

Judicial Attempts to Control Police Behavior in the United States of America

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Abstract

This research paper highlights the implications of judicial attempts to control police behavior in the United States of America. The discussion in this paper revolves around the general nature of 'exclusionary rules' discerned by the judicial decisions viz: Mapp vs Ohio (1961) where by the discretionary behavior of the police is scrutinized in detail. The consequent conduct and control of the judiciary in determining the constitutional framework for the police force as a 'safety value' for the 'constitutional rights' of the individuals, soliciting the warrants and/or judicial custody. The paper traces the historical evolution of the police force over the years, the comparative analysis of different police forces, and gradual emergence of jury system in the United States of America.

The behavioral and structural reforms of the police force through the gradual development of the judicial system to check the discretionary powers exercised by police in the United States have been at the forefront of making sure that the individual liberties are not violated, since it's the important constitutional requirement on the part of the executive, legislative and the judiciary to collectively share that burden. This research paper discusses the attempts on the part of the judiciary to confine the limits of the police behavior through constitutional means and within the context of its historical development.

According to the constitution of the United States of America no branch of the state would have unbridled powers, and hence there ought to be effective mechanism of checks and balances. Although the Fourth Amendment provides that, "the right of the people to be secure against unreasonable searches and seizures, shall not be violated"

defendants involved in criminal prosecutions in state courts have not always been able to exclude illegal obtained evidence.

Hence having the judicial control on the unrestrained powers of police through Mapp vs Ohio decision, and Blazac vs Porto Rico decision to strengthen the jury system in the United States of America are the classis examples of ensuring individual liberty. Thus these notions are pivot of this research paper.

Introduction

Had judicial attempts to protect suspects by controlling illegal police behavior been successful? Gerald Z. Hallworth [1] concludes that “to rely on state Judges and Juries to control police conduct involves the assumption that, by and large, those Judges and Juries share the constitutional values implicit in the development of effective remedies for illegal police behavior in the United States of America. “It is an assumption of doubtful validity”. The exclusionary rule, as he sees it, “probably has very little effect on police (non-testimonial) behavior”. As talking about the Jury system, this was introduced into England during the reign of Henry III. England was not “the” cradle of the Jury system.[2] Greece and Rome knew forms of it, as did the Germanic tribes, the Scandinavians and the Normans. As one historian, Sir Francis Palgrave, stated that the Anglo-Saxons had Juries, that is to say, a Jury of Saxon witness, to determine property rights, but he believed that the Jury in criminal cases wads not known until William the conqueror. If history is any guide, the upshot of the controversy over the Jury system will be some sort of compromise. The pressures for reform are very strong, and there are some signs of such reforms in the present legal structure of the United States of America.

It is generally believed that, the American people consider trial by Jury to be one of the cherished rights to be enjoyed by a free society. After all, the idea that a man's gut or innocence should not be determined solely by officials of the state, but by a group of his peers, can be traced back to antiquity.[3]

Certainly it seems safe to say that in the popular view the guarantee of trial by Jury is regarded as a safeguard of liberty. As Chief Justice Taft noted in Balzac V. Porto Rico, in speaking of the

Jury system, none of its greatest benefits is in the security it gives people that they, as Jurors actual or possible, being part of the judicial system of the country, can prevent its arbitrary use or abuse.[4]

As the Jury system develops in America, because of the increasing length of court calendars and the resulting court congestion, and the further need for economy in this sphere of civic administration, the curtailment of the right to a jury has been gathering speed. For the improvements in the American system of jury trial can only strengthen an institution which, whatever, its current faults, continues to enjoy the support of a great many Americans.

The purpose of this paper is to explore the success of judicial attempts to control illegal police behavior in USA. From the legal point of view, that is, whether there is need for any such control on police behavior. Even if we assume that there is a significant consensus that the police ought to comply with certain minimal standards of the criminal law, it seems that, even in every democratic country, the control mechanisms nevertheless are not necessary in the absence of significant violation of those standards. In this regard one authority rightly observes, that, "Some police have repeatedly violated that most rudimentary notion of decency in the past and that they are doing so today are facts that few would care to dispute".[5] And if critics of the rule of exclusion mean to suggest that the police are sufficiently law abiding that no such rule is needed, the obvious answer is that if such were the case, the rule would present no difficulty because it would never be invoked successfully.

These same observations lead a reject of the claim that while there is need for control, it should be vested within the police organization itself. The police hierarchy in too many cities in America either does not wish to exercise such control or can not do so effectively. Although it is clear that some effort must be made to control police behavior and that such control effort ought to come from outside of police departments, W.E. Burger concludes that, "there is little agreement on the best methods of exercising this control or who should bear primary responsibility for this watchdog function."[6]

History of Police Organization

Available evidence indicates that the origin of police lie in many ancient societies, the military forces served as police. In ancient Rome, for example, the military legions of the rulers enforced the law. Augustus, founder of imperial Roman Government, who became emperor in 27 B.C., formed a nonmilitary police called vigils'.

During the A.D. 800s, England developed a system of law enforcement based on citizen responsibility. The people of every community were divided into tithing (mean groups of 10 families), and each tithing was responsible for the conduct of its members. Males who were more than 16 years old stood watch duty. When a serious crime occurred all able-bodied men joined in a hue and cry (chase of suspect). Each shire (Means County) was headed by a reeve (means chief). The word Sheriff is a shortened from of shire reeve.[7]

In 1750, Henry Fielding, a London magistrate (Judge) and author organized a group of law enforcement officers who ran to the scene of a crime to capture the criminal and begin an investigation. The early 19th century brought difficult times to the rapidly growing city. Poverty and famine increased. Looting and rioting were soon out of control.

In 1829 Sir Robert Peel,[8] realizing the need for a better organized police system formed the London Metropolitan police, with head quarters at Scotland Yard. The new recruits wear top hats and tailcoats. Peel used as his model the early system of constables, but the new forces were much larger, better trained, and more highly disciplined. The rioting in London was soon controlled, but before long it spread to other areas. As a result, in 1835 all towns and cities of England were empowered to form their own police departments. From Sir Robert Peel's name come the familiar nicknames "Bobby" and "Peeler" for the England policeman.

The American colonies followed the early English system. In 1704 Boston, Massachusetts, had watchmen and a military guard to keep the peace.[9] The public watchmen who guarded New Amsterdam (New York City) in the middle of the 17th century were given the Dutch name rattle watch because of the rattles they used to call for aid. The green lanterns they carried survive today as the green-glassed lamps over the doorways of some police headquarter

buildings. In 1658 the voluntary rattle watch was replaced by a paid force of eight men.

In 1830's Peel's London police began to attract notice. A group of New Yorkers made a study of the British system. As a result, in 1844 New York became the first city in the America to establish a day -and night police force similar to Peel's system.[10] American policemen soon became known as "cops" or "coppers". Some people believe that the name comes from the eight-pointed copper star once worn by New York policemen; others believe that the name was taken from the initial letters of the words "constable on patrol".

Police Systems

The Police system of different countries falls roughly into three types. In some countries the central government exercises almost complete control over all levels of the police department. In other countries the government exercises a limited control only, and in still others the government has very little control.

The clearest examples of strongly controlled police systems are the secret police organizations. These groups generally carry out their duties apart from the regular civil police. The Russian police system is one of the most tightly controlled in the world. The Gestapo of Nazi Germany and the Oura of Mussolini's Italy are both examples of government-controlled secret police system.[11]

Examples of highly controlled police system exist in many countries of Europe, Asia, and Latin America. Although they do not always operate in secret, the police departments of these countries are directly responsible to the government. French gendarmes and Italian carabinieri, for instance, are recruited from the army, and strict military discipline is maintained.

False Imprisonment Suits

Major attention was concentrated upon analyzing the process by which legal controls can be imposed on police. In this case the alternative ways to achieve control of police activities have existed in theory for some time. The best known of these is the civil suit for damages against an offending officer initiated by the one who was wronged.

The most common of these tort actions are suits for assault, battery or false imprisonment ("False arrest"). [12]

The difficulties-both factual and legal in successfully suing a police officer are not readily apparent, and the following discussion is designed to point out some of the problems inherent in relying on false imprisonment actions as a stimulus toward a more responsible police department.[13]

In a false imprisonment suit, the plaintiff who sues an officer generally must allege that he was restrained by the officer, that is, that he was arrested. The defendant officer must then either prove that he plaintiff was not in fact arrested or that he, the officer, had the legal authority to arrested him. If the plaintiff is successful in his claim that the defendant illegally arrested him, he is entitled to a monetary award to compensate him for the damages he has suffered. In some instances, the plaintiff may also be awarded punitive damages which are to punish the defendant rather than to compensate the plaintiff. Obviously, the law of false imprisonment is more complex, but this description will serve the purpose there.

It is generally agreed that false imprisonment actions do not operate as a significant deterrent to illegal arrests by the police, and several reasons can be advanced to explain why this is so. Many of the reasons for their inefficacy have to do with the "class of consumers" of illegal police conduct. They are largely the poor and uneducated who have right. Even if a poor and uneducated person finds his way to a lawyer to explore the possibility of a law suit, he will probably be discouraged. Lawyers in tort actions are normally compensated from the damages awarded, an arrangement called a contingent fee (contingent on winning and collecting from the defendant the amount awarded). A lawyer is therefore reluctant to bring such an action if the chances of winning a significant amount are slim.

Because part of the monetary damages is based on injury to the reputation of the plaintiff, the character of the plaintiff is usually in issue. The successes of false imprisonment suits are slim. Furthermore, if control of a department is what is sought, it is doubtful that this may be accomplished by putting financial pressure on in individual patrolman, although there is, of course, some carryover to others who know the outcome of the suit. There are other alternatives available to

control illegal arrests and searches but none of them are thought to be effective. Criminal prosecutions are not actually undertaken although in some circumstances they could be. Civilian review boards await significant implementation.[14] Federal injunctions show some promise as a means of control but injunctive relief is often a clumsy instrument in this context.[15]

To establish further safeguards against illegal police conduct, in 1961 the United States Supreme Court held in *Mapp V. Ohio* [16] that it was a violation of due process for a state court to use any evidence in a criminal prosecution obtained by police by an unreasonable arrestor search. The assumption underlying the rule was that when police officers violated the constitutional rights of suspects, their objective was to secure evidence to be introduced against the suspect at a criminal trial. The rule sought to prevent illegal police conduct by removing that incentive.

The *Mapp* exclusionary rule is only one of several rules which exclude evidence from criminal cases in an effort to control police conduct. Exclusionary rules which are closely related in their rationale also provide remedies when the illegal conduct of the police involves interrogation.[17] However, the *Mapp* rule may be taken as a prime example of judicial attempts to control police.

A majority of the Supreme Court settled on the exclusionary rule despite the fact that, as a practical matter, the existence of the rule in many cases means, as Justice Benjamin Cardozo put it, "the criminal is to go free because the constable has blundered." [18] Whether the cost is too high will depend in large part on the value judgments of the observer, but certainly a relevant factor in making that evaluation is whether, in fact, the rule is structured in such a way that society is the beneficiary of a higher level of observance of constitutional restraints by police. It may nevertheless be useful to discuss some of the reasons why the exclusionary rule ought not to be viewed either as a panacea for police illegality or as an instrument for judicial destruction of "efficient" Crime control.

The exclusionary rule: problems and prospects

The operational assumption which underlies the courts adoption of the exclusionary rule has been pointed. It is that when police behave

illegally they do so for the purpose of acquiring evidence to secure a conviction. By denying use of evidence obtained by an illegal arrest or search and creating a probability that a conviction cannot be obtained, the rule is intended to punish the offending officer and to deter him and others from engaging in similar conduct in the future. "Obviously, such a rule can have an impact only in those cases in which the police desire a conviction, which is not true with regard to many offences today.[19]

The police use of clearly illegal searches and seizures is not limited to vice crimes where convictions are difficult to obtain. Such searches are engaged in for many other reasons. In some sections of the large cities there is a high incidence of serious, assaultive behavior involving the use of guns, knives, or other dangerous weapons. The object of the police is to remove dangerous weapons from persons in those areas. In most cases the police have no grounds for suspicion. The purpose of confiscating illegal weapons is preventive rather than investigative and the police do not look to prosecute those who illegally possess weapons. This instance of illegal police conduct is not designed to be used in criminal prosecution. The point is that primary assumption which underlies the Mapp rule is substantially untrue and, to that extent, it may be supposed that the exclusionary rule is not a deterrent to much illegal conduct by police.

There are other numerous procedural "loopholes" in the exclusionary rule, but mention will be made of only one. This is the so-called standing rule, which means that only the person whose constitutional rights were violated may properly make a motion to suppress evidence at trial. If the evidence is illegally seized from one person and it incriminates a second person, that evidence may be introduced at the trial of the second person; he will be said to lack "Standing" to cause suppression of the evidence.[20]

Apart from legal limitations on the scope of the rule, there are many other problems which undoubtedly contribute to a lower level of success than might otherwise be expected. The legal rules of conduct to which the police are expected to conform are often ambiguous, shifting, nonsensical, and not communicated to the police.

An example of the first is the rule announced in *White V. Maryland* [21] a suspect is entitled to a lawyer at any "critical stage"

of the Criminal process. It is still not clear to criminal lawyers what that means. Second, the rules change frequently, and often the court will declare police conduct illegal even though it was considered proper under the rules that existed at the time of the conduct.[22] Third, there is frequently insistence on adherence to rules which seem to make little sense. For example, in most states, an officer may not arrest a suspect for a misdemeanor without a warrant unless he actually sees the offense committed.[23] Finally, there is usually no systematic effort on the part of the judiciary or anyone else at the local level to explain to the arresting officer why a motion to suppress was granted or to explain how he could legally acquire the same evidence in the future. Less often is there systematic dissemination to all the members of the department concerned.[24]

The failure of trial courts to explain the reasons for their conduct is especially critical, since in many states (although this is changing) the state cannot appeal to a higher court if the ruling on the motion to suppress is adverse. Thus, a reversal-conscious judge feels pressure to decide in favor of the defendant and against the state because a decision adverse to the defendant is the only possible ruling which is subject to being reversed by a higher court.

Much public clamor has existed over the problem of “respect for the law”. If there is any foundation to the assertion that one of major problems is the existence of criminal codes which contain laws viewed by a significant part of society as overreaching or, indeed, simply asinine, then perhaps such an observation has significance for the problem of controlling police behavior. It has been noted that before we undertake to establish efficient machinery for the administration of criminal law we should be concerned first that the criminal law is reasonable; before we set out to control undesired behavior, we ought to make sure that the behavior is clearly undesirable.[25] Perhaps the lesson here is that before we insist on effective means of requiring police conformance to procedural rules we should take care to ensure that the procedural norms upon which we insist are in fact compatible with the operational environment of police work. Proliferation of inflexible legal rules which are inconsistent with reasonable operational rules has undoubtedly contributed to police dissatisfaction with judicial interferences in their

work and, we might speculate. It has contributed significantly toward the claim of political independence of police departments.

It should not be surprising, then that one of the most important effects of the exclusionary rule is the development of more sensible rules of arrest, search and seizure. Prior to that sanction, the rules mattered little. Now it is perceived to be important to have realistic rules and many have been developed throughout the decade of the 1960's. Some have restricted police powers; some have expanded them. All of them evince a more determined effort by the Supreme Court and some other courts to achieve a fair balance of the some times conflicting interests in freedom and crime control.

Doctrinal development has, at times, flirted with notions of preventive control rather than "sanctions" designed to "punish" officers for past transgressions as the dominant means of controlling police behavior. The chief mechanism of this control device is the warrant.

It is often asserted that adherence to higher standards of behavior would advance by requiring approval of a judge before suspect could be arrested or searched. Obviously, a predicate for such a system is the insistence that a warrant be obtained; it will not work if the warrant process is merely an alternative way the police may precede. Although the United States Supreme Court seems at one point to have enunciated a rule that whenever the exigencies of the situation permitted, the police were required to obtain prior judicial approval of actions interfering with a suspect, [26] they have since indicated that this is not the rule.[27] As a result of this clarification, there has been a renewed effort to gain adoption to such a rule.

There is little evidence to suggest that such a rule would be effective in controlling police behavior. The contrary is true. Empirical studies have clearly indicated that many judges do not take the performance of such a task seriously.[28] Police requests for warrants, which are often routinely granted with little or no judicial inquiry into the facts. The most probable outcome of such a rule is that in response to an overwhelming number of requests, judicial acquiescence would become even more routine than it is now.

Conclusion

The conclusions drawn in the study of the impact of the 'exclusionary rule' [29] support the inference one would intuitively draw from the prior to discussion of the problems inherent in the rule, it probably has very little effect on police (non-testimonial) behavior. There is no particular reason to be sanguine about the effectiveness of revamped tort procedures that have been urged as a substitute. I suspect instead that when the political climate shifts enough to permit development of effective remedies for illegal police practices, most of those practices will have ceased by virtue of that fact alone, and new remedies will be superfluous. With no hard evidence, I nevertheless suspect that the converse is also true: until those in positions of authority insist upon changes in police practices, new tort remedies will be either impossible to develop or ineffective in practice. The major reason for this conclusion is that to rely on state judges and juries to control police conduct involves the assumption that, by and large, those judges and juries share the constitutional values implicit in the development of effective remedies for illegal police behavior. It is an assumption of doubtful validity.

The unresolved question is whether the Supreme Court should reverse itself and do away with the exclusionary rule. Here it may be important to distinguish between the functional and symbolic impact of a rule designed to control behavior. From a functional perspective, the Mapp rule may be a failure. It need not follow that the rule should be changed if one can find in it sufficient symbolic worth. The question may be put this way: would reversal of the rule place them in a position that is substantially status quo ante?

An apt analogue may be found in our existing adultery laws. They are, as everyone knows, not enforced. But does administrative nullification of those laws carry the same connotation as legislative repeal? Perhaps not. The latter is often interpreted, whether sensibly or not, as expressing approval rather than just a lack of sufficient zeal to try to stop the practice. It has been traditional when discussing the exclusionary rule to pose the question that has been posed there. Does the rule work? But at this point that may be the wrong question. Instead, the central question may now be this: how would police react if the Supreme Court overruled Mapp vs Ohio?

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