

Policing and Economic Calculation

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Abstract

Despite recognizing the importance of the role of economic calculation in the efficient allocation of resources, as well as the apparent inefficiencies of bureaucratic management, Mises (1944) denied that policing services could be managed according to the profit criterion. The purpose of this paper is to describe a number of economic calculation problems inherent to centrally planned policing and how they would be resolved in a competitive market setting. These problems include the allocation of police resources, the determination of the legal rules regulating police conduct, and the civil service laws intended to find the appropriate balance between management autonomy and preventing a political patronage system. It is further argued that policing services can be provided competitively while still maintaining a minimal state as preferred by Mises. As such, the stability of a state can be sustained while also allowing for the benefits of economic calculation in policing services.

Bureaucratic management, as distinguished from *profit management*, is the method applied in the conduct of administrative affairs, the result of which has no cash value on the market. The successful performance of the duties entrusted to the care of a police department is of the greatest importance for the preservation of social cooperation and benefits each member of society. But it has no price on the market, it cannot be bought or sold; it can therefore not be confronted with the expenses incurred in the endeavors to secure it. It results in gains, but these gains are not reflected in profits liable to expression in terms of money. The methods of economic calculation, and especially those of double-entry bookkeeping, are not applicable to them. Success or failure of a department's activities cannot be ascertained according to the arithmetical procedures of profit-seeking business. No accountant can establish whether or not a police department or one of its subdivisions has succeeded.

- Ludwig von Mises, *Human Action*, p. 305

Let us imagine what might occur if production of a relatively simple consumer good, bread, were organized in a fashion similar to the modern American police department. There would be one monopoly bread-producing firm for every moderately-sized city (smaller towns would have their bread provided by the county government) and their revenue would be entirely paid from tax dollars (no tipping would be allowed, as that may corrupt the bakers). Somehow these firms must decide what types of bread to produce (white, wheat, rye, sourdough, French bread, gluten-free, etc.) and in what quantities. Although the bread companies are able to calculate their costs of production,

they are unable to determine whether the combinations of types and quantities of bread they produce are of more value to consumers than the alternative uses of the productive factors. Though the bakeries are easily able to “sell” their entire daily produce since it is given away at no charge, they are truly in the dark in terms of evaluating whether they have allocated resources to their most highly valued use.

One can easily see the manifestations of the problems of economic calculation in a bureaucratically managed bread company. Despite bread being a relatively simple product to produce, without market prices it is impossible to tell whether the resources allocated to producing bread could have been more profitably allocated to another use. The same reasoning applies to policing, a service that is far more complex than bread production.

The purpose of this paper is to describe a number of problems that arise in centrally planned policing that would be alleviated in a system of competitive policing. These problems include questions of how to allocate police resources, the determination of legal rules regarding police conduct, and how to properly balance the autonomy of police management against preventing a political patronage system from arising. The first three sections of the paper will discuss these problems respectively. As will be shown, the costs of operating a police department without the knowledge available from economic calculation are non-negligible. Indeed, many of the controversies surrounding policing today, particularly policing of minority neighborhoods, could be reconciled if such a tool were available. But can policing be competitively provided in such a way to exploit the benefits of economic calculation? The final section paper argues that such an arrangement is not only possible but to a limited extent already exists. Much of the

policing service we currently enjoy is, in fact, provided privately and competitively, but is more commonly referred to as “security” or “loss prevention.” By further expanding the role of private security into domains traditionally dominated by monopoly police, economic calculation can be employed in making decisions that were previously made in the dark.

The Allocation of Police Resources

Since police departments do not charge prices for their services, they are unable to allocate resources based on what would maximize profit and must base their decisions on some other criteria. This section describes the issues that arise when allocating police resources bureaucratically, methods they have used in response, and how private security, having the benefit of economic calculation, is able to allocate resources more highly valued uses.

The mundane decisions that must be made by police departments are more complex than is commonly appreciated. For instance, consider the question of how many officers should staff a city police department. Should there be a certain ratio of citizens per officer? Should staffing levels vary based on measures such as crime rates? Should there be a minimum number of officers on duty regardless of the citizen demands for their services?¹ Police departments have used all of these methods to make decisions about staffing levels (The PAR Group, 2008).

¹ Beyond the scope of this paper but worth mentioning are the public choice considerations involved in these strategies. Although it is relatively easy to grow the staffing levels of a police department, provided that the funding is available, it is comparatively difficult to reduce its size due to resistance by the police officers themselves. Police unions are among the most politically powerful public sector unions and are able to present powerful opposition to politicians who campaign against their wishes (see, for example, Craver, 2014). Minimum staffing levels in practice have more to do with collective bargaining agreements ensuring minimum work hours for police officers rather than considerations of efficiency.

However, departments using these methods are all, in terms of economic calculation, in the dark. They face the same issue described by Mises (1944, p.50) in a hypothetical:

A police department has the job of protecting a defense plant against sabotage. It assigns thirty patrolmen to this duty. The responsible commissioner does not need the advice of an efficiency expert in order to discover that he could save money by reducing the guard to only twenty men. But the question is: Does this economy outweigh the increase in risk?²

Without the defense plant and whatever other entities that desire protection being able to bid for police resources, there is no way to know whether those resources are being allocated to their most highly valued use. This is not only true for labor resources, but with all of the capital goods used by police as well. Without customers bidding for resources, how do police departments decide how to allocate them?

Sherman et al. (1998) conducted a meta-analysis of studies evaluating the effectiveness of various policing strategies, including rapid response to 911 calls, random patrols, “hot spots” policing, and proactive policing (which involves increasing the number of police-initiated encounters leading to arrests). There are considerable methodological difficulties in evaluating any of these strategies, and conclusions are

² Mises continues: “There are serious things at stake: national defense, the morale of the armed forces and of civilians, repercussions in the field of foreign affairs, the lives of many upright workers. All these valuable things cannot be assessed in terms of money. The responsibility rests entirely with Congress allocating the appropriations required and with the executive branch of the Government. They cannot evade it by leaving the decision to an irresponsible adviser.” It should be emphasized that the calculation problem here is not due to anything in the nature of policing, but due to the difficulty of calculating the benefits provided by the defense plant. If one replaces “defense plant” with “armored truck carrying 50 bars of gold”, one can calculate the efficient number of guards to assign to the truck.

often conflicting. However, even if researchers are able to overcome the methodological issues in determining the efficacy of these strategies in terms of reducing crime, they still have no way to determine whether the costs of allocating additional resources into a certain strategy is worth the benefit of crime reduction. Attempts to satisfy consumer preferences, such as through the use of citizen surveys, do not overcome the calculation problem, as it may be the case that consumers would be unwilling to pay for popular programs if presented with a bill rather than a questionnaire. Thus, how to allocate police resources must be made under some other criteria than efficiency.

Benson, Rasmussen, & Sollars (1995) found strong evidence that police departments respond to financial incentives, with the 1984 Crime Control Act being an illustrative example. Certain provisions of the Act allow local police departments to seize cash and other resources they have probable cause to believe were either used in or are the proceeds of a drug crime and spend those resources for police purposes. Although the “War on Drugs” had been declared over a decade earlier by President Nixon, it was not until after this point that many more police departments were dedicating more resources to drug law enforcement. This process of commandeering resources and using them for police purposes has been such a boon to law enforcement that some departments have become dependent upon it as a source of revenue. Worrall (2001) conducted a survey of 1,400 law enforcement agencies and found that 40% of respondents agreed or strongly agreed that civil forfeiture is necessary as a budget supplement. The federal government offers an equitable sharing program that has allowed 298 state and local agencies and 210 task forces to seize funds equal to at least 20% of their annual budget since 2008 (Sallah, Jr, Rich, & Silverman, 2014).

The well-publicized case of Eric Garner, who died in police custody after being arrested on suspicion of selling untaxed cigarettes, provides another example of criteria that police use to decide how to allocate resources. In this case, political pressure to raise revenue led to the creation of the New York Cigarette Strike Force. Interestingly, three days before the Garner's death, an update was posted on Governor Cuomo's website boasting about the revenue gained from their Cigarette Strike Force, which had seized "nearly \$1.7 million in cash and contraband...in its first six months" ("Governor Cuomo Announces New Cigarette Strike Force Seizes Nearly \$1.7 Million in Contraband and Cash Within First 6 Months," 2014).

This is not to argue that police allocate resources solely based on financial considerations, but that when economic calculation is impossible (at least under the prevailing legal framework), allocation decisions must be made by some other means, and that means will typically reflect the desires of the bureaucrat, as far as his autonomy allows (Tullock, 1965).

How would (or does) economic calculation made possible through competitive security services alleviate these issues of resource allocation? Regarding optimal staffing levels, consider the pedestrian example of loss prevention in a department store. The department store manager attempts to hire additional personnel to the point where the marginal benefit equals the marginal cost. He or she can do this by measuring the value of the loss prevented by one additional security employee and comparing it to the cost of hiring that employee. In contrast, a city police department has no measure of the marginal benefit of one additional police officer. This is true for all police resources, not just

labor.³ What also should be recognized is that labor, especially in the context of security, is heterogeneous. Although the “rent-a-cop” is derided as a low-wage, unimimidating farce, the fact that they pass the market test demonstrates that they provide greater benefit than their cost. Differentiation in skills is underutilized by police departments, who use expensive sworn officers to perform low-skilled duties, such as coordinating traffic at intersections (Dawson, 2017).

With the benefit of calculation, police agencies would be able to identify which policing strategies are worth the cost. Even if policy evaluation research determines that random patrols are not very effective in deterring crime, a housing association may be willing to pay a security service to conduct them because residents are comforted by a more highly visible police presence. Competition and calculation would weed out methods that are ineffective in satisfying consumer desires, which are often distinct from what reduces crime. Indeed, most calls for police service are not crime related (Dunham & Alpert, 2015). Furthermore, if police departments were aided by economic calculation, the War on Drugs would likely have never occurred. This is not to say that no private police agency would engage in some drug enforcement: just as a bouncer will ask a smoker to put out his cigarette in a non-smoking establishment, he will ask a patron injecting heroin to leave. But it is doubtful that even the most ardent supporter of drug

³ Use of one tool used by police - the body camera - is being mandated by an increasing number of cities since the killing of Michael Brown in Ferguson, MO. Interestingly, Intelligard, a private policing service in Toronto that primarily deals with enforcing security in housing complexes, has had employees carry cameras with them to record enforcement contacts (McLeod, 2002). This is for liability purposes, as well as to gather evidence of wrongdoing by those they need to eject or evict. By being able to measure the cost of capital goods, such as a camera, against the benefit (in this case decreased liability costs), a private policing service can calculate whether capital goods increase their profitability. On the other hand, government police departments tend to acquire capital goods, such as mine-resistant armored vehicles, that would unlikely increase their profitability if they were subject to competition. As well, they often need to be forced by law to acquire capital goods that increase their accountability, such as body cameras.

prohibition would be willing to pay the costs of detecting and imprisoning drug users, especially if he cannot force others to subsidize his preferences.

Ultimately, it does not take much imagination to see how private competing security services could perform the tasks reserved to government police agencies (as well as those the latter does not perform). They do so every day, at malls, amusement parks, (some) airports, sporting events, and on the Internet.⁴ Based on the estimated ratio of 3 personnel working in private security to every public police officer (Jaeger & Stringham, 2011), one could argue that the quantity of government police supplied is far below the quantity demanded. Since many of the services citizens desire from the government police are (or could be) provided by competing agencies, the growth of the latter would allow greater use of economic calculation in police resource allocation.

Legal Liability

Despite the barriers that qualified immunity poses for victims of police abuse, it is a necessary limitation. The absence of such a limiting doctrine would undoubtedly create difficulties in hiring police officers committed to protecting citizens.

(Simmons, 2008, p. 500)

In recent years, the issues of police misconduct and brutality have received greater attention from the media. Highly publicized shootings have led many to question whether police officers are being held accountable for their actions and whether they are too quick to use lethal violence. Some groups, such as Campaign Zero (a more formal outgrowth of the Black Lives Matter Movement), advocate reforming the rules that give police officers special privileges and immunities from disciplinary action (Campaign Zero, 2016).

⁴ See Stringham (2015) on how PayPal had to find innovative solutions to online payment fraud without the help of the FBI.

This section addresses the issue of the qualified immunity privilege that police officers enjoy (though the analysis could be applied to any similar privilege) and how economic calculation would be able to determine whether this rule is necessary for the reasons advocates give, namely hiring qualified officers and ensuring that they are not hesitant to use force when necessary.

Qualified immunity protects police officers from civil liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known" (*Harlow v. Fitzgerald*, 1982). It is thought that if they do not have qualified immunity, they will be indecisive in potentially life-threatening situations because they will be concerned about their use of force decisions being scrutinized by juries who do not understand the difficulty of police work. Thus, to ensure that officers will not be afraid to use deadly force in emergency circumstances, protections like qualified immunity are warranted.

On the other hand, some consider qualified immunity an unjustified protection for police officers that increases their propensity to use deadly force, even in situations where it is unnecessary. By lowering the costs of making a bad decision, qualified immunity increases the number of bad decisions that are made. Furthermore, besides the consequences of such a protection, it is thought to be *prima facie* unjust for a harmed party to receive no compensation solely because the person who harmed them was a police officer.

Though both of these perspectives may have some merit, without economic calculation it is impossible to determine which position is more socially valuable.

However, through competition economic calculation becomes possible and consumers can demonstrate whether protecting officers from civil liability or not is preferred.

The process through which this can occur is straightforward. Market competition between security firms would determine whether more aggressive policing tactics (presumably resulting in higher incidents of civil liability) is preferred to a style of policing more careful to avoid such liabilities. That is, consumers who prefer the former style of service must be willing to pay a premium for it.

Under the current legal regime, it is essentially the case that the only style of policing offered is the “premium” service, with it being subsidized by victims of police misconduct. Qualified immunity does not completely protect officers or departments from liability. If a civil litigant successfully shows that a police department demonstrates a pattern of abuse, or that an officer knowingly violated the well-established rights of a citizen, then taxpayers (“consumers”) are on the hook.⁵ However, they do not pay the full cost of the “premium” service because, when officers are protected by qualified immunity, the victim bears the costs.

Under competition, consumers preferring that service would bear the full costs of it. Of course, managers of security firms would unlikely give their employees a carte blanche to be aggressive as they wish. Rather, successful firms would find the most profitable balance between how best to protect the well-being of their clients and limit their own liability. It may be the case that there is not so direct a trade-off between

⁵ Even in cases where police officers are not protected by qualified immunity, it is extremely rare for police officers to pay damages out of their own pocket. They are frequently indemnified by their departments, which, of course, are financed by the taxpayers.

aggressive police tactics and citizen safety, but if there is, security firms, with the benefit of economic calculation, would find the most profitable balance.

Civil Service Rules

In the earliest days of government-run police departments in the eastern United States, positions within the department could be distributed at the whim of local politicians. This frequently resulted in a system of patronage, where there would be frequent turnover of police department personnel, with new recruits being hired based on their political support (Langworthy, 1992). Their authority could then be used to help ensure that their candidate would remain in office; if he lost, they would likely lose their job as well. In order to reduce this corruption of public service and facilitate a more professional police department, many cities implemented civil service protections intended to reduce the arbitrary firing or punishment of public employees.

This section will analyze the calculation problem in attempting to balance the autonomy of police management with protecting public employees from management's arbitrary whims. There are a number of means by which cities and police departments attempt to achieve this balance, but this section will focus on a particular method: arbitration agreements that allow officers to appeal disciplinary decisions before a third party arbitrator. Similar to the previous section, this analysis can be applied to any similar civil service rule.

The problems with a political patronage system, where employees can be fired at will and replaced with others solely based on their political support rather than their ability to fulfill the requirements of their job, are obvious. On the other hand, police management being unable to release employees who clearly lack the ability to perform

the duties of a police officer, or who have even demonstrated a pattern of violence, is also problematic. There are numerous examples of arbitrators reversing police management's decision to fire officers:

Paul Abel of the Pittsburgh police department, driving home after drinking six alcoholic beverages at his wife's birthday party, was punched while at a stoplight. In his attempt to track down the perpetrator, he pistol-whipped and accidentally shot a man who witnesses reported was not the one who punched him. After being fired for his lapse in judgment, he was reinstated by an arbitrator (Sherman & Lord, 2009).

Oakland police officer Hector Jimenez shot and killed two unarmed men within a seven month time span. The second was shot in the back as he ran away, leading the city to pay a \$650,000 settlement with the deceased's family. Officer Jimenez was fired, appealed through his union, and was reinstated (Friedersdorf, 2014).

Deputy Whitney Richtmyer of the King County Sheriff's Department in Washington was found asleep in his patrol car, under the influence of some narcotic. He appealed his termination and arbitrator Michael Cavanaugh decided "termination was too severe, particularly when compared with the prior discipline of another deputy in a similar case" (Miletich, 2016). Richtmyer was reinstated with back pay.

The job security that civil service protections afford to police officers can be thought of as a compensating differential. Indeed, at a time when the city of Chicago was experiencing financial difficulties, the police union was willing to negotiate for increased protections for its members in lieu of pay raises (Chase & Heinzmann, 2016). This results in a transfer: instead of taxpayers paying police officers the full cost of a higher monetary

salary, some costs are shifted onto those who are victimized by officers who would have been fired if not for civil service protections.

The calculation problem faced by police departments is whether the composition of these compensation packages (as well as their amount) is economically justified based on the value of the services provided by officers. A competitive system would largely alleviate this calculation problem, as well as the issue of finding a balance between the needs of management and prevention of political patronage. First, the issue of arbitrary firing would be less of a problem: firms that arbitrarily fire qualified employees would be at a competitive disadvantage. Moreover, the issue of political patronage would be moot. Second, because the marginal contribution of employees could be calculated, their compensation packages would reflect the value they provide. Third, competition among firms for employees would lead to compensation packages that are commensurate with employee preferences and consumer desires. Although it is highly unlikely that employers would relinquish to arbitrators their authority to summarily fire employees that assault innocent people, or that conscientious employees would prefer having such a protection in exchange for a massive pay cut, only in a competitive system can the optimal compensation arrangements be determined. Compensation would have to be on par with the value of services provided to consumers, and job security would depend on the ability to continually provide that value, not on an arbitrator's idea of what is "fair."

Competitive Policing in a Minimal State

Even if a competitive system of policing could solve the aforementioned calculation problems, is it feasible? Classical liberals like Ludwig von Mises believed that the ideal minimal state provides the services of policing, courts, and national defense

(see Mises, 1985; Nozick, 1974) because a competitive market for these services is infeasible or unstable. The argument of this section is that a more minimal state is conceivable: policing services can be privately provided in competitive markets and need not be monopolized by the state. As such, the benefits of economic calculation can be reaped while still maintaining the stability of a minimal state.

Nozick (1974) and Cowen (1992) argue that, in a system of competing security firms, one dominant firm will arise and prevent competition by other firms. However, as argued in this paper, there are many firms who compete to provide consumers security along a variety of margins. Security is a heterogeneous good; to produce it in its many forms, the division of labor and specialization are required. The skills and expertise necessary to protect the IT systems of an online retailer are much different than those needed to protect an armored truck. Nobody depends upon municipal police departments (or federal law enforcement agencies) to provide these services, but upon private enterprise. Clearly, having a monopoly on the use of force within a given geographical territory is distinct from providing all security services within that territory.

So the question becomes, what services do monopoly police provide that could not be provided by competitive firms? For one thing, services that police provide that would not be profitable on the market (such as apprehending non-violent drug users) would not be provided by private firms. Conversely, services that consumers are willing and able to pay for would be provided.⁶ Of course, state judges and courts would still

⁶ The question, “What about those unable to pay for policing services?” may be raised. But since this section is about a minarchist state, the same question could be asked about other essential goods and services, such as food, clothing, and shelter. If, however, a role of the state is to ensure a minimum standard of living of which policing is a part, the benefits of competition and economic calculation can be realized through maintaining a competitive system and money transfers; a monopoly is not required.

fulfill their role under this legal structure, approving warrants, hearing disputes, and ensuring individual rights are respected by security firms, just as they do under the current framework.⁷ Optimal operation of such a system may require replacing the criminal law with a legal system based primarily on restitution to victims (Benson, 2014) or the depoliticization of law (Hasnas, 2008).

Under such a system, the state would still maintain its “statehood,” as long as it is able to enforce its legal decisions⁸ and hold its territorial monopoly against conquering by foreign forces. The state functions requiring the use of force, such as tax collection, can be fully separated from the desired service of policing. Thus, a truly minimal state would leave policing to the private sector.

Conclusion

Economic calculation problems are not inherent in the nature of policing, but could be significantly ameliorated if the service were provided competitively. This includes calculation problems in resource acquisition and allocation, assignment of legal liability, and job protections afforded to police officers. These insights are especially relevant as of late, where disagreements on the proper level of use of force by police, as well as about the disproportionate mobilization of police resources against minority neighborhoods, are prominent. Competitive security firms, guided by economic calculation, would discover and provide the preferred type and level of policing service desired by diverse communities, and thereby reduce conflict over the role of the police.

⁷ However, competition and the ability to not hire unsatisfactory security firms would probably do far more to ensure respect for individual rights.

⁸ Most of these legal decisions would be enforced by private efforts. This is hardly different than the current legal regime. For example, even if the state holds that theft from retail stores is illegal, it is not the state but private efforts that do the vast majority of the enforcement of this rule.

Furthermore, such an arrangement does not entail the need for the abolition of the state, but an increased role of private security into services traditionally provided by government police.⁹

⁹ “Traditionally,” as used here, is over a rather short time horizon. The modern police department as we know it did not arise until 1829, when the London police force was established (Dunham & Alpert, 2015).

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