

VALUES AND GOVERNANCE IN POLICING

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ABSTRACT

Corporate governance is process by which organisations are directed, administered and kept accountable: this may extend to the wider stakeholder body implicated with the organisation. The purpose of this paper is twofold: one is to canvass some issues relating to strategy, policy, and corporate governance for police work, particularly to emphasise the importance of expressing appropriate values: the second point is to illustrate that suggestion by providing examples of strategic governance issues of importance for police functioning. The conclusion is drawn that as policing is a constantly evolving process and organisation which can and should learn from recent developments. Because of this constant evolution it is imperative to give expression to the values that underpin good police governance. Five moderate suggestions are given: the importance of the formal rules for meetings; using the strategies proposed by master strategists; the importance of ethical infrastructure; setting key performance indicators for assessing success; and the importance of separating issues from personality. It is hoped that these suggestions will be of practical as well as conceptual benefit.

Key terms

Corporate governance

Values

Policy and strategy

Police

Ethics

This paper addresses the issue of the values that underlie corporate governance for police forces. Corporate governance refers to the processes by which organisations are directed, administered and kept accountable. There is also a view that these governance functions extend to the wider stakeholder body implicated with the organisation.

In order to have governing principles they need to have a reference point by which each governance principle is evaluated, and by which all proposed new principles might be assessed. Here it is argued that such agreed values, and sensitivity to them, underpin all governance issues and, as such, are of critical importance. Thus value principles are crucial to both efficient functioning and to reputation. Modern policing is not so much a fixed entity as an evolving set of functions and values. As such, attention to mission statements, to governance, and to values is essential. Such concurrence provides a stable underpinning that invests governance values with the effectiveness that they properly deserve.

Evolving police work came, inevitably, to be seen as both generalist and specialist. Thus the ordinary foot patrols had specialist functions added: among them were the mounted police, the water police, the air wing, the dog squad, the drugs squad, and homicide. Police come in various forms: semi-military, secret, political, military, religious, community, and secular civic control. The civil guard originally had various functions that have since separated (such as fire control). The invention of policing went hand-in-hand with the development of the notion of due process and of civil liberties. The point here is to emphasise that policing, like all other social functions, is a constantly evolving process; and one which has intimate connections to other parts of our social system (such as politics and the judicial system).

Corporate governance has, underlying it, both legislation and of values and principles. The role of police has connections to very many other legislated matters. It is interesting to observe that if Victorian legislation is searched for Acts which are police relevant, there are 201. They cover a broad spectrum that includes witness-protection, the magistrates court act, seafood, and gambling. It is worthy of note that the Act does not have a mission statement such as the ‘... purpose of a police force is ...’ Perhaps that is seen as too constricting: whatever the reason it would be good to see a high level aim given explicit expression.

GOVERNANCE AND ETHICS ISSUES

Police governance is of various forms. First there is the Act that sets up and sanctions a police force: in Victoria, for example, it is the 1958 Police Regulation Act. That enabling legislation and, in its ideal form, is one of general control rather than control of particular issues. Thus a government would set up and fund a police force, provide the necessary general support, but not instruct the Commissioner on how to do the job, nor would it interfere in particular cases. Governments do, however, take account of issues that emerge, and legislate accordingly.

One form of governance is that of internal control within the force itself. Among other things this takes the form of the regulation of conduct, internal procedures, the Office of Police Integrity, and the information flow, both up and down. Yet another form is that of how the public are to be treated. This involves reference to principles such as court procedures and requirements, the use of courtesy, the presumption of innocence, and the separation of powers. Finally, there is an emerging form of governance – that of research governance.

In Victoria, a fairly typical Australian state, the chain of governance is that the Chief Commissioner reports directly to the Minister of Police. As the official statement holds: ‘the Corporate Committee has responsibility for setting corporate policy positioning, setting strategic direction and policy, organisational performance targets, corporate budget and for monitoring organisational performance. It also has the responsibility of mentoring the various departments and developing senior staff’. That corporate committee has six standing committees, each has its own terms of reference and charter, and each is responsible for the development and oversight of core strategies and projects in their own area.

One of the most persuasive arguments for corporate governance is that it provides stability as well as conforming to values. It is worth noting that stability is an essential part of organisational conduct. Standard accounting procedures, corporate regulators, the Stock Exchange, and banking processes are all instances of stability in commerce. Regularity and a reasonable degree of predictability are highly desirable qualities.

Perhaps a significant additional contribution that good corporate governance provides is that of both reducing the incidence of, and providing solutions for, whistleblowing. Some may believe that instituting ethics policies and procedures sensitises employees to ethical matters and, thereby, fosters a climate of whistleblowing. While we have no firm evidence for such a belief we may conclude that a well ordered organisation is less likely to have problems if the commitment to good governance is strict. Good governance principles also provide a reference point by which breaches may be judged, and hence make the resolution of disputes easier. To that end a whistleblower policy is a substantial help.

The law gives police extraordinary powers and, at the same time, circumscribes those powers in a manner to that ensures that they are not abused. This form of expression of the doctrine of the separation of powers not only ensures that power is not abused but also has the consequence of enhancing the reputation of the police as a fair-dealing body. It is the very values that underlie police governance that ensure it.

One of the often unexpressed problems with morals is that it is not measurable. The values that people do have may, however, be assessed with a modicum of precision by using various scaling techniques commonly used in the behavioural sciences. That point of being able to assess is also true of broader concepts such as ‘ethical climate’ (see Francis & Armstrong).

Ethics, morals and the law

The general issue of the relationship between morals and the law was the subject of an extended debate in the UK in the 1960s, known as the Hart-Devlin debate. Lord Devlin's original paper compared morals and torts, and distinguished between those things that are wrong in themselves (eg. those things which impinge on the sanctity of life), and those things that are wrong because they are prohibited (eg. a minor breach of a trading act). As Devlin (1963) wrote, 'real crimes are sins with legal definition'. Devlin's view is that lawmakers need the stuff of morals in order to fashion the law.

That view was contested by Professor Hart of Oxford (1987), who noted that it is not possible for a community as large and diverse as the UK to have a firm and unambiguous moral position. The supposedly common stock of ideas on right and wrong do not exist, a point that has even greater force in countries that are yet more socially pluralistic.

No matter that there might be diversity of opinion - that interchange is about values, and reveals the importance that values-debates play. What is most evident is that any principle of corporate governance can only be evaluated for worth if there is a standard by which it may be judged.

The argument in favour of codes

Codes have specific application. The code of practice for medical practitioners does not apply to lawyers: the police are bound by the police codes. That specific application is captured in *The Australasian Police Practice Standards* as:

- Ethical practice
- Professional service delivery
- Knowledge-based practice
- Continuing competence
- Professional responsibility and accountability

Prominent here is the ongoing nature of police, of continual updating, and of the critical issue of accountability. Such principles are at the top of the hierarchy, followed by strategic issues, with tactical issues being further down, and day-to-day operational matters being the guide for police work at the primary face.

Human values, ethics and corporate governance

Human values inevitably invest corporate governance decisions. The notion that we stop sending small boys up chimneys to clean them does not have its origins in economics but, rather, in the physical danger, degradation, and exploitation. In addition to the direct links to business, and such questions as 'Is ethics profitable?' – and then there is the issue of the whole framework within which we work. No matter how good it is for the economy we do not agree that child labour is humane or just: no matter what the economic justifications we do not agree that unsafe work practices are acceptable. In just the same way one would not wish to have police efficient at catching criminals that

it erred on the side of wrongful arrests. These sorts of issues are now part of the fabric of our thinking and are not questioned. So many such issues are part of our frame of reference that we no more notice them than a fish notices water.

Among the values that might be considered are those that are expressed in clear terms, and with relatively clear behavioural outcomes. For example, one might hold that open-ness should always apply to the revelation of information, save where there are special circumstances. Those circumstances then need to be outlined: for example, open-ness is not to be followed if the information is personal and not relevant to some agreed civil purpose (such as an obligation to answer questions truthfully while under oath). It might also be held that information is not to be freely available where it breaches the rights of the owners of intellectual property, where it could lead to danger to others, or to cases which involve national security. It is only by such caveats and exclusions that we can devise an effective guide to conduct.

The unfettered use of power is against common and widely accepted covenants, such as the United Nations *Declaration of Human Rights*, and against the precepts of the world's major religions. Privileges carry corresponding responsibilities. One cannot imagine admiring any social institution which takes upon itself all of the benefits without acknowledging and adopting corresponding responsibilities. Organisations operate within a wider social framework that gives them life, and sustains their activities. It is this debt which business repays to society by making the lives of its citizens that much better. These wider responsibilities find expression in various ways: by economic betterment, by health and educational improvements, by corporate philanthropy, and by operating within a structured framework of values.

REGULATION

Ethical self regulation is a complement to the law – it is not in competition. While the law very properly sets minimum standards and sanctions transgressions, ethics complements that by being positive rather than punitive. It is about being solution-oriented rather than judgemental. The trend to self regulation has much to commend it, and may be materially assisted by adopting the *Australian Standards on Corporate Governance*, having been worked out in detail. This developed model owes much to other approaches (such as the OECD code) but has particular value in Australia, and is applicable to a variety of organisations from the commercial to the volunteer. Among the pressing arguments for adopting a code of corporate governance is that where self regulation fails, where organisations are driven by minimum standards, the law will intervene. That intervention is costly in time, money, and in reputational damage.

The verbal definitions often confuse what we do. There is, clearly, a world of difference between health-damaging exploitative slavery on the one hand, and recruiting from another country for contract labour. It is so easy to fall into the comfortable position of assuming the superiority of the

ways with which we are most familiar and becoming moral imperialists. It is well to remind ourselves yet again that cultural variations tend to distract us from the very real differences that exist within our own society. Cultures do not come as an invariant unit. The guidelines that apply to inter-cultural interchange can apply with equal force to dealing with the substantial personality variations that we see in our own everyday lives.

The treatment of stakeholders as cypher entities instead of human beings is most likely to result in a failure to achieve organisational goals. The harsh treatment of personnel does not promote productivity. The promotion of goodwill is an instance of treating stakeholders as dignified and sensible people; it not only promotes organisational efficiency, but also results in goodwill in commercial terms that may have a substantial monetary value.

Police codes

It is pleasing to see that the Victoria Police have a self imposed code: interestingly it uses a useful mnemonic to remind the busy practitioner of the four basic principles.

Will your decision stand scrutiny?	S
Is your decision ethical?	E
Is your decision lawful?	L
Is your decision fair?	F

It would be facile to consider that the expression of terms, such as those above, should not be scrutinised. The first point, scrutiny, is the one of least concern. The notion of scrutiny goes with accountability – a principle with a long and honourable background. Whether or not the decision is ethical is slightly more problematic. What constitutes an ‘ethical’ decision may be variously interpreted.

One might say that an action is ethical if it is consistent with an agreed code of ethics. What that does not accommodate is the notion that some principles enjoined by a code may be objectionable. One might devise a code that gave salience to loyalty to the police force and to police colleagues when it could be more important to give such salience to the manner of dealing with the public.

The third principle, is your decision lawful, is less contentious. Jurisdictions that give primacy to law must also enjoin legal conformity. If a law is a morally bad law then the appropriate action is to use legal and democratic means to change it. It is not the province of police functioning to flout a law.

The final principle, is it fair, sounds appealing but has considerable ambiguity in it. What is ‘fair’ is open to speculation. One might hold that ‘fair’ means equitable: for example, it is fair to restrain violent offenders, it is not fair to use unreasonable force. The essence of fairness would need to have a due sense of proportion in its function. Unfortunately, this does not seem to be a concept

amenable to clear definition. If we were to use some other term, equity or balance, it would be more meaningful.

To this commentary one would need to add that two related issues have a powerful influence on how policing is exercised on a direct basis. One issue is that of tolerance levels: how much deviation is acceptable. One could readily imagine how, in a country town where everybody is known to everybody else, a large amount of tolerance would be displayed. The small community have to get along, not having the anonymity of the larger towns and cities. Among the contextual behaviour patterns is the known character dispositions of the local inhabitants. Someone known to be of 'good' character will be accorded considerable leeway whereas in a larger and more anonymous community would have their behaviour judged on that 'slice' alone.

The other related issue is the exercise of police discretion. Whether or not a charge is brought or an arrest made the police need to make a judgement about whether it merits formal treatment or, more simply, an admonition to behave in a more responsible manner, or even to ignore the behaviour. Again, one could imagine seeing a falling-down drunk taken into self-protective custody: if, in a smaller community, that were to happen the discretion would be tempered by the knowledge of the circumstances – perhaps the drunk had just received news of significant ill-fortune. Experience of policing, tolerance levels, and personality makeup all contribute to the way in which discretion is exercised. At best one can only provide experience, supervision, and guidelines – not hard and fast rules.

Importance now attaches to the notion of integrity as an essential ingredient of policing. The introduction of the *Office of Police Integrity* in the state of Victoria is a concrete expression of that recognition. Formed in late 2004, the Office is the monitor of high ethical standards and, at a practical level, handles complaints against the police and conducts investigations into police corruption. The standards that prevail rightly include the concept of natural justice. The Manual puts those points precisely.

Practical issues and value principles

With police forces, as with other organisations, it is not uncommon to find a disparity between what is professed and what is practised. Prenzler & Ronken (2003), for example, found such a disparity when surveying Australian police forces. Innovative programs were operative but no reports of programs of integrity development and maintenance. The authors reported their disappointment at the results of the survey 'Misconduct prevention is clearly on the agenda for contemporary police departments, but in many cases rhetoric of commitment to integrity does not appear to be matched by reported practice. The disquieting aspect of all of this, apart from some notable exceptions, was evidence of '... dangerous complacency and, while there is little concern these days about highly organized corruption, diverse and hidden forms of misconduct may be occurring under such conditions. Of additional interest was the lack of reference to benchmarking, either through

comparisons with other police departments in the world or through the research literature on police corruption'. Their conclusion noted that no Australian police department reported anti-misconduct strategies '... consistent with an advanced model of "best practice"'. They concluded that it is incumbent upon legislation, on citizen pressure groups, and on oversight agencies, to press for a wider and more urgent internal integrity strategies. One might add the need for more pressure from external agencies, perhaps by such bodies as law institutes.

The importance of emphasizing early ethical training has been canvassed by Stephens (2006). He noted that such early training sets the tone for later career attitudes. As he put it, '... law enforcement should serve as a reminder, not as a challenge'. Further, it is well to note that corruption does not come only in large packages. Del Pozo (2005) has reminded us that the 'Case of the free cup of coffee' is one that may lead to gratuities, and thus to larger scale derelictions from the code.

In a British police force Rowe (2007) found only minor corruption, although that may be a reflection of methodology, and of self-report statements. What that paper does provide is a strong pointer to the need for exploring the difficulties in negotiating access to field work, and to the important issue of obtaining informed consent. Much fieldwork is mundane, and ethical dilemmas do not occur in every encounter, but fieldwork contacts are important as they reflect what actually goes on in day-to-day policing.

The notion of corruption may have a flow-on to other professions. For example, one could ask whether a medical confidence given by a police officer to a registered medical practitioner should be kept confidential? This is the kind of dilemma for which there needs to be clear guidelines. In a similar frame of reference one might ask what kind and degree of medical disorder discovered in a medical checkup for an airline pilot would require disclosure to airline management.

Paradoxical cause

In dealing with governance issues, and acting from the best of motives, it is quite possible that the proposed policy or intervention may be self-defeating. Some police-related instances are the construction of physical barriers may invite destruction; high speed chases may result in the injury they are designed to prevent; the use of suspended sentences in the UK was designed to keep the prison populations down. As a suspended sentence was not perceived as a punishment it did not have the desired deterrent effect. Re-offenders collected their original sentence and the new one - thereby filling the prisons.

The recent declarations by governments that we need to be deprived of some of our civil liberties in order to protect our way of life has become more pressing. It does have the curious conclusion that we need to be deprived of something in order to protect the thing of which we are deprived. There may be pressing reasons to suspend some civil liberties in order to protect others – but it is a judgement that is fraught with difficulty in that it may end up destroying the very thing that one wishes to preserve.

In ethics there is the now recognised conclusion that to try and capture ethics into a series of compliance acts is often counter-productive. Ticking the correct boxes leads to a mind-set of doing minor compliance acts rather than attending to higher principles. When the correct boxes have been ticked then there might be a switch-off for values leading to lower ethical standards.

A rise in complaints against the police may reflect an increasing dissatisfaction with the police. It might also be interpreted as a good sign in that there is now a good protective system for making complaints effective with adverse effects on the legitimate complainant. For an excellent article on this topic see Grabosky (1996).

SUGGESTIONS FOR THE IMPROVEMENT OF POLICE GOVERNANCE

Having suggested what does not work we now consider what does. The first prescription would have to be to avoid that which does not work. Having said that there are several positive approaches that we might use, the first of which is to appeal to reason. These rational arguments might be divided into three broad categories.

The first category is in-house to the organisation. This will include addressing employee concerns, improving morale, avoiding debilitating internal criticism, and having the measurable qualities of decreasing absenteeism, and of improving productivity by that means as well as a better-motivated force. It is also highly likely that it will both attract and retain better staff.

Another principle that the present author believes has much to commend it is that of what we might *Gradualism* (see Francis, Gius, & Coin, 2004). Here the notion is not to be intransigent and immediate; not to be too pressing nor too inflexible but, rather, to have a longer-term goal in mind. To take a commercial example: one might deal with product from (say) India. Where a group of families in a village have a small commercial enterprise they might provide an economic commercial product, but do so using child labour. That issue is not always clear-cut; for example, the family and village are socially cohesive and provide excellent emotional support for the children even though they work hard.

A police instance is one where (say) a policeman in early days of experience committed a tactical mistake – not too serious a one. Suspecting that a crime may have been committed let us suppose that such a new officer breaks into premises only to find the place empty. A more senior colleague could use that experience to build up the experience and confidence of judgement in someone in need of experienced guidance.

We do need to recognise that values underlie all principles of governance. If one did not have expressed values and someone suggested a new principle for governance one would not know if it had any merit unless one had a reference point: ethical values are just such.

Five strategic suggestions

Given that the accepted values that underlie police work it is seemly to offer some strategic suggestions for continued improvement. The rationale for these value-laden suggestions is the benefit of findings from the behavioural sciences, and in corporate governance work in general. Clearly, meetings may be ineffective, and/or a waste of time, and counterproductive. Further, those who wish to be effective in pursuing strategies will find it easier to implement them through committee work if they have a good working knowledge of meeting procedures. Similarly, the importance of strategies needs no extra emphasis: having strategies removes the prospect of decisions made on the run. Further, effective strategies ensure that agreed policies are implemented.

From this flows the notion that one can only be seen to be effective if there are measures that demonstrate change: to this end measures of effectiveness are crucial. The framework within which such changes take place must occur within a context of values, and thus there is a need for an explication of the values that underpin such strategic approaches. Finally, it will be recalled that no matter what formal processes are in place they all operate through people. In order not to confuse policy and strategy with persons it is seen as crucial that specific attention be given to separating such corporate approaches from the personalities of incumbents. Thus the proposals are:

1 Rules of meetings

There are basic procedural rules for policy making bodies, and those involved in other forms of corporate governance. Among such requirements are their duties, responsibilities, actions, measures of protection, and the accountability of those who exercise corporate governance. It is a truism that corporate governance is exercised mostly by decisions made at formal meetings. While it is recognised that many, if not most, meetings work on a consensual basis it is crucial that there be agreed rules by which problematic decisions are made and recorded. Such a process affords fairness, economy of time, and a defensible position should any contentious points be raised at a later date.

It does deserve emphasis that compliance with formal requirements is necessary, but not sufficient. Formal rules are there as a guide, and capture the collective experience of what works: that function is aided immeasurably by the addition of goodwill to others and good intent of purpose. We do need to recognise that rules help us deal with contentious situations: as such they are of great value but not if the rules are used as weapons rather than as tools.

2 Strategies

Like Clausewitz on war or Machiavelli on politics, the master organisational strategist will always have in mind the means by which their aspirations might best be achieved. Jay in his *Machiavelli and Management* (1980), and by von Ghyczy et al (2001) in *Clausewitz on*

Strategy are prime instances. Jay took the principles from *The Prince* and gave them application to modern management: Ghyschy took the Clausewitzian principles of military strategy and extended it to the econo-political realm. So long as we bear our values in mind there is much to be learnt from master tacticians. Knowing what works in implementing values, knowing the dangers and appreciating strategic approaches is crucial. Mission statements and the clear expression of values keep us focused. One suggested set of organisational objectives is: preventing crime, protecting individuals and organisations, keeping the peace, and catching the wrongdoer.

3 *Set criteria for success*

Finally, to make it work it is necessary to know what has worked: without markers of some kind one would never know. For this reason the criteria of judgement should be set out clearly and explicitly. Having the criteria is no guarantee, but it is an excellent start. For example, using the infrastructure instance above, an organisation with a Code of Conduct, a Committee which exercises it and suggest improvement, has a program that trains in values, and has regular reporting to command on its achievements is well on the way to success.

4 *Ethical infrastructure*

An infrastructure that demonstrates commitment to ethics would, at a minimum, consist of four features. A Code; an Ethics Committee; training in ethics; and regular reporting on ethical matters. Although this is no guarantee of ethical success it does provide both an effective approach and an indication of sincerity.

5 *Separate the issues from personalities*

One of the hard lessons that professionals learn is that of separating issues from personalities. Among senior experienced people it is commonplace to find polar opposite views on an issue while personal respect is still maintained. This division of view may be of various forms but, commonly, takes one of two views. One is an agreement of aims and principles but a difference in the preferred method of achieving them: the other is that of having vastly different views on a subject. The expression 'we will have to agree to disagree' portrays it nicely. Formal tuition for the less experienced could improve the professionalism.

CONCLUSIONS

This paper argues for clear expression of the human values that underpin good codes of corporate governance. It is argued that such well-based codes benefit organisations in various ways. It is, in other words, an argument for the consequential view of ethics: the notion that values and standards are to be assessed by the value outcomes that they produce. When the agreed values are

clearly expressed then, and only then, might we think about the strategies and tactics that would help achieve the agreed goals. The suggestions offered may help move highly professional forces in appropriate directions. It is by a commitment to such developments and new insights that policing may progress not only in effectiveness but also in organisational and moral stature.

REFERENCES

- Del Pozo B (2005). One dogma of police ethics: gratuities and the 'democratic ethos' of policing. *Criminal justice ethics*. 24 (2) 25-46
- Devlin P (1963). *Enforcement of morals*. London: Oxford UP
- Francis RD & Armstrong AF (2007). Quantifying ethics. *Australian journal of professional and applied ethics*. 9 (1) 74-85
- Francis RD, Gius E and Coin R (2004). Ethical gradualism: a practical approach. *Australian journal of professional and applied ethics*. 5 (1) 25-34
- Grabosky PN (1996). Unintended consequences of crime prevention. (in Homel and Clarke, Eds). *Crime Prevention Studies*. Vol 5 (1996)
- Hart HLA (1987). *Issues in contemporary legal philosophy*. Oxford: Clarendon Press
- Jay A (1980). *Machiavelli and Management: an inquiry into the politics of corporate life*. NY: Bantam Books
- Prenzler T & Ronken C (2003). A survey of innovations in the development and maintenance of ethical standards by Australian police departments. *Police practice and research*. 4 (2) 149-161
- Rowe M (2007). Tripping over molehills: ethics and ethnography of police work. *International journal of social research methodology*. 10 (1) 37-48
- Stephens N (2006). Law enforcement does not begin when you pin on your badge. *FBI law enforcement bulletin*. 75 (11) 122-23
- Von Ghyczy T, von Oetinger, B and Bassford C (Eds) (2001). *Clausewitz on Strategy: inspiration and insight from a master strategist*. NY: Wiley.

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