not sacrifice the law or justice in the process of preserving and restoring order.

We must anticipate other acts of lawlessness and terrorism to occur in various cities, and which the radical extremists on both sides will try to exploit to their own advantage and objective. How the police and the community respond to these situations will determine whether or not our democratic, constitutional society can meet this crisis effectively and judiciously and without violation to our basic core values. To counter this threat we will have to deal not only with the immediate dangers posed by this incipient urban insurgency. We will also have to undertake meaningful programs in the private as well as the public sector that will meet the legitimate needs of those who are impoverished and need assistance, white as well as black.

The immediate security problem will require necessary measures that will enable the police and civil authorities to prevent the radical extremists from carrying out their terrorist and disruptive activities.

The chief requirement is good intelligence which will provide advance warning of impending trouble so that proper protective measures can be taken to neutralize or minimize the danger to the community. Such intelligence is dependent on good relations between the police and the community and the establishment of mutual confidence and respect with the broad mass of community residents who want law and order and oppose violence and lawlessness.

It will also require proper and intelligent responses to those who have legitimate grievances and wish to exercise their constitutional rights to protest or demonstrate peacefully. Failure to rec-

ognize and protect such rights will only benefit the extremists. As the FBI states in its manual on riot control:

A peaceful or lawful demonstration should not be looked upon with disapproval by a police agency; rather, it should be considered as a safety valve possibly serving to prevent a riot. The police agency should not countenance violations of law. However, a police agency does not have the right to deny the demonstrator his constitutional rights.

Simultaneously with the police measures to neutralize and contain those seeking to disrupt the orderly processes of government and to provoke the authorities into excessive and inflammatory overreaction, it is essential to deprive the extremists of their opportunity to exploit the deep unrest and legitimate grievances that exist in nearly every urban community. It will require the commitment of all community leaders, private and public, and a priority on our resources to undertake without further delay programs such as those recommended by the Kerner Commission.

They must be projects which will signify visibly and in a meaningful way that the American system can respond to the legitimate grievances and meet the needs of people through evolutionary, and peaceful means. We will have to demonstrate to these Americans, without whose support the revolutionaries cannot succeed, that they have more to gain from working within the framework of the law than outside it, and that peaceful protest will bring greater benefits and more effective results than resort to violence.

It is easy to understand the daily frustrations officers must live with in fighting a losing battle against the rising incidence of crime and of trying to maintain the civil peace in an environment of tensions and hostility which is directed against the institutions a policeman has been taught to respect and value. It is equally understandable how fearful and angry so many Americans feel over their sense of physical insecurity for themselves and their families, and their apprehension and outrage against group violence that has accompanied many civil disorders.

None of us should forget, however, that real security of persons and property in our cities and the preservation of civil peace will only be meaningful if they are achieved in a way that is consistent with the values of a democratic society. This will require order that is maintained under the law and with justice.