

Broken windows, naloxone, and experiments in policing

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Abstract: The opioid overdose death crisis is one of the most serious public health crises the United States has ever faced. The cause of the crisis, and potential solutions to it, are shrouded in controversy. One partial solution, naloxone use by police, has produced disagreement within the police profession. I adjudicate the disagreement in this article. I argue that equipping officers with naloxone is a permissible police strategy. I begin by diagnosing the professional dispute as rooted in a philosophical account of the source of professional, role-based obligations. Parties to the debate appear to agree that what the police are permitted to do is determined in part by the essential goal of the police profession, they just disagree about the essential goal. Instead of looking to the essence of a profession for guidance on permissible activity, I argue that we should instead make room for “experiments in working.” Experiments in working draw on the Millian idea of experiments in living: we don’t know ahead of time how best to live, so we must allow for experimentation in professional responses to social problems. Finally, I argue that naloxone use by police is an experiment in working that falls squarely within the tradition of order maintenance policing. In light of concerns that police are expected to do too much, reorienting the police profession towards harm reduction and away from aggressive law enforcement is an attractive reform.

By the end of 2020, opioid related overdose deaths are expected to reach 55,000 (Ahmad, Rossen, and Sutton 2020). The “opioid epidemic” is not, however, a single phenomenon. As overdose deaths involving prescription opioids spiked in the 2000s, policies were enacted in 2010 to combat them.¹ Opioid users in turn substituted black market synthetic opioids for prescription opioids. As this happened, we saw the onset of a heroin epidemic (Evans, Lieber, and Power 2018). The switch to heroin, given its similarities in appearance to the much more potent synthetic opioid fentanyl, created the opportunity for its widespread distribution. In parts of the country where white powder heroin was popular, fentanyl deaths skyrocketed.

¹ Those changes included shutting down gray market prescription opioid “pill mills” into Florida and the reformulation of Oxycontin by Purdue Pharma to deter abuse (Surratt et al. 2014).

There were around 10,000 overdose deaths in 2015 involving fentanyl. That number passed 30,000 in 2018 (Goodnough, Katz, and Sanger-Katz 2019).

This represents one of the most serious public health crises in U.S. history. The cause of the problem is far from clear. Some blame the problem primarily on deceptive advertising by pharmaceutical corporations, some on various forms of drug prohibition, others on the loss of blue-collar job opportunities in rural parts of the United States. Likewise, as individuals and organizations have searched for solutions, few have escaped controversy. Federal law enforcement agencies have created prescription monitoring programs to deter over-prescription, some local law enforcement agencies have provided their officers with naloxone, state governments have cracked down on so-called “pill mills,” pharmaceutical corporations have reformulated their products to prevent recreational use and abuse, and healthcare professionals have established various harm reduction programs.

These programs are controversial not only because it is hard to figure out whether they are effective. They are also controversial on normative grounds. Federal prescription monitoring programs and pill mill legislation plausibly interfere with private medical decisions (Leichtling et al. 2017). Reformulated prescription opioids might be a way of abusing the intellectual property and patent system. Harm reduction programs like syringe exchanges might increase rather than decrease opioid overdose mortality rates by “encouraging” drug use via moral hazard mechanisms (Packham 2019). The crisis is doubly problematic; it is a problem that demands a solution, but given all of their tradeoffs, it is a problem in its own right to say what an acceptable solution looks like.

The central concern of this paper is the controversy surrounding the use of naloxone by law enforcement agencies. Naloxone, commonly sold under the brand name Narcan, blocks opioid receptors to prevent an opioid overdose from becoming fatal. It can be administered as a nasal spray, and in this form

does not require especially demanding training. For this reason, it is rather easy to equip all first responders with naloxone, even those without extensive medical training (Creech 2016; Lewis, Vo, and Fishman 2017). Given the relative ease of use and the severity of the opioid overdose crisis, progressive law enforcement agencies have begun to equip their officers with naloxone (Davis et al. 2014). Claremont Ohio, Sheriff Steve Leahy claims that it is “the right thing to do” (Sewell 2017). Several police chiefs cosigned a document produced by the Bloomberg American Health Initiative at Johns Hopkins University, in collaboration with the Police Executive Research Forum, encouraging police to carry naloxone (Bloomberg American Health Initiative 2018).

This development has not been welcomed by everyone in the police profession. While some have embraced the change, other police executives have insisted that administering naloxone to prevent overdose deaths is simply not what police officers do. Butler, Ohio Sheriff Richard Jones claims that “It’s not what we’re supposed to do. We won’t do it. Period,” (Sewell 2017). The Scottish Police Federation has similar reservations, claiming that “saving lives” is not a “statutory function” (Goodwin 2019). Others, like police officials in Washington D.C., express opposition to carrying Naloxone due to its cost (Jamison 2019). Yet police chiefs in Windsor, Ontario have not allowed their officers to carry Naloxone, despite the cost of the drug being covered by the province and not the department (Wilhelm 2019).

The police profession is far from the insular and homogenous profession of the mid-twentieth century (Sklansky 2008, 156), so naturally the rank-and-file have similar disagreements. The professional disagreement is rooted in a philosophical problem: how do we determine the role-based obligations had by professionals within a political system? The *political* nature of policing makes the issue more philosophically complicated. What the police are, essentially, is determined at least in part by political preferences and procedures. Our answer to the practical problem will turn on our answer to the philosophical one.

After setting out the practical problem in Section One, I argue that it is permissible for police agencies to equip their officers with naloxone kits and for officers to use them. Not only is it permissible, it is good policing. This follows from two other claims. First, there are competing conceptions of what the police profession is and what counts as good police work, so the objection that carrying naloxone is “not what we do” fails. Call this professional pluralism, and the view it undermines, professional monism. Second, political systems and their agents must change to accommodate new political problems. In other words, an account of professional, political role-based obligations requires room for (Millian) experimentation. I set out the dispute between professional pluralism and its counterpart in Sections Two and Three. Finally, Sections Four and Five locate harm reduction strategies, like naloxone use, in a longstanding tradition of order maintenance policing. The defense of naloxone use by police offered here can be readily deployed in defense of adopting a range of other harm reduction strategies.

We don’t know ahead of time what the full set of good lives look like. This necessitates Millian experimentation. Similarly, the fact that we don’t know ahead of time the solutions to the ever-changing landscape of political problems requires particular kinds of experiments, experiments in policing (or working more generally). A rigid approach to professional, political morality is fundamentally unsuited to the kinds of problems that the police profession faces in diverse, dynamic societies. Recognizing this clears the way for justifications of innovative policing.

1. The practical problem

The practical problem is this: should police agencies equip their officers with naloxone, and should officers use it? If it is permissible, is it *good* policing? The profession is split, with some refusing to carry naloxone and others embracing it. Some have been eager to embrace the change. Further along the spectrum of

police uptake of harm reduction strategies, the Burlington, VT police department has de facto decriminalized diverted buprenorphine (del Pozo, Krasner, and George 2020). In an even more ambitious adoption of harm reduction strategies, the New Haven Police Department is conducting a pilot program that distributes clean needles and glass pipes (alongside information on counseling resources) to those released from police custody in an effort to reduce HIV and Hepatitis C transmission. According to Chief Reyes, “While many think that the primary responsibility of police is to arrest and enforce the laws, for us in New Haven, the primary responsibility is the protection and preservation of life,” (Breen 2020).

Jones’s claim (“It’s not what we’re supposed to do. We won’t do it. Period.”), though brief, is instructive. Jones does not merely argue that funding for naloxone undermines his agency’s capabilities, or that his officers are too busy providing other services. The claim implies a particular view of the role-based obligations of the police: they are not *supposed* to administer naloxone. They are *supposed* to enforce the law. In the words of the Scottish Police Federation, *protecting*, but not *saving* lives, is within the proper police role. The claim is not that reversing opioid overdoses is categorically immoral. It may be the job of other first responders, but not the police. According to Jones, some changes could cause him to deploy naloxone: “There's no law that say police officers have to carry Narcan. Until there is, we're not going to use it,” (Siemaszko 2017).

This remark is an example of a particular conception of the role-based obligations of the police: the police, simply put, are supposed to enforce the law. Anything else would be outside the scope of the police role, and therefore off limits according to the professional ethics of policing. This kind of view closely links a (typically narrow) conception of the goals of a role or position with what occupants of that role are permitted to do. It has analogues outside of policing that I take up in the following section.

Some might worry that I've read too much into these remarks by police skeptics of naloxone.

There are several things to say in response. First, most non-philosophers lack well-articulated theories of professional ethics, so some interpretation is necessary. Second, notice that Chief Reyes explicitly positions his approach in opposition to this law-enforcement-first conception of policing. Third, as we'll see in later sections, one of the developments in policing scholarship has been to push back against the view that police are primarily law enforcers. This shows that this conception of policing as law-enforcement-first has widespread uptake in the profession. Finally, even if police skeptics of naloxone would reject such a conception of the policing role upon reflection, it is nevertheless one that practitioners and theorists might endorse, and if true, could count against equipping officers with naloxone.

Now, to be clear, no one thinks that the police ought not to provide first aid when they get to the scene of a violent crime or accident. So it is not that police are *only* permitted to enforce the law. Rather, on this view, professional activity that is contrary to the primary role of the police is supposed to be off limits. Recreational opioid use is clearly illegal, and its prohibition is part of the core, primary police role. Providing first aid to a gunshot victim is not contrary to law enforcement, whereas engaging in harm reduction activities is. This is, at least, a charitable reconstruction of the naloxone skeptic perspective, one that would also accommodate an opposition to police officers providing clean drug paraphernalia or declining to make arrests for possession of diverted buprenorphine. Harm reduction activities, on this view, are outside the police role.

How, then, can police professionals like Sheriff Leahy or Chief Reyes find naloxone use permissible? They aren't simply confused or bad at their jobs. Rather, this disagreement illuminates a more fundamental, longstanding philosophical problem of accounting for professional, role-based obligations. It does so by putting pressure on a theory of role-based obligations that the anti-naloxone position is

committed to. I'll argue that the disagreement itself is evidence against the philosophical foundations of the anti-naloxone position.

2. Professional monism

Certain approaches to professional or political ethics, which I shall call *professional monism*, would prohibit naloxone use because it is outside the scope of essential police activity, and is therefore impermissible. This section aims to situate the discussion of the previous section in the context of a theory of role-based ethics; the naloxone-skeptics are implicitly committed to an inchoate form of professional monism. On this view, *the* essence of policing is crime fighting, and naloxone use by police is impermissible because it is contrary to fighting crime.

Professional monism has proponents outside of policing. The view is most well-developed in medical ethics. Consulting the medical ethics literature helps to flesh out the position. There, a commitment to professional monism manifests as an “internal morality of medicine.” Professional monism has proponents in military ethics and other forms of political ethics as well. According to this family of views, role-based obligations come from internal features, like “goods” or goals, of the profession. Not only do professional monists think that internal features of the profession determine, in part, the scope of permissible professional behavior, they also hold that there is a single conception of the relevant profession. Professional goals entail professional obligations, sometimes via the notion of professional integrity.

On some views, “[e]xcellence in healing is [...] a good internal to [medicine]; making money is a good external to that practice,” (Pellegrino 2001, 562). This implies that self-mutilation, human embryo research, and euthanasia are prohibited by the internal morality of medicine (2001, 572). There are a variety of competing internal moralities also based on the goals of the profession that generate different

moral guidance, such as the permission to decline to provide an abortion, or prohibitions on treating one's family, having a sexual relationship with one's patient, prescribing anabolic steroids for athletes, facilitating or engaging in capital punishment, and advertising cosmetic surgery procedures to prospective "patients". (Kass 1975; Miller and Brody 1995; Miller, Brody, and Chung 2000; Boorse 2016; Hershenov 2020).²

There is nothing about the internal morality approach that restricts its application to medicine. Theories of political ethics and the so-called problem of dirty hands attempt to establish special permissions for public officials based on a separate, public morality (Nagel 1978). Military ethicists have appealed to professional integrity or an internal morality of the military to constrain permissible military activity (Wolfendale 2009, 127). The APA's code of ethics also appears to endorse a kind of internal morality when it holds that philosophers must respect all philosophical traditions (plausibly something no one else has an obligation to do) due to the *professional* status of the discipline (American Philosophical Association 2016).

Surely, some of these activities are thought to be universally impermissible by internal morality theorists. But some actions are wrong *for physicians, soldiers, or philosophers*, because they conflict with their professional goals. Because there is a single, privileged conception of the profession and its essential nature, disputes about the internal obligations of medicine are to be determined by resolving disputes about the internal goals of the profession. Whether physicians may euthanize a patient, for example, is not settled by a general theory of the ethics of killing. Rather, according to the internal morality theorists, it is settled by appeal to the goals of medicine.

² Philosophers are obviously more explicit about the theoretical underpinnings of professional obligations than professionals. But we do see glimpses of the internal morality in professional codes of ethics. The AMA's code of ethics claims that euthanasia and physician assisted suicide are inconsistent with the professional goals of medicine (American Medical Association 2016).

The connection to the anti-naloxone view should be apparent. The goal of policing is law enforcement or crime fighting. Harm reduction practices for criminal activity, like illegal opioid use, is contrary to crime fighting (cf. Lee et al. 2018, 18). According to some, harm reduction practices *support* criminal activity. But reversing an opioid overdose with naloxone is not universally impermissible. The naloxone skeptics admit that other first responders may, or should, carry naloxone. It is, rather, impermissible *for police officers* because it is *not what they do*. This relies on the same basic framework that says that euthanasia and capital punishment, for example, might be permissible actions for some, but not for physicians.

This conception of policing is perhaps supported by some “rule of law” views, according to which the law must be applied uniformly and equally.³ When a law is bad, there must be a legislative change to the law, not an executive change to its enforcement. By separating the various tasks of government into isolated roles, checks and balances can be installed in the political system to reign in political pathologies. These checks only work when the various professionals who make up bureaucratic systems of government are constrained by the acceptance of informal norms that include strong role-based obligations, and the role of the police is to enforce the law. The view is also supported by Supreme Court jurisprudence that denies that police have a specific duty to rescue or provide aid, and instead holds that police obligation are had to the community *generally* (McCabe 1984). If police lack a duty to rescue or provide aid, then reversing opioid overdoses are not within the role-based obligations of policing.

³ See Hayek (1960/2011, 316) for the view that the rule of law requires equal enforcement and forbids most discretionary non-enforcement of law. This is an over-simplification of the rule of law, but those subtleties are orthogonal to the argument of this paper.

Notice also that on the anti-naloxone view, as defended by Sheriff Jones or the Scottish Police Federation, when the law changes, then what police may and should do changes. If police are required by law to carry naloxone, or if saving (rather than protecting) lives became part of the “statutory function” of policing, then things would be different. If the Supreme Court held that officers have a duty to rescue, then the opposition to carrying naloxone would have to be abandoned. This view satisfies the main hallmarks of an internal morality: the source of the prohibition is the role (“what police are supposed to do”); there is one privileged conception of the role from which to derive moral guidance, and the guidance applies only to members of the profession.

One way to argue against the anti-naloxone view is to defend a different set of professional obligations grounded in a competing conception of the profession, or to attempt to ground professional duties in features not internal to the profession. In criticizing the decision in *Williams v. State* that held that police have no duty to provide aid, but are instead bound by the Good Samaritan doctrine, Lisa McCabe argues that the unique role that officers have in society, in light of their training and the public expectations of police, support a (legal) duty to rescue (McCabe 1984, 695). I have argued that similar facts generate special moral obligations had by police officers, and those obligations could include a duty to rescue (Monaghan 2017). Alternatively, one could argue that the role of police as crime fighter is an *ideal* role, and because we live in a non-ideal world, “common morality” accepts police deviating from their role. In short, either the police role essentially involves providing aid, or it is permissible for officers to act “outside” their essential role (Lee et al. 2018, 23). If officers have a legal or moral duty to rescue, then a permission for administrators to equip officers with naloxone will likely follow.

These arguments, though complementary to this paper’s thesis, are not of the sort I will pursue here. Rather, I’ll argue that the dispute between the naloxone skeptics and the harm reduction proponents,

one rooted in a philosophical disagreement about the nature and source of police obligations, undermines the philosophical account of professional obligation on which naloxone skepticism rests.

3. Professional pluralism and experiments in working

Let us turn now to what I claim is a serious problem for professional monism. The practitioner disagreement puts pressure on professional monism by raising the specter of professional *pluralism*. If there are competing conceptions of what the profession is, in terms of its goals and their lexical priority (if more than one), then the internal morality approach is unable to settle disputes about professional obligation. Further, professional pluralism undermines the privileged status of whatever conception of the profession is needed to establish rigid, role-based obligations. The disagreement between Leahy and Jones is clear evidence of (reasonable) professional pluralism.

Earlier critiques of internal moralities turn on the claim that professionals have multiple, conflicting, and vague goals (Veatch 2001; Beauchamp 2001, 604). Given the plurality and conceptual vagueness of professional or role-based goals, there is no uncontroversial way to determine their end(s), and thus no way to uncontroversially ground an internal morality. In response, certain proponents of internal morality views modify the position to allow a goal pluralism and an evolution of those goals (Miller and Brody 2001). The committed internalist might also respond that any moral theory that admits pluralism will run into the same difficulty. If Rossians, for example, embrace pluralism, then the internalist can too (Ross 1930).

A stronger critique is available, one that relies on a different kind of pluralism. In addition to *goal* pluralism, there is a more fundamental *taxonomic* pluralism to consider. The problem is not merely that roles have multiple goals that give conflicting moral guidance. It is, rather, that if roles are distinguished by

their essential goal(s), then conceiving of them as having different goals, or goals with different lexical priorities, results in a different role. There are different professional taxonomies that crosscut, and it is hard to imagine how we could establish one taxonomy as privileged.

The problem of cross-cutting taxonomies is well-worn in the philosophy of science. Simplifying, there are two popular options: opt for a taxonomic pluralism (and, usually, anti-realism) or opt for a theory of natural kinds essentialism that privileges one taxonomy over the others (Ereshefsky 1998; Devitt 2008). But privileging one professional taxonomy is implausible. Professions are not natural kinds.

Let us set aside a single, privileged taxonomy, then. Just as disputes that arise because of cross-cutting taxonomies in the sciences are often settled in broadly instrumental terms, the same should go for professional taxonomies. A morphological species concept might win out in paleontology, and a reproductive species concept in genetics, both due to their relative usefulness for the epistemic goals in each field. Scientists need not settle which is the *one true* species concept, nor need they even be interested in that question, to conduct viable research programs. Further, it may not even be clear before beginning a research program which taxonomy will prove epistemically valuable.

Professional taxonomies that allow for different kinds of professional activity will be more or less useful given different problems and against different background conditions. A pathocentric conception of medicine is highly useful with less developed medical technology. If the medical profession is not especially good at prolonging life, then a range of problems simply never arise. Once we have the technology to extend the biological life of a patient beyond their autonomous life, however, a medical profession that includes palliative specialists is much more useful. The need to skillfully help patients end their lives on their own terms, without experiencing avoidable pain or incurring avoidable costs to their dignity, arises only once patients can be kept alive nearly indefinitely on a ventilator, with a feeding tube, and so on.

Analogously, the utility of a police profession that adopts harm reduction strategies will depend in part on whether there is an ongoing overdose death crisis.

Much of the internal morality literature is in the service of constraining the permissible activity of professionals. It thus runs contrary to an important point about professional and political roles: what we need from them changes over time, and we don't know ahead of time the most valuable and productive professional roles. We must allow for *experiments in working* if we want to continue to improve and adapt to a changing problem set. We must engage in searching and experimentation to determine what should be in our option set. Jettisoning internal morality theory and embracing experiments in working allows professionals to push the limits of their occupation into different professional "species" as the need arises.

I use the phrase "experiments in working" deliberately to analogize to Mill's "experiments in living." Mill famously argues for experiments in living in *On Liberty*:

As it is useful that while mankind are imperfect there should be different opinions, so is it that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when anyone thinks fit to try them (1859/2008, 193).

There are two aspects of the analogy worth attending to. First, just as Mill thought that experiments in living were important for determining how to increase wellbeing, given that this is not something we can know a priori, experiments in working can do the same. Experiments in living test alternative conceptions of the good life by seeing what lifestyles aimed at different conceptions look like in practice; more modestly, they can also test alternative strategies for achieving a particular conception of the good. Experiments in working can similarly test different conceptions of the profession's good or goal, or different methods for achieving some professional goal.

Second, experiments in living are also integral to the development of self-governing capacities. The same holds for experiments in working. By enabling experiments in working, professionals are more likely to engage in honest self-reflection rather than giving in to inertia and the status quo (cf. Muldoon 2015, 180). This builds skills needed for self-governance. Medical professionals were skeptical of the informed consent revolution, palliative care, and now of physician-assisted death. Much of this skepticism can be chalked up to status quo inertia. In light of the now-obvious moral progress that is informed consent and palliative care, this status quo inertia is often dangerous. Experiments in working are a tool to help us separate compelling objections to professional innovations from mere status quo bias.

Mill's notion of experiments in living has been applied to political society writ large as a tool for exploring ways for diverse societies to live together (Muldoon 2015; 2016). Experiments in working occupy a level intermediate between the individual and broader political society. Professions, political or otherwise, can benefit from experimentation and the reflection prompted by challenging the status quo. Because the police profession's goal is determined in part by reference to preferences of the polity, experiments in working fit more naturally here than rigid conceptions of the profession shared only by some of its members. Further, because police administrators actually have quite a bit of influence over the activity of their agency—as the motivating question of this paper indicates—professional self-governance cannot be turned over entirely to voters and legislators.⁴

⁴ There are reasonable concerns that one might have about police discretion, though it should be emphasized that full enforcement or zero tolerance policing is not a practical (or desirable) option in policing. Administrators have to set priorities and make decisions about how to allocate resources, and patrol officers have to do the same. Criminologists take full enforcement to be a myth and discretion to be a defining feature of patrol work (Berg 1999, 262; Goldstein 1990, 9, 11).

Experiments in working are an attractive alternative to internal morality theory. Whereas internal moralities reify the inertia and stasis of current professional practices (and whatever “despotism of custom” from society that seeps into professions), experiments in working allow for novel practices and a renewed, more confident appreciation of successful existing practices. Competing conceptions of a profession and its place in the professional landscape are rooted in competing perspectives on the world. Experiments in working enable us to move beyond the limitations of any one perspective (Muldoon 2015, 182). Justification of professional activity comes not from conceptual constraint, but from demonstrating valuable, successful work (cf. Muldoon 2015, 193).

The opioid crisis is a major new challenge for police and medical professionals that necessitates new professional tools. The public health profession has embraced “harm reduction” techniques, something possible only in a profession that has moved beyond conceiving of itself as essentially pathocentric. Police could simply dig in their heels and insist that all they can and should do is enforce the law. Or, they could look to rethink and renew their goals and strategies in light of the challenges of a dynamic society.

4. Law enforcement, order maintenance, and police pluralism

Naloxone use by police is an experiment in working that some would constrain. As I argued above, naloxone skepticism—not an idiosyncratic or isolated view—is plausibly understood as a result of internal morality theory grounded in professional monism. The essential, constitutive goal of policing is law enforcement; naloxone use is contrary to the enforcement of drug prohibition laws because it “supports” or “encourages” illegal activity. The only thing that would render naloxone use permissible would be a change in the law requiring the administration of naloxone or legalization of recreational opioid use. If, as I’ve argued, the internal morality approach is mistaken, then naloxone skepticism is not philosophically well

supported. This section argues that the competing priorities and strategies of policing are fertile ground for experimentation to set the stage for completing the argument in the following section that naloxone use is a permissible—and good—experiment in policing.

The primary reason I offered for skepticism about the internal morality approach is an appeal to pluralism about professional taxonomy. The police profession is a clear example of this kind of pluralism. Police departments in London and northeastern American cities grew out of the “city watches” (Dulaney 1996, 3). Their function was to patrol and deter crime. Investigative work was privately funded. In time, the detective’s role was brought into the public sphere (Hunt 2019, 20).

Police scholars recognize two broad goals of policing: law enforcement and order maintenance. Law enforcement, as the name suggests, is the use of arrest and investigation to support prosecution and punishment. Order maintenance is the use of police tools to foster a safe and controlled environment. Order maintenance can occur without an arrest, unlike successful law enforcement. The “British model” in the north was aimed largely at order maintenance. The goal of police patrol is to use police presence to serve as a crime deterrent. But the patrol officer now does much more than simply deter crime. Crucially, for our purposes, much of that work can be done without making an arrest or directly enforcing the law (Wilson 1978, 83; Bayley 1996, 34; Kleinig 1996, 86).

Eventually, the police profession became dominated by its law enforcement role. Police agencies oriented themselves towards law enforcement, and even order maintenance patrol work transformed into “criminal patrol” (Remsberg 1995). In part, this followed the development of an influential theory of crime and policing called “broken windows policing.” Broken windows policing was taken up most famously in New York City’s “quality of life” initiatives and later stop, question, and frisk strategy. To be clear, Kelling denies that stop and frisk is an instance of broken windows policing (Roberts 2014). Stop and frisk,

however, is near enough to popular conceptions of broken windows tactics by remaking the patrol officer into a law enforcer. Patrol officers, rather than deterring crime via their physical presence and engaging in rapid response to calls for service, focused on making low-level arrests and engaged in a kind of widespread screening process to find illegal firearms and drugs.

Ironically, as we'll see, the practical developments in the 1980s and 1990s policing focused on turning officers into crime fighters, thereby ignoring one of the main points made by police scholars at the time that allowing law enforcement to crowd out order maintenance renders policing less effective. Not only did the patrol officer become focused on law enforcement in real life, popular depictions of police in media focused almost exclusively on the police officer's law enforcement role. From *Dragnet* to *The Wire*, policing is primarily law enforcement.

Yet, these goals are separate. This is most obvious in the context of citizen-lead neighborhood watch and private security services; both take up the order maintenance function as public police agencies shifted their focus elsewhere. Not only are they separate, they can conflict. Vigorously making arrests for small infractions can undermine perceived legitimacy, in turn reducing citizen cooperation with other law enforcement matters.

The most important point for now, though, is that the most popular conception of the police is a coarse-grained police-as-law-enforcement conception. But a more fine-grained conception is available, one that distinguishes investigative work from patrol work, and law enforcement from order maintenance. Whereas the former holds the essential, constitutive goal of policing to be law enforcement, the latter recognizes two equally important goals. Further, one might even opt for not only a more fine-grained, but also a cross-cutting professional taxonomy that has the patrol officer as fundamentally distinct from the detective, occupying a role much more like a service worker or even "street corner politician," (Muir 1977)

their membership in the same agency notwithstanding. The boundaries of professional police agencies are a contingent historical fact rather than a response to the apprehension of the true essence of the profession. The privatization of the pure order maintenance security guard role is similarly a contingent historical fact. Just as Federal Bureau of Investigation jettisons the patrol role from the agency, there could just as easily be public agencies that jettison the detective role.

The internal morality approach requires determining which of these classifications are correct or privileged. Is Sheriff Jones correct, or Chief Reyes? It is unlikely that there is one single correct or privileged classification. Rather, the issue can be settled instrumentally. And the failure of aggressive law enforcement tactics to stem the opioid overdose fatality rate strongly suggests that we require experimentation rather than the conceptual cudgel that is internal morality theory. Let us turn now to how naloxone use fits into a longstanding, widely recognized, if subordinated, goal of policing.

5. Experiments in broken windows policing

To see that non-law enforcement oriented police work was once central to the profession, and in turn that experimentation with naloxone is good policing, it will be useful to consider two of the most influential theoretical works on policing since policing in the United States was professionalized by August Volmer in the early twentieth century (Seo 2019). That is James Q. Wilson and George Kelling's theory of broken windows policing, and Herman Goldstein's problem-oriented policing approach (Kelling and Wilson 1982; Goldstein 1990). Both works encourage an approach to policing that makes room for police tactics that do not rely purely on enforcing the criminal code. The broken windows essay is worth considering for the additional reason that it played a role in the turn towards low-level *enforcement*, despite being a defense of the order maintenance role of police.

In their essay, Wilson and Kelling are primarily concerned with advocating a *return* to the order maintenance roots of policing. In their words,

From the earliest days of the nation, the police function was seen primarily as that of a night watchman: to maintain order against the chief threats to order—fire, wild animals, and disreputable behavior.

They continue, putting the point more strongly:

The essence of the police role in maintaining order is to reinforce the informal control mechanisms of the community itself. The police cannot, without committing extraordinary resources, provide a substitute for that informal control (1982).

On the broken windows picture, focusing on law enforcement and serious crime to the exclusion of low-level offenses and disorder abandons their role in assisting informal, community created order. Wilson and Kelling give two reasons for focusing on order. The first is a theory about crime. Disorder causes crime, so eliminating disorder can also prevent crime. Second, disorder is independently bad, so eliminating disorder even without preventing crime is itself a valuable police service. The first reason relies on a probably false theory of crime. But the second embodies a correct value judgment and represents an important insight into policing.⁵

In their view, the original function of the police was a night watchman, order maintenance function. Not only was that the *original* function, but it is the *essence* of the police role. While I've advocated for skepticism about privileging one conception of policing to establish a true essence of the role, that

⁵ I do not mean to generally endorse broken windows policing tactics. As I said above, the practical implementation of broken windows policing maintains order by making arrests. This is surely problematic, and a close reading of the original essay shows it is in tensions with Kelling and Wilson's recommendations. Further, determining what counts as order without letting racist or classist perspectives infect the issue is a real political problem. All I intend to do here is motivate the point that independent of crime rates, order maintenance is a genuine police service.

prominent police scholars and criminologists locate the essence of policing in order maintenance rather than law enforcement should undermine any confidence one might have had in identifying the police role with crime fighting alone.

One of the other major developments in police scholarship is Herman Goldstein's "problem-oriented policing" approach. On this view, the approach to policing that simply has police officers enforce the law is flat-footed, and effective policing requires officers to engage in more proactive problem-solving. Indeed, the "dominant perspective of policing is heavily influenced by the primary method of control associated with the work—the authority to enforce the criminal law," (Goldstein 1990, 2). The result is that we typically refer to police officers as law enforcement officers, something the Goldstein considers a misnomer (1990, 2). On this view, the police serve a wide variety of purposes, but the self-conception of policing as law enforcing causes the police to rely on the enforcement tool in all of these other situations. This produces "the absurdity of police officers arresting people in order to help them," including the drunk, homeless, or mentally ill (1990, 43).

More recent "ecological" approaches to criminal justice also encourage police officers to look beyond enforcing the criminal code to solve problems. Because police officers are part of the "ecology" or system in which health outcomes are produced, producing good outcomes (e.g. reducing the spread of infectious diseases) will require changes in police practices (Burriss et al. 2004). Simply making arrests for possession of illegal drugs or paraphernalia will not solve the problem; in many cases it simply exacerbates it (e.g. by encouraging needle or pipe sharing). Again, for those who think that police have duties to aid, this will count against privileging arrest and other enforcement strategies over others. The political ethics of policing, and theories of legitimate political action, need to reflect these developments in legal theory and the social science of policing.

The point here is not to get into the longstanding debates over broken windows policing, drug prohibition, or related topics. The point is, first, influential police scholarship that set the stage for major developments in police practice orients itself with the understanding that policing has a long history of non-law enforcement, order maintenance activity. This is an aim that the profession has moved away from as it has become increasingly professionalized and specialized but that it has not abandoned. Second, police work need not be geared towards law enforcement in order for it to be good and permissible policing. Often, the ends of law enforcement have to take a back seat to the ends of order maintenance. Further, as I argued above, it is possible to adopt a view of the patrol officer as distinct from the detective, and therefore not constrained by the goals of the detective. The plurality of plausible conceptions of the police profession include those that make law enforcement essential, those that include both law enforcement and order maintenance, and also those that separate police roles more finely, enabling the patrol role to prioritize order maintenance.

If police can focus on order maintenance to the exclusion of law enforcement then naloxone use need not be a controversial, fringe police practice. This is because naloxone use is a form of order maintenance that serves recognized police goals just as much as facilitating the return of stolen property or driving an adolescent shoplifter home rather than making an arrest, the latter being unremarkable patrol activity (Bailey 1996, 22). The reason is that overdose deaths are pretty clear instances of disorder and contribute to cycles of disorder in the community. They are also the sort of thing for which we can reasonably want police, alongside other first responders, to rescue people from. Thus, naloxone use is just one more example of police work aimed at serving community needs without directly aiming at law enforcement.

Despite the pushback from Naloxone skeptics in policing, the naloxone experiment has been in the works for several years by now. The CDC reports that naloxone distribution and training within the community is associated with a decline in opioid-related mortality (Morbidity and Mortality Weekly Report 2012). Medical professionals argue that, because of its life-saving potential, naloxone should be available over the counter (Strang et al. 2006). When it comes to police use of naloxone, research suggests that equipping police officers with naloxone reduces overdose deaths. Indeed, one study that found promising results was conducted in Sheriff Jones's own state of Ohio (Rando et al. 2015). Other research suggests that police usually can correctly identify overdose systems and safely administer naloxone without significant risk to themselves or others (Fisher et al. 2016). As discussed above, other police departments have experimented with more ambitious harm reduction strategies, including the distribution of clean needles in New Haven, or the de facto decriminalization of buprenorphine, alongside increased access to naloxone, in Burlington, VT. The latter experiment has been associated with a fifty percent reduction in opioid overdose deaths, while surrounding areas have seen increases (del Pozo, Krasner, and George 2020).

Of course, there is conflicting evidence, and accurately identifying the effects of equipping officers with naloxone in particular is difficult. Research on naloxone by economists has found that increased access has not reduced mortality rates. The explanation for the finding relies on a moral hazard mechanism. Making opioid use less risky can increase the rate at which people use opioids or cause even riskier opioid use (Doleac and Mukherjee 2018). The success of the harm reduction strategy will depend on the details. But we don't know ahead of time what will work, and that counts in favor of the experimentation I have been defending. Given the abysmal failure of the law enforcement approach to the problems of opioid abuse, there is much that counts in favor of experimenting with police adoption of harm reduction strategies like carrying naloxone.

As Wilson and Kelling noted decades ago, and as police officers practiced for decades before that, police strategies can be good even if they don't reduce crime. They can be good even if they don't *attempt* to reduce crime. So the fact that naloxone use might not contribute to the Sisyphean task of waging the drug war is immaterial to evaluating its role in contemporary policing. Drug Enforcement Administration agents may disagree, but they don't have the final word on what good policing looks like. Police like Sheriff Leahy, Chiefs Reyes and del Pozo, and the many patrol officers who embrace naloxone use get a say too.

It should be emphasized that adopting the experimental framework does not prevent the appeal to features internal to the profession in developing role-based ethics. In other words, the experimental framework and an internal morality approach are not necessarily mutually exclusive. Rather, the former is a theoretical account of how professionals can reflect on the changing demands of their role and how their role can adapt to accommodate them. Whereas naloxone skeptics argue that the nature of the police role prohibits them from carrying naloxone, naloxone proponents can reply that the nature of the police role is compatible with naloxone use given the current problems police are expected to solve. The experimental framework simply cautions against the appeal to internal morality as a bulwark against novel police strategies.

I argued above that like disputed scientific taxonomies, disputes about professional taxonomy ought to be settled instrumentally. Instead of appealing to our epistemic goals, professionals need to think about how their professional activity fits into the broader landscape of social and political problems and needs. Given that (i) police responses to the opioid epidemic have made the problem worse or have been ineffective, that (ii) naloxone use falls within the long tradition of order maintenance policing, and that (iii) empirical results suggest that the naloxone experiment can be successful in reducing the severity of the

overdose death crisis, police participation in harm reduction strategies (including but not limited to naloxone use) is worth further exploration and experimentation.

6. Conclusion

I have interpreted the anti-naloxone view in policing as rooted in a kind of professional monism and internal morality theory. Internal morality theory as a tool to prevent novel police strategies ought to be rejected, I argued, because it depends on a taxonomic monism that we reject in other domains. Instead, we should embrace professional pluralism and experiments in policing. The history of policing demonstrates that order maintenance is a core police goal even if law enforcement has taken center stage over the last several decades. Influential police scholarship recommends a return to order maintenance policing and an adoption of less arrest-focused police strategies. Naloxone use is a kind of order maintenance, problem-oriented policing. Embracing naloxone use in policing is an acceptable experiment in policing, one badly needed in the face of the severity of the opioid overdose crisis.

One might object that if no conception of policing is privileged, doesn't this allow the naloxone skeptics to continue to dig in their heels? Or, alternatively, the naloxone skeptics might claim that carrying naloxone is inconsistent with the kinds of (perhaps nonhedonic) value judgments that prevail in (e.g.) conservative communities. In reply, there is an asymmetry here. The internal morality constrained position prohibits naloxone use. But the experiments in working permissive position encourages it. The naloxone opponents, then, cannot appeal to what police are *supposed* to do in order to defend their position. The argument must be made on different grounds. Further, the experimental framework does not require police in all communities to carry naloxone, even if the anti-naloxone position appears foolhardy. Instead, it

makes doing so consistent with the role-based obligations of the police in a manner sensitive to the differences in democratic communities.

There are surely plenty of costs associated with equipping officers with naloxone that I have neglected in this paper. For one, even if a single dose of naloxone is inexpensive, equipping all officers with kits can be expensive and cut into other agency goals. Plenty of skepticism about naloxone in policing comes from these concerns, rather than a commitment to a law-enforcement-first internal morality (Smyser and Lubin 2018). In a world where there are calls to defund the police, and where police are plausibly expected to do too much, taking on this role has costs. As there are tradeoffs with everything, this is not a decisive objection. Rather, pushing the profession to embrace harm reduction and to downplay aggressive law enforcement may amount to an attractive reform in itself.

Mill thought that experiments in living were important to combat homogenous, stagnant societies. Experiments in working can do the same for homogenous, stagnant professions. But, according to Mill, these experiments are constrained by a harm principle. Random face-punching is an unacceptable experiment in living. The experiment in policing that is naloxone use does not run afoul of this harm principle. In other words, my case for experiments in policing would not justify a department eliminating policies constraining the use of force. Police officers are not, as skeptics of naloxone use think, duty bound to always enforce the law. Even without a law requiring officers to carry naloxone, it is not violation of their professional duties to do so. On the contrary, it is good, even if controversial, policing. The immense cost of the opioid epidemic, and the failure of pure law enforcement strategies, suggest that not only ought police to carry naloxone, but that police should also adopt a wide range of harm reduction strategies. If the argument for naloxone use in policing is successful, it will also contribute to justifications of more ambitious harm reduction strategies.

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