# Olmsted's Police

DAVID THACHER

The urbanization of nineteenth century America led to enormous changes in American criminal justice, as the rise of this dramatically more complex kind of human settlement posed new problems for legal regulation. Some of those problems are familiar. Many reformers emphasized the way cities eroded traditional controls on predatory crime, and they viewed modern police forces, public prosecution, and the modern penitentiary as a means of substituting formal social control for the informal controls of the past.[1] But cities posed a different problem as well. In the city people

1. See, for example, James Richardson's statement that "the social controls of a stable society had broken down in many areas of the city" and that local government would soon be "providing substitutes" (*The New York Police, Colonial Times to 1901* [New York: Oxford University Press, 1970], 16); Wilbur Miller's view of the new police as "an effort to substitute more formal and efficient social controls for a modest police apparatus" coupled with "common moral standards" (*Cops and Bobbies* [Chicago: University of Chicago Press, 1977], 5); Eric Monkkonen's reference to the way "wars, depressions, vast population movements, and an economic transformation" generated crime and disorder in the nineteenth century city (*Police in Urban America, 1860–1920* [New York: Cambridge University Press, 1981], 65); Samuel Walker's comment that "informal social controls operated effectively" in "small and homogeneous" villages but that "as communities grew larger and more anonymous" they increasingly turned to formal law enforcement agencies (*Popular Justice* [New York: Oxford University Press, 1998], 27); and Roger Lane's observation that in the new cities "rootless visitors and residents freed from the old restraints required new and sometimes harsh methods of control" (*Policing the City* [Cambridge, MA: Harvard University Press, 1967], 2). Even regulatory law has been described on this model: "We were all at the mercy of strangers: the people who made our food, built our cars, flew the airplanes or drove the buses we rode on, poured the concrete for the buildings we worked

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made their homes in dense mixed-use environments that had not yet been sorted out and segregated along the lines of the modern metropolis, and when they ventured out of them they came together in the crowded streets, squares, and parks that proliferated in the nineteenth century. This complex environment made new demands on their behavior, as conduct that would have bothered no one in sparsely occupied rural spaces became problematic in the densely shared environments of the city.[2] This change did not involve the collapse of old strategies for controlling familiar forms of bad behavior; it involved a shift in what sort of behavior counted as "bad" in the first place. The continued evolution of the urban environment, in turn, depended upon the ability of criminal justice institutions to grapple with these challenges. Shared environments require those who use them to develop and enforce rules to regulate the sharing.

That task was an uneven fit with the criminal justice institutions that took shape alongside it. On the one hand, the professionalization of criminal justice established a type of institutional capacity that was essential for regulating the public realm.[3] Before the shift toward independent public prosecution and the rise of full-time salaried police forces in the middle of the nineteenth century, criminal justice relied heavily on crime victims to detect and prosecute their own cases. But damage to shared environments affects many people rather than a single individual, so none of its "victims" has the right incentive to combat it. Like risk management, crime prevention, and morals policing, the protection of shared environments is a collective good, and only collective institutions can provide it successfully.[4] In this respect, the professionalization of criminal justice

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in, installed elevators, boilers, furnaces, machinery of all types. What controls were there over their behavior? We never saw these people face to face--the builders, the workmen, the designers. We relied on *law* to keep them honest and true": Lawrence Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), 289. In each case, law mainly serves to replace customary controls to protect individuals from victimizing one another.

2. John Schneider, *Detroit and the Problem of Order, 1830–1880* (Lincoln: University Nebraska Press, 1980); and Roger Lane, "Crime and Criminal Statistics in Nineteenth-Century Massachusetts," *Journal of Social History* 2 (1968): 163.

3. On the shift away from amateur and popular control over criminal justice toward the professionalized administration of criminal justice prevalent today, see, especially, Allen Steinberg, *The Transformation of Criminal Justice* (Philadelphia: Temple University Press, 1989); for countercurrents, see Elizabeth Dale, *Criminal Justice in the United States, 1789–1939* (New York: Cambridge University Press, 2012).

4. As Roger Lane put it: "Private citizens may initiate the processes of justice when injured directly, but professionals are usually required to deal with those whose merely immoral or distasteful behavior hurts no one in particular." Lane, "Crime and Criminal Statistics in Massachusetts," 160. For the challenges involved in enforcing laws designed to protect the

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laid the foundation for a rise in criminal justice cases involving disruptive public behavior: the so-called "order maintenance" categories such as disorderly conduct, breach of the peace, public drunkenness, and a variety of nuisances, which quickly came to dominate the police workload.[5]

On the other hand, as the new police agencies took shape as independent social institutions, they came to embrace a set of substantive commitments that sat uneasily with the task of regulating shared spaces.[6] Convinced that the real mission of policing is the control of serious crime, reformers repeatedly urged them to turn their attention away from order maintenance toward what one historian described as "the more urgent task of protecting lives and property."[7] Those reforms have only had erratic success, but they

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public realm before the rise of the modern police, see, for example, David Flaherty, *Privacy in Colonial New England* (Charlottesville: University of Virginia Press, 1972), ch. 7; Joseph Smith, *Colonial Justice in Western Massachusetts* (Cambridge, MA: Harvard University Press, 1961), 110–14, 124–26; and Steinberg, *Transformation of Criminal Justice,* 131–35.

5. I argue that the heart of the order maintenance function involves the control of unfair use of shared spaces in "Order Maintenance," in *Oxford Handbook of Police and Policing*, eds. Michael Reisig and Robert Kane (New York: Oxford University Press, 2014), 122–47. For the growth of order maintenance cases in the legal system after the establishment of modern police agencies, see Allan Levett, "Centralization of City Police in the Nineteenth Century United States" (PhD diss., University of Michigan, Department of Sociology, 1975), 54–57; and Steinberg, *Transformation of Criminal Justice*, 29–30, 226. For the same pattern in England, see David Philips, *Crime and Authority in Victorian England* (London: Croom Helm, 1977), 84–87. For the ubiquity of order maintenance work in mid- to late-nineteenth century American police, see Monkkonen, *Police in Urban America*, 103.

6. On the embodiment of legal and moral values in institutions and their practices, see Philip Selznick, *The Moral Commonwealth* (Berkeley: University California Press, 1994), part III; and Selznick, *Leadership in Administration* (Evanston: Row, Peterson, 1957). Given the importance of the distinctive institutional commitments of the modern police, a full understanding of the regulation of individual behavior in the urban public realm requires a more organizationally specific understanding of "policing" than the one influentially advocated by Christopher Tomlins, *Law, Labor, and Ideology in the Early American Republic* (New York: Cambridge University Press, 1993), ch. 2. Willard Hurst articulated clearly the value of this kind of institutional understanding in legal scholarship. Trying to hire the Wisconsin Law School's first policing scholar in 1963, Hurst commented: "Given the working reality, that the bulk of public policy expressed in the criminal law finds its whole content in what the police do or do not do, it is disturbing … that to date there has been practically no law school effort to come to terms with the operating values in police activity." Dianne Sattinger, "How I Got Here: Herman Goldstein," *Gargoyle* 33 (2008): 19. For the decoupling of police from the rest of the criminal justice system, see Mark Haller, "Historical Roots of Police Behavior: Chicago, 1890–1925," *Law and Society Review* 10 (1975): 303–24; Egon Bittner, *Aspects of Police Work,* (Boston: Northeastern University Press, 1990) 109–19.

7. Douglas Wertsch. "The Evolution of the Des Moines Police Department," *Annals of Iowa* 48 (1987): 448; compare Eugene Watts "Police Response to Crime and Disorder in

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have contributed to the intellectual and administrative neglect of the order maintenance role.[8] Equally important, they have encouraged the advocates of order maintenance to become extravagantly indirect when they try to explain why police should devote so much effort to apparently trivial or even harmless offenses, recasting these offenses as causal agents that precipitate more serious crime[9] or as useful pretexts that make it easier to control truly dangerous people.[10] Both rationales link the complex and ambiguous problem of public disorder with the clear-cut crimes whose control supposedly forms the heart of the police role, but in the process, these rationales threaten to corrode important limits on police authority.[11] In these ways, the order maintenance function has alternatively atrophied and degenerated.

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Twentieth-Century St. Louis," *Journal of American History* 70 (1983): 340–58. Beyond this overt idea that the real mission of the police is the control of serious, predatory crime, the influence of the 911 system on the bulk of police activity tends to downplay the importance of public order; see, for example, Peter Moskos, *Cop in the Hood* (Princeton: Princeton University Press, 2008), 109.

8. For the continued neglect of the order maintenance role by police managers and reformers through the past half century, see, for example, Egon Bittner, "The Police on Skid Row," *American Sociological Review* 32 (1967): 715; George Kelling, *Police Discretion and 'Broken Windows,'* National Institute of Justice Research Report (Washington, DC: United States Department of Justice), 1996, p. 16.

9. James Q. Wilson and George Kelling, "Broken Windows." *Atlantic Monthly* 249 (1982): 29–38.

10. For example, Wayne LaFave, *Arrest* (Boston: Little, Brown, and Co, 1965), 354 ff.; Lawrence Tiffany, Donald McIntyre, and Daniel Rotenberg, *The Detection of Crime* (Boston: Little, Brown, and Co., 1967), 129–31; Steinberg, *Transformation of Criminal Justice*, 153, 178; David R. Johnson. *Policing the Urban Underworld: The Impact of Crime on the development of the American police, 1800–1887*. (Philadelphia: Temple University Press, 1979), 126; Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Chicago: Callaghan & Co., 1904), 100; and William Douglas, "Vagrancy and Arrest on Suspicion," *Yale Law Journal* 70 (1960): 1–14.

11. Andrew von Hirsch, "'Remote' Harms and Fair Imputation," in *Harm and Culpability,* eds. Andrew Simester and Tony Smith (Oxford: Clarendon, 1996), 259–76; David Thacher, "Order Maintenance Reconsidered," *The Journal of Criminal Law and Criminology* 94 (2004): 381–414; Bernard Harcourt, *Illusion of Order* (Cambridge, MA: Harvard University Press, 2001); and Jeffrey Fagan and Garth Davies, "Street Stops and Broken Windows," *Fordham Urban Law Journal* 28 (2000): 457–504. Some order maintenance advocates have rejected the dominant emphasis on preventing serious harms to individuals, embracing a form of legal moralism that conceives order maintenance work as an aspect of the police role defending community norms: see, for example, Gary Sykes, "Street Justice: A Moral Defense of Order Maintenance Policing," *Justice Quarterly* 3 (1986): 497–512; and George Kelling, "Acquiring a Taste for Order," *Crime and Delinquency* 33 (1987): 90–102. That approach arguably provides even fewer safeguards against abuse and distortion. For critiques, see Carl Klockars, "Street Justice: Some Micro-Moral Reservations," *Justice Quarterly* 3 (1986): 513–16; and Klockars, "Order Maintenance, the Quality of Urban Life, and Police: A Different Line of Argument," in

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Having reached a dead end in the evolution of the order maintenance function, it is worth retracing our steps to explore the alternative paths that have always been available. One of the richest alternatives appears in the early work of the Central Park Police under the direction of Frederick Law Olmsted, who served not only as the park's codesigner but also as its first superintendent. Central Park was the first large urban park in the United States, and it set the agenda for the parks movement throughout North America; to this day it stands out as one of the paradigmatic shared spaces of the modern city.[12] The task of defining and enforcing standards of behavior that would allow thousands of park visitors to coexist provides a vivid example of the order maintenance function. Olmsted devoted considerable effort to that task during the two decades when he intermittently oversaw Central Park's management, and the institutional independence of the park police gave him the leeway to develop a unique approach to it.

As he grappled with the challenges of policing the park, Olmsted emphasized several of its distinctive characteristics. First, Central Park was a *designed* environment—a deliberate investment of collective resources undertaken to accomplish specific purposes—but those purposes could never be achieved through physical design alone. The work of the park police was best thought of as an extension of design, guided by the project's aims just as much as the construction and landscaping work was. Second, the most significant threats to the park's environment involved a kind of death by a thousand cuts. Each small injury typically mattered very little on its own but only as one ingredient of a larger *set* of actions taken by many people. In the jargon of legal philosophy, injuries such as these are "accumulative harms";[13] such harms comprised an increasingly important regulatory problem in the shared urban environment.

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*Police Leadership in America,* ed. William Geller (New York: Praeger, 1985): 309–22. For the abuse of order maintenance authority to impose dominant moral standards on the lower class, Southern blacks, and gays, see, for example, Sidney Harring, *Policing a Class Society* (New Brunswick: Rutgers University Press, 1983), 198; Risa Goluboff. *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* (New York: Oxford University Press, forthcoming 2016); and George Chauncey, *Gay New York* (New York: Basic, 1995), 185. In this article, I aim to develop a conception of the order maintenance role (and thereby the police role more broadly) that is distinct both from this moralistic position, on the one hand, and from the more prominent liberal position focused on serious harms to individuals, on the other.

12. For the importance of the urban parks movement (and Central Park in particular) in reshaping the nineteenth century city, see David Schuyler, *The New Urban Landscape* (Baltimore: Johns Hopkins University Press, 1988).

13. Joel Feinberg, *Harm to Others* (New York: Oxford University Press, 1985), 225–32; and Andrew Kernohan, "Accumulative Harms and the Interpretation of the Harm Principle,"

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Together these two characteristics of the park environment underwrote a third: the relevant standards of behavior were unavoidably opaque to everyday users, deriving as they did from aggregate considerations and collective purposes that individual visitors might have little direct access to. (In that respect, the park's rules unavoidably took the form of what Nicholas Parrillo recently dubbed "alien impositions."[14]) That characteristic contributed to many of the controversies the park police became embroiled in, and it informed Olmsted's belief that the heart of their work lay in education of the genuinely ignorant rather than deterrence and control of the deliberately malicious. Social historians have noted this educational mission of Olmsted's police, but they have ignored its significance as a distinctive regulatory strategy tailored to the nature of the shared urban environment.[15] As nineteenth century public officials struggled to enforce the unfamiliar rules that the modern world sometimes required, they discovered that bluntly coercive forms of state authority often proved inapt.[16] The educational model of policing represented Olmsted's approach to that problem in the form it took in the park.

Olmsted was hardly the first manager of legal authority to face the challenges posed by the crowded urban industrial world. Decades earlier, nineteenth century courts considered a wide range of conflicts over the acceptable use of shared environments, and they repeatedly insisted that individual rights had to yield to collective interests. Many of the harms involved in those earlier conflicts, however, were less mysterious than those that preoccupied Olmsted. Courts had no trouble mobilizing the familiar impositions of the common law to handle blatant intrusions on the public realm—a single cotton mill belching one-and-a-half tons of lime, acid, ash, chlorine, vegetable oil, and fiber into the Passaic River every week; a steam engine noisy enough to singlehandedly make a neighborhood uninhabitable; a private house erected in a public square; or a 500 square meter floating dock installed by merchants in the Hudson

*Social Theory and Practice* 19 (1993): 51–72. Compare Jonathan Glover, "It Makes No Difference Whether Or Not I Do It," *Proceedings of the Aristotelian Society* 49 Suppl. (1975): 171–209; and Shelly Kagan, "Do I Make a Difference?" *Philosophy and Public Affairs* 39 (2011): 105–41. This way of understanding the significance of public order offenses contrasts sharply with the "broken windows" approach. It conceptualizes them as constitutive components of some more obvious harm rather than causal agents in producing it; compare Thacher, "Order Maintenance Reconsidered."

14. Nicholas Parrillo, *Against the Profit Motive: The Salary Revolution in American Government, 1780–1940* (New Haven: Yale University Press, 2013), 24–26.

15. See note 109.

16. Parrillo, *Against the Profit Motive*, 33–40, 199–220, 241–52, 272–94, 302–6, 329–52.

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River to help unload their shipments more quickly[17]—but the subtler threats the park managers grappled with required a different form of intervention. They required, Olmsted thought, a policing practice that aimed to instill norms of behavior through persuasion and other strategic interventions in situ, with the threat of traditional court-backed sanctions only lurking in the background, and rarely mobilized.

That form of policing leaves little sediment in the courts themselves. To reconstruct it we must turn to whatever evidence is available about the practice and philosophy of front-line enforcement agencies. In this case, a relatively detailed picture of park police work can be developed from the manifestos, memoranda, and letters that Olmsted left behind, along with other available accounts of the park police's experience.[18] Those documents reveal how Olmsted's ambitious vision for the public realm led him to an equally ambitious conception of the police role: one distinguished both by the broad mission he assigned to the park police and by the distinctive regulatory tools he encouraged them to rely on. That conception poses a challenge and alternative to the model of policing we have inherited from Olmsted's contemporaries, who grasped only part of the problem that urbanization posed for legal regulation.

## The Origins of an Independent Park Police

Central Park's policing arrangements attracted concern long before the grounds opened to the public. Writing in 1853 for a committee that petitioned the state legislature to locate the park at its current site, future park board president James Cooley wrote that Europe's parks had

17. William Novak, *The People's Welfare: Law and Regulation in the Nineteenth-Century City* (Chapel Hill: University North Carolina Press, 1996), 219, 146, 220, 140. Sanitation and pollution laws resembled the kind of problem Olmsted emphasized more closely; I return to that comparison in the conclusion.

18. To reconstruct Olmsted's views about the police, I rely mainly on the extensive papers that have survived from his years working on Central Park. Most of them appear in the series of published volumes overseen by Charles Beveridge, which aimed to make Olmsted's most significant correspondence easily accessible: Charles E. Beveridge, Senior Series Editor, *The Papers of Frederick Law Olmsted* (Baltimore: Johns Hopkins University Press, 1977–2013), hereafter cited as *FLOP* with volume and page numbers. Because my focus on Olmsted's police work is idiosyncratic, I also returned to the core source material in the Frederick Law Olmsted papers at the Library of Congress (hereafter *FLO Mss.*). I also reviewed the minutes, documents, and reports of the Central Park board through the end of the nineteenth century; news coverage of Central Park's police during and immediately before Olmsted's tenure; the secondary literature about Olmsted's park work; and his writing about topics other than Central Park that discuss policing.

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successfully attracted visitors from all walks of life because their cities all "have a police force sufficiently strong to keep these great and desirable accessories to city life and comfort in good order." The reputation of his local police, where concern about discipline and political patronage had recently sparked a major reorganization of the 8-year-old force, led Cooley to wonder:

> How would it be in New York, were you suddenly to open to its thronging masses a large public park, with its present system of police? Would it be a safe resort for unprotected ladies, for children and young persons, for the sick and infirm, and the aged citizens of New York? Could they sit down with their little family groups beneath the cooling shade, without danger of being insulted, run over, knocked down, perhaps robbed, and may be murdered? I think not. Experience has already tested this sadly at Hoboken, on Staten Island, and at many other places of general resort in the open grounds in the city and vicinity.

Cooley looked forward to a time when New York would develop "a more stringent and effective police."[19] In the meantime, complaints about partisanship and incompetence among the municipal police multiplied, and infighting broke out within its board.[20] In that context, the interim managers of the undeveloped parkland elected not to rely on the existing municipal police to safeguard it. Instead, in June, 1856, they created their own force, setting nineteen men to work wearing the same uniforms as the city police (except for caps labeled "C.P.P.") and charging them with preventing theft and destruction of park property.[21] A year later, the newly established Board of Commissioners of Central Park (BCCP) directed the captain of this makeshift force to explore "the establishment of a proper police force." The Metropolitan Police board refused to pay for a special park

19. New York Senate, "Report of the Minority of the Select Committee on the Bill Relative to a Public Park in New York," June 23, 1853.

20. For discussion of the volatile organization and reputation New York's police during this period, see Richardson, *New York Police,* ch. 3–4, and Richardson, "Mayor Fernando Wood and the New York Police Force, 1855–1857," *The New York Historical Society Quarterly* 50 (1966): 5–40. In 1857, the Republican state legislature wrested control over New York's police from the Democratic local government by creating a new "Metropolitan" oversight board appointed at the state level. At the same time, the legislature transferred authority over Central Park to a similar state-appointed board.

21. "A Central Park Police," *New York Daily Times,* May 30, 1856, page 8. This initial force apparently reported to the municipal police as well as to park officials, as the city quickly installed a telegraph line connecting the park police station with police headquarters: *New York Herald,* July 18, 1856, page 8. It was clearly a makeshift force. It took a year it to pay its officers, as some aldermen argued that the interim park managers lacked authority to hire police: "Payment of the Central Park Police," *New York Daily Times,* April 9, 1857, page 1 and January 7, 1858, page 8.

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detail, but it agreed to deputize twenty-two "park keepers" of the commissioners' choosing, paid for by the BCCP and overseen by the as-yet-unfilled position of park superintendent.[22] The keepers force was soon staffed with men who had worked as foremen and mechanics at the park rather than men who had experience with the municipal police.[23] In that way, a separate park police force was born, sufficiently independent from the city police to develop a distinctive approach to its work.

Olmsted learned about the superintendent's job during a chance meeting at a Connecticut inn, where he sat down for tea with a friend who had just been appointed to the BCCP, and from this first conversation he understood that one of the job's major responsibilities involved oversight of the park police. Olmsted had even fewer qualifications for that task than the rest of the superintendent's job, but he was a creative résumé writer. "I have visited and examined as a student most of the large parks of Europe," he told the board in his application letter, "and while thus engaged have given special attention to police details."[24] His literary connections, along with his experience managing farm plantings and studying European parks for an 1852 travelogue, apparently got him the job. He began work in September, 1857.

Design and construction immediately dominated Olmsted's attention—within a month he had prepared a study of tree plantings and a plan for draining the site, during the winter and spring he worked furiously with architect Calvert Vaux on a landscape design plan, and over the course of his first 2 years he built and managed a workforce of more than 3,000 landscape and construction workers for what became the largest public works project in the nation—but he had police business to deal with as well.[25] Some of it was generic personnel management. In February, 1858, the Board finally authorized the new park keeper's force under Olmsted's direction, disbanding the makeshift force that had reported to

22. *BCCP Minutes,* July 21 and 28, 1857, and February 2, 1858.

23. New York Senate, Doc. 18, *Report of the Special Committee Appointed to Examine the Condition, Affairs, and Progress of the New York Central Park,* January 25, 1861, 35.

24. FLO to BCCP president, August 12, 1857, *FLOP III*: 76. On Olmsted's early knowledge of the superintendency and his efforts to win the position, see "Passages in the Life of an Unpractical Man," *FLOP III:* 85–94; FLO to Asa Gray, August 20, 1857, *FLOP III:* 77; FLO to John Hull Olmsted, September 11, 1857, *FLOP III:* 79–84; and Laura Wood Roper, *FLO: A Biography of Frederick Law Olmsted* (Baltimore: Johns Hopkins University Press, 1973), ch. 11.

25. The work on drainage and tree planting appears in FLO to BCCP, October 6 and 16, 1857, *FLOP III*: 94–101, 106–13; the timing of his design work with Vaux appears in *FLOP III:* 453; and the employment figures in Fredrick Law Olmsted, Jr., and Theodora Kimball, eds. *Forty Years of Landscape Architecture* (Cambridge: MIT Press, 1973), 533–34 (hereafter *FYLA*).

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a Metropolitan Police inspector. After an extended debate, the board gave Olmsted the authority to make all personnel appointments, rejecting an alternative that would have allowed each commissioner to appoint two keepers. Instead the commissioners pressed their patronage claims on Olmsted. "I am just informed that you have made some 12 or 14 new appointments for the Police and have paid no attention to my request relative to the man recommended by Mr. D," one angrily wrote to him. "I once *saved your head*. I doubt whether, I in doing so served the interest of the Park." Olmsted complained that these demands crowded out more important work.[26]

Nevertheless, his management of the keepers' force eventually brought him in contact with the substantive business of park policing—with the distinctive problems of order posed by Central Park and the challenges the police faced in resolving them—and with what little expertise was available about this specialized task at the time.[27] As he and the board drafted Central Park's earliest regulations, they collected model ordinances from the great parks in Europe, and Olmsted consulted with several police officials in European cities on a BCCP-financed trip in the fall of 1859.[28] His most notable contact was Sir Richard Mayne, one of the founding commissioners of the London Metropolitan Police (the Met). Olmsted reported to his board on the "very detailed information" he received from his meetings with Mayne, with the Met's director of recruits, and with the head of the police division patrolling London's parks. Years later, when critics challenged his management of the park police, Olmsted cited his credentials:

> I was one of the few men then in America who had made it a business to be well informed on the subject of police organization and management. I had made some examination of the French system; had when in London known Sir Richard Mayne, the organizer of the Metropolitan force, upon the model of which our New York Metropolitan force is formed; had been favored by him with a long personal discourse on the principles of its management, and been given the best opportunities for seeing them in operation,

26. John Butterworth to FLO, September 8, 1859 (*FLOP III*: 229); and FLO to BCCP, December 28, 1859 (*FLOP III*: 234–39). Requests to appoint park keepers include (all in *FLO Mss.*): Green to FLO, April 30, 1860 (urging Olmsted to reappoint an admittedly "old" keeper to "one of the less frequented gates"); Francis Hawks to FLO, November 18, 1859 (recommending a needy family man on the grounds that his appointment could be made "without injuring the public interest"); and Fields to FLO, September 20, 1859 (whose "recommendation" read in its entirety: "Mr. Olmsted will most oblige me if he will appoint Mr. Fischer").

27. On the idea of the substance of police work, see Herman Goldstein, "Improving Policing: A Problem-Oriented Approach," *Crime and Delinquency* 25 (1979): 236–58.

28. On the collection European ordinances, see *BCCP Minutes*, December 9, 1858; for the visits with European police, see FLO to BCCP, December 29,1859, *FLOP III*: 236.

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both in the park service and in all other departments. I made a similar study of the Irish constabulatory.[29]

From Mayne, Olmsted would have heard lectures on the need for discipline and impersonal demeanor among the park keepers. To reassure a skeptical British public, Mayne insisted that the police serve as "models of restraint and politeness." He issued orders against rudeness, forbade unnecessary conversations at work, demanded quiet in the station houses, and established strict military discipline and respect for the command hierarchy, backing these rules up with a zero-tolerance approach towards violations. Olmsted's park police incorporated all of these tactics.[30]

## The Park as a Shared Space

In spite of this influence, the most distinctive feature of Olmsted's vision for the park police was its rejection of one of Mayne's key commitments. Like the historians who eventually told their story, early police reformers such as Mayne viewed the city as a place where traditional controls on predatory crime had frayed. That view led them to adopt a model of policing that emphasized deterrence, in which the main task of the police was to restrain malice by threatening the malicious with punishment. To do that, they hoped to establish a well-coordinated and pervasive force of officers who would deter crime through their visibility and systematic surveillance of the city.[31]

Olmsted rejected this deterrence model explicitly, insisting that "the occasional sight of a man who is simply distinguished from men in general by a badge and some peculiarities of clothing is going to check misuse of the park very little." He calculated that each keeper often had responsibility for thousands of visitors and 50 acres of labyrinthine park land, and concluded that most visitors would escape surveillance most of the time. If

29. FLO, "Spoils of the Park," *FLOP VII:* 619; "A Card from Mr. Olmsted", *New York Tribune,* June 3, 1873, page 5 (reprinted in *FLOP VI*: 604–10).

30. Succinct discussion of Mayne's ideas (and those of his collaborators) appears in Miller, *Cops and Bobbies,* 38–42. See also Thomas Critchley, *A History of the Police in England and Wales* (London: Constable & Co. 1967); John Tobias, *Crime and the Police in England, 1700–1900* (London: Gill and Macmillan 1979); and Belton Cobb, *The First Detectives and the Early Career of Richard Mayne* (London: Faber and Faber, 1957).

31. A clear statement of the deterrence philosophy appears in Miller, *Cops and Bobbies,* ix–x; Miller discusses Mayne's philosophy, which stressed the preventative value of a highly visible uniformed force, at 33–36. Actual police work during this period probably did not follow this model very closely—as I noted in the introduction, the early Anglo-American police spent most of their time on order maintenance, not crime control—but the idea itself remains powerful down to the present; it was the idea, rather than the actual practice of the municipal police, that served as Olmsted's foil.

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they really were inclined to malice, then the task of policing them would be hopeless. Along the way, the deterrence approach would corrode the social atmosphere he hoped the park would provide: "The value of a ramble in the park would be destroyed … if at every turn a visitor were to be made to feel himself superintended in all his conduct like a lunatic by his keeper, or a child by its nurse."[32]

The deterrence model failed because it focused on the wrong threat to the park environment: it aimed to control the malice of an urban jungle, not the carelessness and ignorance that posed the main dangers to an urban park. Olmsted drew this contrast most sharply when he resumed command of the park police in 1872 after a long hiatus.[33] Two years earlier, New York's short-lived Tammany government had taken control of the park board and restructured the park police extensively, doubling their numbers, making them a centerpiece of political patronage, and revising their basic orientation to their jobs. Olmsted complained that Tammany's reorganization had failed to recognize how the keepers' mission differed from that of the municipal police: "The force was re-formed with the evident assumption that the service to which it was to be adapted differed … in no way essentially from that aimed to be secured in the organization and training of the ordinary street police of the city." From that premise, the Tammany board had installed a long-time Metropolitan Police captain with no park experience as commander, renamed the keepers force the "park police," and armed the officers with clubs. Olmsted criticized these changes sharply:

> The starting point of organization for the metropolitan police is the liability of citizens to suffer from fires and other disasters to buildings, from burglaries, riots, and other crimes of violence. Its most important object is to overawe, outwit, and bring to punishment the constant enemies of society, and to guard vast stores of private property from their depredations. The means chiefly relied upon for this purpose is that of a guard patrolling the sidewalks, in front of the walls and doors which constitute the primary means for the same purpose, and the training chiefly required is that which will develop a keen scent for discovering, and a quick and strong hand for getting the better of deliberate attempts at felony.

The park police had a different task: "On the park," he wrote, "there are no stores of private property, no walls or doors to be guarded, and respectable women and well nurtured children are much more tempted to the class of

32. "General Order for the Organization and Routine Duty of the Keepers' Service of the Central Park," March 31, 1873, *FLOP I Supp.:* 300 (hereafter "General Order").

33. Olmsted left New York during the civil war to run the United States Sanitary Commission, and it took several years and a few diversions before he returned to park management.

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acts which it is the chief business of the park police to prevent than rogues or ruffians."

> The service for which there is the most frequent need on the Central Park is, in fact, that of quietly and civilly pointing out to visitors, and mainly to women and children, how they can best obtain what they desire, so far as it is to be found in the park, and cautioning them in a respectful, courteous, and propitiating way when they may seen to be going wrong, either ignorantly or carelessly, or thorough an inadequate appreciation of the harm which would result in the park from actions which elsewhere often pass as venial, if not harmless. Such, for example, would be the picking of way-side flowers or the hunting of birds' nests in thickets.[34]

The idea that visitors typically misbehaved "through an inadequate appreciation of the harm" inflicted by their actions was the foundation of Olmsted's philosophy. He elaborated on it in his most detailed General Order to the keepers, using damage to the park's plantings to illustrate:

> The danger . . . is chiefly this, that a few persons, perhaps one in ten thousand of all who pass near any such place, will tramp across it, and in so doing, stamp out the life of the plants, or will, one by one, pick and misappropriate the flowers to private use. They have no more right to do either than to pick their neighbor's pockets, throw stones at his windows or vitriol at his coat. Yet, of the comparatively small number of visitors who will crush out the life of the ferns, or steal the flowers, it will certainly be still a very much smaller number who are capable of being led intentionally to do any such wrong to their neighbor. . . . Much the larger part are capable of being tempted to it only because having had no occasion, under ordinary circumstances, in walking along the streets, or when in the country, through the woods and fields, to consider the rights of others in the way that is necessary in the park, it fails to be clear to their minds that they will be wronging others.

These examples involving the park's physical environment illustrated Olmsted's main idea in a straightforward way, but they were only illustrations; he insisted that the same idea applied to the park's social environment. "There is the same explanation often to be made even for people who carry themselves rudely in the Park, disputing loudly with one another, using threatening, profane or obscene language, crowding others off the walks, excluding others unnecessarily from seats, and so on. It is not with the intention of troubling others that they do these things but in most cases from sheer unmindfulness that others are being unpleasantly affected by them."[35]

34. FLO to Board of Commissioners of the Department of Public Parks, October 23, 1872, *FLOP VI*: 577–78. The BCCP was renamed the Board of Commissioners of the Department of Public Parks (BCDPP) under Tammany.

35. "General Order," 301.

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One reason visitors failed to appreciate the harm their actions caused, Olmsted believed, was their lack of familiarity with the demands of this kind of shared environment. Superficially, Central Park resembled the countryside, but because it was used each day by thousands rather than a few, the effects of every action were amplified. One month after he became superintendent, Olmsted advised the commissioners: "Visitors to the park should be led to feel as soon as possible that wide distinction exists between it and the general suburban country, in which it is the prevalent impression of a certain class that all trees, shrubs, fruit, and flowers, are common property." Whatever the merits of that view in the countryside, it would be disastrous for an urban park.[36] Fifteen years later, he wrote again to the board: "It requires some little reflection to understand that nearly all that is agreeable and refreshing at present on the Central Park would speedily disappear if practices, harmless elsewhere, were to be continued in it; if the multitude of visitors were to move through it, for example, as freely and inconsiderately as visitors at a watering place are allowed to move through the neighboring woods and fields."[37] A rural park in the midst of a major city had no precedent, and if New Yorkers treated it like the commons or country forest it resembled they would destroy it.

It was not an abstract worry. At the time the park commission was formed, uptown Manhattan was a semirural environment dotted with hog pens and other nuisances recently driven from lower Manhattan, and many residents collected firewood and grew crops to live at least partly off the sparsely occupied land. These had been perfectly legitimate activities in the past, but park officials worried early on about the damage they might do to the park if they continued in a space used each day by thousands. A major impetus for creating the original park police detail was to prevent damage to the property's natural landscape—the *New York Daily Times* announced its arrival with a dare: "Now if anybody wants to cut down fine trees without a license on the park grounds, let him come on"—and one of its earliest actions was to arrest a man for gathering rocks to sell as paving stones.[38] A year later, the newly established park

36. "To the BCCP," October 13, 1857, *FYLA:* 58–59. A few years later, Olmsted penned an early challenge to the common view that the countryside itself was an infinitely renewable common resource; see his "Preliminary Report upon the Yosemite and Big Tree Grove," August, 1865, *FLOP V:* 507–8.

37. "Report of the Landscape Architect on the Recent Changes in the Keepers Service," July 8, 1873, *FLOP VI:* 613.

38. The *New York Daily Times*'s dare appears in "A Central Park Police," May 30, 1856, 8. Roy Rosensweig and Elizabeth Blackmar summarize subsistence activities on the park land before 1857 in chapter 3 of *The Park and the People* (Ithaca: Cornell University Press, 1992); page 91 notes the early arrest for stealing park stones. The board resolved

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board acted quickly to evict leftover tenants who kept farm animals and gave them free range on the park land, "destroying the trees and otherwise injuring the public property in our charge."[39] Park officials also worried about uptown residents who used the park land as a dumping ground and nearby farmers who put their cows, goats, pigs, and even geese out to pasture on the park—"using it as a commons, and doing great injury"—and they moved quickly to wall the property off and establish a pound for untended animals.[40]

New threats to the park's physical environment arose after it officially opened to visitors. Olmsted received reports that visitors were helping themselves to flower bulbs and birds' nests, wearing down the turf in heavily traveled areas, spitting tobacco, leaving rubbish on the walkways, and carving their initials into park benches and buildings.[41] Early news reports about enforcement seem to bear out his diagnosis of these problems, filled as they are with stories of visitors who expressed surprise when told they were doing something wrong: a young man who "thought he did no harm to pluck a modest garland for his ladie love," foreign tourists who could not read the park's signs and "did not understand the harm of picking flowers," and visitors feeding the park's celebrated swans who insisted that they were unaware of the harm it might do (the city of Hamburg had sent a dozen swans to the park as a goodwill gesture, but nine soon died because of their diet).[42] Commenting on a report of Olmsted's that detailed the damage that careless use could do to the park, the *New York Times* lamented the common association of wooded areas such as the park "with the idea of perfect liberty—of free climbing, bough smashing, and every other species of rustic saturnalia." A woods shared by "thousands" demanded a different kind of care than woods visited by a few: "Nature in the neighborhood of large towns needs rules and regulations to enable her to do herself justice, just as certainly as in the country she does better without them."[43]

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to hire twenty-two officers in the summer of 1857 in order "to secure the property at the park from depredation and destruction": *BCCP Minutes,* July 21, 1857.

39. BCCP Doc. 3, May 26, 1857.

40. BCCP Docs. 3 and 9, May 26 and September 23, 1857; "Corporation Notices", *New York Herald,* August 29, 1858, page 3; and *BCCP Second Annual Report, 1859*, 35.

41. One report of stolen bulbs appears in A.J. Dallas to FLO, April 8, 1861, *FLO Mss.;* see also the report of "flower pilferers" in "Central Park on a Windy Sunday," *New York Herald,* May 21, 1860, page 1. Other threats to the park's physical environment appear in Green to FLO, June 10, 1861, *FLO Mss.*

42. The enforcement examples appear in *NY Herald*, "How NY Breathes on Sunday," July 30, 1860, page 1; and "Central Park on a Windy Sunday," May 21, 1860, page 1; and in "The Central Park," *New York Times,* February 21, 1859, page 4.

43. "The Central Park," *New York Times,* February 21, 1859, page 4. The paper's editors added that the city's existing public spaces provided an equally poor model: "Every one

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## The Designed Park

Central Park was not really a "natural" environment in any familiar sense. It was a thoroughly constructed environment: the result of a massive investment of time, money, and labor to transform a hostile and rocky piece of land into something more pastoral. Its outlines had been drawn by Olmsted and Vaux's Greensward plan, which the Board of Commissioners selected over thirty-two competitors in an 1857 design competition.

Olmsted repeatedly insisted that the Greensward plan should guide not just the park's construction and planting but also the regulation of park usage. At times this claim bordered on fanatical. He described the park as his perfect diorama: "Every foot of the Park's surface, every tree and bush, as well as, every arch, roadway and walk has been fixed where it is *with a purpose,* and upon its being so used that it may continue to serve that purpose to the best advantage, and upon its *not being otherwise used,* depends its value."[44] The users were part of the diorama—plastic figurines he intended to arrange *just so* to complete his work of art. "Does the work which has thus far been done accomplish my design?" he asked the board rhetorically in an aborted resignation letter during his first stint as Superintendent. "No more than stretching the canvas and chalking a few outlines, realizes the painter's. Why, the work has been thus far wholly & entirely with dead, inert materials. My picture is all alive—its very essence is life, human & vegetable."[45] In Olmsted's mind, his "art" encompassed choreography of the visitors themselves.

This megalomaniacal language masked a more mundane point about the relationship between design and regulation. Many design choices relied on expectations about how the relevant design features would be used, and ignoring those expectations would make the original choices pointless. Immediately before the hyperbolic claim that "every foot of the Park's surface … has been fixed where it is *with a purpose*," Olmsted illustrated what he meant by "misuse" of the park:

> The Park is furnished with a bridle-road, the object being to have a place where horses can be ridden with a free hand and at a rapid rate of speed. This is forbidden by law anywhere else in the city, because nowhere else have arrangements been made by which it could be done with safety. In the park they have been, at great cost. This bridle-road might be used by

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must cease as soon as possible to associate [Central Park] in his mind with that dirty play–ground in front of the City Hall."

44. "General Order," 298, original emphasis.

45. FLO to BCCP January 22, 1861, *FLOP III:* 304.

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> people in carriages or on foot but it is not necessary to the comfort of anyone that it should be, as there are on the Park above nine miles of road much better adapted to driving, and nearly thirty miles better adapted to walking; and, as to drive or walk upon it would greatly injure its value for its special purposes, it is the business of the Commissioners to prevent such misuse of it. Similar illustrations might be multiplied by the hundred.[46]

The proper way to use the bridle roads was to ride horses on them, not walk or drive carriages; otherwise the expense invested to create them would be pointless, and the investment would never had been made but for an expectation that this scheme of use would be enforced. In this way, past choices about the kind of environment the parks department would construct imposed future constraints on the kind of behavior that was appropriate there.

Individual park visitors did not always appreciate this logic, even in the relatively clear-cut case of the park's trail system. Olmsted recounted an example in an early report to the board. "A private carriage containing a gentleman and ladies was observed driving through the narrow walks of the finished ground north of the pond, the wheels often running upon the borders and putting the trees and shrubbery recently planted in much peril. A policeman hastened to remonstrate with the gentleman, who replied, angrily, that the park belonged to the public, and he should drive where he pleased in it, at the same time threatening to obtain the dismissal of the policeman if he continued to stand in his way."[47] It was an extreme case, but it echoed in many other controversies and complaints about park policing. The idea that there was a "proper" way of using the park inevitably invited resistance.

Olmsted gave a similar account of the notorious restrictions on walking on the grass. "Rock has been removed, drains laid, deep soil formed and fine, short greensward gradually established upon the soil in order to secure that particular form of gratification which may be produced by a rich color and texture of turf," he explained. "Under certain conditions, the turf may be trodden upon without injury, but if walking upon it were generally allowed, the particular object for which much labor during many years has been thus expended would be wholly lost." The design also included areas with "a luxurious growth of ferns and wild flowers in association with rocks and other adjoining objects" designed to "delight" those who came across them, but because trampling through the ferns or picking the flowers would destroy this carefully crafted scene, park officials instructed the keepers to prevent it.[48]

46. "General Order," 298.
47. Reprinted in "The Central Park," *New York Times,* February 21, 1859, page 4.
48. "General Order," 299–300.

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These were not trivial examples. Until the Tammany board took over park management in 1870, approximately half of park arrests were for traffic infractions, and another substantial share were for damage to the plantings.[49] In each case, talk of "proper behavior" in the park did not refer to a desire to elevate visitors culturally but to an attempt to vindicate expensive design choices that local officials had made by selecting the Greensward plan. "To justify the design of the park and the vast outlay which the city has made to carry out that design," Olmsted maintained, "a certain class of requirements must be met upon it for which no provision is made, unless through the expenditure designated 'For Police'."[50] The design of park rules and police was an extension of, and a necessary accompaniment to, the physical design; all of those elements had to be adopted as an interconnected package.

Venturing beyond the mundane examples of the bridle road and park plantings, Olmsted also described a vaguer and more general design principle relevant to the park rules. He repeatedly claimed that the park was designed to provide city residents with a convivial respite from the fear and strife that dominated the streets and business life, helping them to overcome their suspicion and antagonism and rediscover a community of interest.[51] Less ambitiously, the park simply provided "relief from the confinement in the city."[52] The Greensward plan tried to create that kind of environment partly by emphasizing large fields of grass surrounded by thick plantings that would insulate the space from the city. The plan's most unique and ambitious feature was its provision to submerge

49. Of approximately 1,000 arrests recorded by park police during the 1860s, 512 were for speeding. Records are spottier before 1861, but "The Central Park," *New York Times*, February 21, 1859, page 4 cites Olmsted's early claim that most ordinance violations (approximately half of the total arrests in 1859) involve damage to the park's natural environment.

50. FLO to BCCP, August 27, 1874, *FLOP VII:*74–81. The manuscript of the text, covered in strikethroughs and emendations, shows that Olmsted labored over this crucial passage.

51. In "Public Parks and the Enlargement of Towns," Olmsted wrote that urban experience led people to regard each other "in a hard if not hardening way" and bred "a peculiarly hard sort of selfishness," and he argued that urban parks could help counteract this atomizing environment by providing an "opportunity and inducement to escape from conditions requiring vigilance, wariness, and activity toward other men" (*FLOP I Supp.:* 182–183). In this respect he shared the views of many other nineteenth century observers, who often worried that city life and commerce threatened to corrode social solidarity and leave American society fragmented; see Daniel Bluestone, "From Promenade to Park," *American Quarterly* 39 (1987): 529–50.

52. Letter to Henry Stebbins and BCCP, August 27, 1874, *FLOP VII*: 76; Olmsted often gave this claim a psychiatric twist, maintaining that pastoral urban parks had a "tranquilizing influence on the nerves," for example, in "General Order," 299.

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the four required crosstown roads beneath the park's surface. Because the roads had to be open to the same traffic as any other road in the city—to "coal carts and butchers' carts, dust carts and dung carts"—Olmsted and Vaux worried that they would become "crowded thoroughfares, having nothing in common with the park proper, but everything at variance with those agreeable sentiments which we should wish the park to inspire," and they could easily destroy any sense of the park as an oasis: "Eight times in a single circuit of the park will they oblige a pleasure drive or stroll to encounter a turbid stream of coarse traffic."[53] The expensive plan to submerge the roads aimed to avoid that.

All of these physical features aimed to create a "character of quiet seclusion" (complete, Olmsted declared earnestly, with the "the twittering of birds and such other rural charms as would help to the general result of simple, quiet, tranquilizing, and refreshing recreation"), but once again they could not achieve that aim alone. To reinforce them, park officials adopted several rules of behavior, including regulations restricting commercial vehicles, peddling, noise, and "threatening, abusive, insulting, or indecent language" in the park.[54] Failing to enforce those rules would mean squandering the investment that local officials had made (for better or worse) to build the type of space outlined in the Greensward plan: an elaborate pastoral respite from the urban realm that contrasted sharply with other submissions the board of commissioners had rejected, such as those that envisioned something more like an amusement park and those that aimed at something less romantic but more economical.[55]

Olmsted believed that such decline had already begun during Tammany's reign, which had turned the keepers into a replica of the municipal police, ignoring efforts to protect the unique features of the park.

53. "The Greensward Plan," *FLOP III:* 121. The frontspiece to the *Third Annual Report of the Board of Commissioners of Central Park* (1860) titled "Archway under Carriage Drive" captures this idea visually, showing a mishmash of sheep, horse-drawn carriages, children running in the street, and harried workers lining the side of the road under a park bridge bursting with lush trees. For Olmsted and Vaux's general philosophy of the park's physical landscape, see Charles Beveridge, "Frederick Law Olmsted's Theory of Landscape Design," *The Nineteenth Century* 3 (1977): 38–43; and "A Consideration of Motives, Requirements and Restrictions Applicable to the General Scheme of the Park," *FLOP I Supp.:* 239–55.

54. "General Order," 300.

55. Near the end of his tenure as superintendent, Olmsted worried that widespread violation of these rules threatened to undermine the park's "special rural attractions"; see Letter to Stebbins and BCCP, August 27, 1874 *FLOP VII*: 76. A good account of the Greensward Plan's competitors appears in Rosensweig and Blackmar, *The Park and the People,* ch. 4. Lewis Mumford was among the earliest commentators to identify the distinctive character of Olmsted's pastoral vision for urban parks; see *The Brown Decades* (New York: Harcourt, Brace, and Company, 1931), 35–43.

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"[They] perform the same duties as the city police so far as there is occasion for them in the park, quite as faithfully in manner as the street police," he wrote in an abandoned draft from 1872. "Beyond this—for the other class of duties—the keeping of the park—they are almost worthless. They hate them; they consider them beneath their notice as policemen."[56] The following year he repeated the concern publicly, complaining to the board that the keepers force had been "definitely transformed into a 'Police' and assimilated as closely as possible in all respects to the ordinary street police of the city." If the change stuck, there would be no reason for a separate park police force at all: "If it is so, I can see no justification for the present *imperium in imperio* which exists on the park in respect to the matter of the police. There would be obvious advantages in the Department's abandoning the maintenance of any distinctive force and allowing the Police Commission to take its appropriate responsibility in this respect in regard to the parks as well as other portions of the city."[57]

This neglect of park keeping in favor of more conventional police work threatened the park with failure. Struggling for control of the keepers, Olmsted explained what he thought was at stake to his board:

> The designers of Central Park aimed to provide, or rather to retain and develop, certain elements of interest and attraction which, if they were successful, would be almost peculiar to itself. They saw from the beginning that the danger of failure lay chiefly in the liability of misunderstanding, misuse and misappropriation of these elements of the design by the public… I now affirm that every dollar that has been spent thus far on the Park, or that can be spent on it, without changes in plan, uprooting its very foundations, will have been spent on the assumption of a much more efficient keepers' service than has ever yet been had upon it. Not a line of the Park would have otherwise been laid where it is, not a tree planted where trees now stand. It has been a mistake from the beginning.[58]

A year later, he repeated the bleak thought that "the undertaking to provide a *rural* recreation ground upon such a site in the midst of a city like this" may have been "a mistake."[59] Unless a commitment to the kind of policing he advocated could be restored, "a new park will have to be made upon the ruins of that hitherto designed, adapted to recreation of a less refined

56. "Distinction Between the Duty Required of Park Police and City Police," 1872, *FLO Mss*.

57. FLO to Stebbins, July 30, 1873, *FLOP VI:* 639.

58. "Report of the Landscape Architect on the Recent Changes in the Keepers' Service," July 8, 1873, *FLOP VI:* 611–12. The word "efficient" in the penultimate sentence is unfortunate; Olmsted clearly has in mind not how economically the park police pursued their goals but their limited conception of what those goals were.

59. FLO to Albert Browne, November 12, 1874, *FLOP VII:* 83.

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character, and in which there shall be little to lose through mere carelessness and rudeness."[60]

Two months after he delivered his impassioned speech to the board, Olmsted was stripped of his authority over the keepers. Officially, the board wanted to relieve him of ancillary duties so that he could focus on landscape design. The real catalyst seemed to be the keepers' outcry against the exhausting patrol routine he demanded from them, which Olmsted himself compared to the duty expected from Union soldiers during the Civil War. (He defended it as a "temporary expedient" designed to reinstitute discipline in a force made lazy by patronage.[61]) His reputation must also have suffered from the fact that his first assignment upon resuming oversight of the keepers in 1872 was to cut the force in half.

Whatever the reason for the board's decision, Olmsted fought it bitterly. With only a police captain to oversee them, he worried, the keepers "would be confirmed in habits of slighting, if not regarding with contempt, those parts of their duty by which they should be distinguished from an ordinary street police."[62] Over the next year, he began to receive reports that fueled these fears. His head gardener complained at length that the park police stood by indifferent while visitors trampled the plantings and made off with trimmings and birds' nests, treating these violations of park rules as beneath their notice.[63] It was in this context that Olmsted warned the board about the dangers threatening Central Park's "quiet seclusion."

After he read Olmsted's remarks in the *City Record* late in the summer of 1874, police Captain Henry Koster wrote to the board to object to several of the facts his former boss had used to make his case, and to register a broader dissent about the way Olmsted understood the keepers' goals. Calling Olmsted's account of the park's purposes "poetical" and "filled with sentiment," Koster complained that "disappointment naturally follows when a realization of visionary ideas are expected in actual human affairs." He went on to imply that the far-reaching tasks Olmsted expected from the keepers exceeded their proper law enforcement role, which had to reflect "reasonable expectations" about visitor behavior.[64] Olmsted viewed these remarks as an official acknowledgement that the force had abandoned its

60. FLO to BCCP, October 23, 1872, *FLOP VI:* 575.

61. "Report of the Landscape Architect on the Recent Changes in the Keepers' Service," July 8, 1873, *FLOP VI:* 623–25.

62. FLO to BCDPP, January–February 1875, *FLOP VII:* 119.

63. Robert Demcker to FLO, August 27, 1874, *FLO Mss.* Olmsted notes other reports of the keepers' failure to stop misuse of the park in FLO to Stebbins, August 27, 1874, *FLOP VII:* 74–82.

64. Koster to Stebbins, September 12, 1874, *FLO Mss.* In Koster's own words, the park police role "consist[s] in specific positive and direct application of the law." His main

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park-keeping mission, and he seemed to be setting a trap when he asked Koster to clarify:

> What I understand him to charge is this: that my ideas of what the park should be and of how it should be managed are largely sentimental, poetic and chimerical and that the demands which I directly or implicitly make upon the police force are consequently exaggerated and impracticable… That judged by the ordinary standard of a practical man who looks at things as they are and not as he may imagine they might be, the police force is, in fact steadily fulfilling its proper purpose in the detection and arrest of actual offenders in the greater number of cases of lawbreaking on the parks… That this is all that is or reasonably can be required of a police force by the commissioners or the sensible public.[65]

Koster confirmed this interpretation 3 days later, and Olmsted pounced. By rejecting the "sentimental," "poetical," and "visionary" purposes attributed to the park, Olmsted claimed, Koster had meant to criticize him but had implicitly criticized the park commissioners themselves. *They* were the ones who had selected the Greensward plan on behalf of the public and assumed stewardship for it. In the process Koster had shown "pity and contempt" for exactly what made Central Park distinctive:

> Captain Koster is perfectly right… in claiming that what is being lost and wasted is simply the romance and poetry and fine art of the park—all, that is to say, that differentiate the scope of this Department's duty essentially from that of the Department of Works and the Department of Police, and justify its distinct existence. As soon as the views of the park and of the proper duties of its police upon which the police is now managed come, through the gradual habituation of the public to them, to be generally accepted, either as desirable or as from the political condition of the city the limit of that which is practical, the whole business of the Department will be gradually merged in that of water mains and pavements, sidewalks and sewers.

In Olmsted's eyes, Koster's remarks confirmed his worries that the park police force was drifting away from its distinctive mission toward a more conventional form of police work; the remarks had "significance," he stressed, "as to his understanding of what is to be expected of his force."[66]

The conflict made vivid not just Olmsted's high aspirations for the park but also the connection he saw between design and policing. He believed

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purpose for writing was to question Olmsted's most ambitious ideas about the standards of behavior the keepers could realistically enforce.

65. FLO to Stebbins, September 19, 1874; *FLO Mss.;* Koster's brief response confirming Olmsted's summary appears in Koster to Stebbins, September 22, 1874, *FLO Mss.*

66. FLO to BCDPP, January–February 1875, *FLOP VII:* 117–21.

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"from the start" that the ambitious design he and Vaux had submitted required a particular standard of behavior in the park, and if the keepers retreated from that standard—if they stopped educating visitors about "misuse" of the park to focus only on offenses that would have attracted police attention elsewhere—then the design would be a dead letter; the fragile environment it envisioned could not withstand such a laissez faire philosophy of policing. A few weeks later, Olmsted insisted to the board that Koster's remarks afforded "the clearest evidence either that the Board has repudiated the original design of the park, which I do not believe, or that its keepers force is not adapted to that design and is practically causing it to {be} set aside in favor of one radically different."[67]

I have recounted the conflict with Koster mainly to clarify Olmsted's philosophy of park regulation, but the episode may also suggest the reasons why that philosophy never took permanent root. Olmsted himself believed that despite some surface disagreements about particular rules, the public and its political representatives did not really object to the main regulations he was asking the keepers to enforce. In his letters to the park board, Olmsted tried to show that the standards Koster rejected were precisely those the commissioners embraced. Apparently they agreed. They suspended Koster as captain of the park keepers 4 days later.[68] It was not, moreover, just the Republican board that Olmsted had worked with for so many years that agreed with him. In practice, the Tammany Democrats did not dissent in any significant way from the substance of the behavioral standards the keepers were supposed to enforce. When Tammany took control of park governance, its commissioners adopted a new set of ordinances that incorporated all the major provisions of the old park rules: no defacing trees, no walking on the grass except areas designated "commons," no selling or posting advertisements, no playing musical instruments without permission, no holding group events, no "obscene" or "insulting" language or behavior, and no merchants' carts, among other restrictions. The main innovation in the new ordinances was to *add* a blanket rule empowering park police to eject undesirable visitors.[69] At the same time, the board revised

67. FLO to BCDPP, March 1, 1875, *FLOP VII:* 126–27.

68. *FLOP VII:* 598.

69. The new rule, adopted over the objections of the one remaining Republican commissioner, read: "All drunken, disorderly, or improper persons, and all persons doing any act injurious to such parks, squares, or places, may be removed therefrom by the park-keepers in charge thereof" (*DPP Minutes,* May 23, 1871). When Tammany Commissioner Henry Hilton originally proposed it, the rule had been even coarser: "All filthy or offensive persons may be removed" (*DPP Minutes,* May 8, 1871). The authority to exclude disreputable people was on the short list of Tammany priorities for the keepers. It was echoed 2 years later in a letter to the *New York Daily Tribune* that called for a return to Tammany's approach to

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the regulations for the park police, but the new regulations focused almost entirely on administrative matters such as pay and sick leave; they said little about the substance of police work, excepting a blanket statement that park police should "be vigilant in preserving order" on park property.[70]

Why, then, did the park police come to resist the distinctive park keeping work that Olmsted stressed? Olmsted himself believed that they did so not because of any policy decision by park officials or the public but because of the growing influence of police occupational culture. "It is impossible," he complained in 1872, "to get men when denominated police men and dressed and paid and regarded by the public as policemen to trouble themselves with other duties than those of police men."[71] It was not that municipal police officials deliberately imposed any particular view of what real police work involved on the park police; as an organization, the municipal force apparently left park policing to the keepers.[72] Over time, however, key personnel from

park keeping: "Not only those of disorderly conduct, but every one recognized as being of disorderly character, ought be rigorously excluded," the letter-writer implored ("Central Park in Danger," *New York Daily Tribune,* May 28, 1873, 4). News coverage of the board's meetings ignored both the ordinance changes and the new police rules, perhaps indicating a lack of public interest in the topic.

70. *DPP Minutes,* May 23, 1871. (Compare, by contrast, the voluminous discussion of the substance of park keepers' work in Olmsted's "General Order," described earlier in this article.) The most significant administrative change in the new police rules transferred the power to appoint keepers from the superintendent to the board president, presumably to facilitate patronage. The board also expanded the force, as discussed later in this article. For a useful account of the transformation of park politics and governance after 1870, see Rosensweig and Blackmar, *The Park and the People,* ch. 11–12; they report an easing of park rules during this era (pp. 309 ff.); however, the rules they have in mind were Sabbatarian restrictions on Sunday concerts and rentals rather than general rules of behavior in the park.

71. "Distinction Between the Duty Required of Park Police and City Police," 1872, *FLO Mss*.

72. Olmsted received little correspondence from the Metropolitan Police, and none of it said much about how the park keepers should do their jobs: for example, John Kennedy [Metropolitan Police Commissioner] to FLO, April 9 1861, *FLO Mss.,* regarding private organizations of men ready to support the government in case of military conflict. The park police and the Metropolitan Police seemed to operate independently. In 1879, the Corporation Counsel was asked to issue an advisory opinion as to whether the park police shared their jurisdiction over park property with the city police. (A Metropolitan officer had tried to arrest a park bartender for selling liquor on Sunday, in violation of city but not park rules, but a park keeper had intervened.) Along the way to his conclusion that they did not, the Counsel noted the generally hands-off attitude the city police had taken towards the park: "The police department, except, perhaps, in isolated cases, like the one mentioned in your letter, has never attempted to exercise any jurisdiction or control over the public parks. . .. The understanding appears to have been that the Police Department had nothing to do with police matters in the different parks": William Whitney to Seth Hawley, November 28, 1879; reprinted in *DPP Minutes and Docs,* year ending April 30, 1880, 302. It took

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the Metropolitan Police found their way onto the keepers force, and they presumably brought their assumptions about police work with them. In December 1870, the new Tammany board assigned command of the park keepers to Nathaniel Mills, a long-time captain of the Metropolitan Police's Broadway squad; and as his second-in-command, it appointed Robert P. Schofield, who had worked alongside Mills as a Metropolitan Police Sergeant in the Eighth Precinct.[73] (Recall that at its inception, the keepers force had been staffed with former mechanics and foremen from the park, not former policemen.) Olmsted's concerns about police culture began 2 years later.[74]

## A Tyranny of Design?

Olmsted's claim that design set the agenda for policing may seem to establish a tyranny of design; the park was made for the people, a critic might complain, not the people for the park. Olmsted's first and simplest response to this charge was that it was the people—as represented by the political system established to serve them, warts and all—who chose the design in the first place, and that in choosing it they simultaneously endorsed the measures necessary to protect it. When he implored the board that he and Vaux "saw from the beginning that the danger of failure lay chiefly in the liability of misunderstanding, misuse and misappropriation of these elements of the design by the public," he added: "The Commissioners

nearly two more decades before the municipal police absorbed the keepers' force in 1898: *DPP Annual Report,* 1898.

73. Mills and Schofield assumed command of the keepers December 9, 1870 : *DPP Minutes*, December 13, 1870. For Mills' background with the Metropolitan police, see "Captain Mills, of the Broadway Squadron, Made Captain of the Park Police," *Commercial Advertiser,* December 10, 1870, 3; *New York Herald,* December 11, 1871. For Schofield's service under him at the Metropolitan police, see David T. Valentine, *Manual of the Corporation of the City of New York* (New York: Edmund Jones & Co., 1866), 110. It is possible that the Tammany board understood how Mills and Schofield would alter enforcement practice, and by appointing them it indirectly sought to deregulate park usage; however, there is no direct evidence that it intended to do so, and the fact that the board actually *added* new rules to the park ordinances seems inconsistent with this possibility. I do not mean to imply that Mills and Schofield alone brought police culture to the keepers, but they do seem to represent an important shift from the early days of the keepers' force drawn from the park mechanics and foremen.

74. "Distinction Between the Duty Required of Park Police and City Police," 1872, *FLO Mss.* Close to the same time, Olmsted wrote that he had objected to Mills's appointment because he "was new to the park, wholly uninstructed in its special requirements," chosen only because "he had passed reputably through the various ranks of the metropolitan police to the rank of captain, and was thus assumed to have a familiar knowledge of, and proficiency in, the common duties of that force": "To the BCDPP," October 23, 1872, *FLOP VI:* 577.

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adopting the plan were distinctly warned of this. I myself stated to them, in full board, that I should be unwilling to take any responsibility in respect to the Park unless assured that I would be allowed to exact a degree of faithfulness, activity and discipline in the keepers' force that would be extraordinary in any service of the city."[75] It may be a legitimate criticism that the choice of plan was not democratic in the first place—perhaps the expensive investment in bridle trails was just a romantic project of elites who unfairly crowded others out of the decision making—but once a legitimate public decision about the kind of park New York should have does get made, the policing corollaries of *that* decision would make their demands felt. The idea of democracy applied to complex projects that unfold over time inevitably encounters a dilemma, as collective investments made at one point in time constrain future choices in ways that could easily seem undemocratic.

Olmsted's second response to the tyranny of design charge represented his attempt to grapple with that dilemma. In his view, the connection between design and policing worked both ways. Design choices required a suitable form of policing, but the realities of policing also put limits on design. If a design ideal required either superhuman police work or a level of intrusion that visitors would not tolerate, then it had to be rejected. In "Public Parks and the Enlargement of Towns," for example, Olmsted argued that although he admired the wild and rugged landscapes called "picturesque" on aesthetic grounds, they were an inappropriate model for urban parks partly because such terrain made it too hard to guard against "opportunities and temptations to shabbiness, disorder, indecorum, and indecency."[76] His mid-1870s despair that Central Park may have been "a mistake from the beginning" considered whether the same diagnosis applied to *rural* landscapes. At a more detailed level, specific design choices had to be made with an eye to their regulatory implications; a designer ought to create an environment that made it as easy as possible for people to obey the rules. For example, Olmsted and Vaux tried to locate rocks and

75. "Report of the Landscape Architect on the Recent Changes in the Keepers' Service," *FLOP VI:* 611; compare FLO to Stebbins, July 30, 1873, *FLOP VI:* 639: "From the first, the design of the Park has assumed a very different class of attendance on visitors from that of ordinary policemen and my professional judgment has been often expressed to the Board that there is nothing so important for the justification of the design as a Keeper's force under such management as was originally intended." Olmsted returned to this theme in his work on other parks. Writing about Detroit's Belle Isle, he complained that "a character of park is attempted . . . that the tax-payers will not allow to be creditably maintained," leading to "too much of shabby gentility," *The Park for Detroit* (Boston: Rand, Avery & Co., 1882), 21–22.

76. *FLOP I Supp.:* 189–90.

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plantings so that "it need be little, if any, inconvenience for visitors to avoid walking on them," and they incurred considerable expense to lay out the walkways and horse and carriage drives to minimize intermodal conflicts.[77] In these respects, decisions about design goals and policing related to each other dialectically: Some design goals could not be achieved without appropriate policing, but constraints on policing also set limits to the design purposes a park could realistically serve.

The evolution of the park's infamous "keep of the grass" rules can serve to illustrate this reciprocal relationship between design and policing. Access to the park's lawns was a contentious issue from the beginning. Early on, the board rejected most applications for baseball teams and other organized sports to practice and play games on park lawns (although it apparently allowed "occasional match games"), reasoning that the demand was overwhelming. With "the constant play of a great number of cricket and ball clubs," the board wrote, "the lawns would be rendered unsightly before one season passed." That, in turn, would undermine an important purpose of the park: "The Park has attractions to those that visit it, merely as a picture. . . Whatever defaces or injures this picture makes it less attractive to the great mass of visitors, and should, for the general good, be excluded." Although the city clearly needed more sports fields, smaller neighborhood parks would suit that purpose better; Central Park served a different function that would be undermined by intensive use of the turf. The board gave a similar justification for restrictions on individual access to the park's lawns, which have attracted more mockery over the years than any other park rule.[78]

Olmsted himself felt torn on this topic. He believed strongly that large expanses of well-kept green fields were an essential ingredient of the Greensward plan, but he worried that park visitors would chafe against strict constraints. "I do not like at all to have published a positive interdict upon all grassed ground," he wrote in the fall of 1860 to Park Comptroller Andrew Green, who had emerged as the staunchest advocate for severe restrictions. "Judging from my own feelings, as well as my observations of the public, nothing would be more unpopular."[79]

77. "General Order," 300; *BCCP Third Annual Report*, 1860. 40.

78. *BCCP Fifth Annual Report*, 1862, 47–49.

79. FLO to Green, November 10, 1860, *FLOP III:* 279. A decade later he elaborated the thought in a report to the city of New Britain, noting that "there is nothing which people desire more in a park than to walk upon the turf," and, therefore, "there is no regulation so offensive or so difficult to enforce as one requiring them to keep off from it"; even an "expensive police force" would find the task impossible: FLO to the Board of Park Commissioners of New Britain, Connecticut, March 23, 1870, *FLOP VI:* 362. He went on to draw out more specific design implications: "The extent of open turf should be

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Given that reality, Olmsted tried to refine his designs to make them more resistant to the kinds of usage that police could not reasonably prevent, but the task proved more challenging than he expected. In Prospect Park he and Vaux had designed the Long Meadow to maximize public access, using the hardiest grasses on extensively drained ground and then leaving it open to the public without restrictions, but he eventually concluded that the experiment had failed. He summarized his conclusions in a letter to *New York Times* Publisher George Jones, whose paper had repeatedly criticized park officials for their overzealous enforcement of turf protections. "The rules about not walking on the grass are now enforced so rigidly that sending children to the park is rather a punishment for them than a treat," the *Times* had complained in 1875. "Policemen hunt them about as if they were little criminals who were 'wanted' at headquarters."[80] Olmsted wrote privately to Jones to defend the police, citing his experiment in the Long Meadow and other evidence he had accumulated over years of park work: "The manifest results of each experiment are in my judgment not simply unfavorable but absolutely disastrous to the hope that the turf of the Central Park can ever be made use of by the public more unrestrictedly than it has been. I know that this opinion strikes almost all who have not given special study to the matter as preposterous."[81] The same year, Olmsted considered how parts of the park might be redesigned to mitigate the worst damage visitors were inflicting on the turf—for example, by widening walkways in the most crowded areas, where visitors were especially likely to step off the path onto the grass—but he lamented that the Parks Department lacked the funds for such projects in the midst of an economic depression.[82]

In the meantime, Olmsted tried to find a middle ground between a draconian embargo and ruinous laissez-faire. The regulations he proposed prohibited walking on the grass except in designated "commons," which could be introduced or withdrawn as turf conditions warranted (a common sign asked visitors to stay off the grass "for the present").[83] The following

large relatively to the number of people who will resort to it"; moreover, "nothing should be attempted, on the ground devoted to this purpose, which requires to be very carefully treated or which would be liable to serious injury from such usage as would be incident to athletic sports." Elaborate plantings, however desirable, would take more maintenance and policing than the city and its residents could tolerate or afford.

80. *New York Times,* November 15, 1875, 4.

81. FLO to Jones, November 19, 1875, *FLOP VII:* 160–63. The *Times*'s complaints about the turf rules stopped after Olmsted's letter.

82. FLO to BCDPP, May 19, 1875, *FLOP VII:* 139ff.

83. FLO to BCCP, November 13, 1860, *FLOP III:* 280–84; and *BCCP Fourth Annual Report* (1861): 48–49.

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summer Olmsted watched the park's largest crowd to date at a concert near the terrace, and the park keepers found it impossible to keep them off the grass. "I think they did no harm and it would be well now to put the sign of a 'common' there and on the 'green,'" he concluded. At approximately the same time, Green (who paid the maintenance bills) wrote to Olmsted complaining about damage to the lawn nearby, and recommended keeping the public off the area.[84] Through such trial and error, park officials searched haphazardly for the right balance between protecting the landscape and maximizing visitors' freedom.

Once again, these examples from the regulation of the park's physical environment provide the simplest illustrations of Olmsted's main idea, but once again the same considerations arose for the park's social environment. A case in point involved the rules governing park concessions. To establish the park as an oasis from the commercial city, the board early on passed an ordinance that banned peddlers, and it repeatedly directed Olmsted to crack down on unauthorized vendors.[85] At the same time, park officials established a limited commercial realm through a tightly regulated system of authorized refreshment stands and other concessions, such as boat and skate rentals, in order to meet visitors' needs (and, presumably, to raise revenue). At the outset the Commissioners seemed conservative, calling for "strict rules … as to what shall not and what not be sold"; they presumably had alcohol in mind.[86] Olmsted eventually advised a more liberal course, worrying that an outright ban on alcohol would leave visitors to bring their own or visit the surrounding taverns, "where they will meet with temptations to intoxication, and be withdrawn temporarily from restraining influences which will act upon them while on the Park."[87] Instead, he proposed a system of licensed vendors for alcohol sales on the park, with detailed conditions enforced by park police, citing the successful experience of Aston Park in England as precedent.[88] (Once the park concessions opened, the park police repeatedly shut down noncompliant vendors.[89]) An environment completely free of commerce

84. FLO to Green, November 3 and 10, 1860, *FLOP III*: 279; FLO to Green, August 26, 1861, *FYLA*: 414; and Green to FLO, June 10, 1861, *FLO Mss.*

85. *BCCP Minutes* September 23, 1859; and Green to FLO, September 5, 1859, March 10, 1860, and December 18, 1860, all in *FLO Mss.*

86. *Doc. 2 BCCP*, September 2, 1859, 18.

87. *BCCP Doc. 6* April 30,1860; compare FLO to Richard Blatchford, December 17, 1860, *FLOP III*: 290. Many taverns and liquor stores had sprung up around Central Park, and Olmsted believed that they supplied alcohol irresponsibly—to people who were already visibly drunk, and in an all-male environment that encouraged rowdiness.

88. *BCCP Doc. 6* April 30, 1860; and FLO to Thomas Lloyd, November 28, 1859, *FLO Mss.*

89. For example, "The Cold Snap," *New York Herald,* January 14, 1861, 5.

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would be impractical, but rigorous enforcement of less extreme regulations would advance this aspect of the Greensward plan's vision well enough.

## The Educative Model of Policing

Olmsted believed that the two features of the park environment I have been describing—the fact that it was both a *shared* space and a *designed* space—gave a distinctive shape to the park police's job. It was not always obvious to most park users how their own seemingly harmless actions might combine with others' to damage the park environment noticeably, particularly how they might undermine the design goals that had motivated the public to create the park in the first place.[90] The mission of the park police, therefore, was fundamentally instructional: It was "to aid, instruct and restrain honest but often inconsiderate visitors in their use of the Park—that of arresting criminals being *incidental to this*."

By contrast, Olmsted stressed repeatedly, the mission was *not* to ambush devious sneaks to punish them. He urged the keepers not to try to "surprise visitors" or "play the detective," and he implored them to use their arrest authority "with extreme caution"; mainly as a last resort when visitors had defied their informal authority. Instead, a keeper who found a visitor violating the rules should strive "to respectfully aid him toward a better understanding of what is due to others, as one gentleman might manage to aid another who was a stranger to him." Any arrest a keeper did make would be reviewed by his commanding officer, who would scrutinize the reasons for it along with the manner of implementing it.[91] Throughout their first decade, the entire force made fewer than ten arrests per month.[92]

In this respect, Olmsted actively discouraged the use of formal legal intervention through arrest and prosecution to enforce the behavioral standards he considered essential to the park environment. In part, this approach seemed to reflect his belief that punitive sanctions were an

90. As Olmsted put it: "Few persons fully comprehend the purposes of a park, and still fewer, especially city-bred persons, fully appreciate the conditions upon which the real value of the various elements of a park depend." "Report of the Landscape Architect on the Recent Changes in the Keepers Service," July 8, 1873, *FLOP VI:* 613.

91. "General Order," 290, 301, 292; compare also "Report of the Landscape Architect on the Recent Changes in the Keepers' Service," July 8, 1873, *FLOP VI*: 613, which defined the keepers' mission as "the prevention of ignorant and inconsiderate misuse of the park" through "education." The seeds of this fully articulated position from the 1870s were present from the start; for example, an 1859 annual report announced: "The duty of the Park-keepers is, by timely instruction, caution, and warning, to prevent disorderly and unseemly practices upon the Park, and thus, as far as practicable, to avoid occasion for arrests" (*BCCP Annual Report,* 1859, 45).

92. *BCCP Annual Reports*, 1858–1868.

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inappropriate response to wrongdoing that was "more frequently the result of thoughtlessness than of willful design to do injury." He repeatedly called such misbehavior "venial," suggesting that its fairly trivial moral character called for a restrained response. He also (and perhaps for that reason) worried that heavy-handed enforcement might backfire. If park keepers approached each rule-breaker "as a watchdog might accost a sneak-thief, growling, and with a look of seizing hold of him," the visitor's attitude towards park authorities might turn defiant. "Let the keeper consider," Olmsted warned, "whether a desire will not grow with this visitor to take care of himself when he is in his Park, and no thanks to anybody; whether a disposition to try conclusions with the whole force of keepers, to see whether they shall prevent him from going where he likes and behaving as he pleases, will not be established in his mind." By contrast, if the keepers treated wayward visitors with "considerateness and courtesy," they could inspire a cooperative spirit that would motivate them to regulate themselves. Olmsted grandly speculated that "every park-keeper would distinctly represent the general, permanent and legal interests which [each visitor] possessed, in common with all other citizens, in the park, in distinction from the momentary, selfish, illegal, individual interests which alone can be served through its misuse," and that the "mere sight" of a keeper might remind many visitors of the consideration they owed to others. When visitors broke the park rules out of ignorance and the keepers brought the problem to these visitors' attention, they would accept instructions willingly: "So far from being felt as a personal affront, [they] would be received with all respect and cheerfully complied with."[93]

The keepers' educational role involved more than simply posting signs and admonishing individual park visitors, teaching them the formal rules contained in park ordinances one by one.[94] To achieve their instructional mission, the park police had to strategically employ a range of tactics to influence everyone's tacit sense of appropriate behavior. To explain what he had in mind, Olmsted imagined a man walking on a street to a theater, church, or funeral, "smoking or engaged in a warm debate and talking loudly with his friend." When he reached his destination, the man would not wait for the police to admonish him before he put out his pipe and lowered his voice. "He would be led by the silent and unconscious influence of

93. "General Order", 304, 302, 305, 303, 304. Similar language regularly found its way into the Board's annual reports; for example, "The larger proportion of the offences at the park are of a venial character, and are the result either of thoughtlessness or carelessness… In most cases a polite suggestion to recall the wandering attention is quite sufficient to prevent the repetition of an offense" (*BCCP Annual Report* 1863, 30).

94. Dozens of signs announcing the rules were posted around the park, but Olmsted rarely even mentioned them. See "List of Signs in Use in Central Park," *FLO Mss,* 1871.

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others present to regard the custom and proprieties of the occasion and the place." Olmsted wanted the keepers to install this kind of unconscious custom in Central Park, to establish the "proprieties of the occasion and place" in this new kind of public space. By doing that they would regulate behavior more effectively than direct surveillance and rule enforcement: "The force of custom would act, out of the keeper's sight, in resistance to the misuse of the Park."[95]

As his reference to "the silent and unconscious influence of others" indicates, Olmsted thought visitors would take their cues about acceptable behavior from observing others. For that reason, the keepers had to intervene strategically and consistently against the violations of park rules that had the most value as precedents, particularly the first violation of a rule, which might draw others along as followers. That view underpinned his earlier insistence that park officials should impress visitors with the park environment's distinctive nature "as soon as possible," before it became "thronged with crowds of unmanageable multitudes of visitors." If the keepers could establish clear norms from the outset, they would perpetuate themselves to some degree.

Conversely, unchecked misbehavior might spiral out of control. Shortly after he returned to park management in 1872, he complained that inconsistent enforcement had undermined the old respect for park rules:

> Wherever one [visitor] is seen to have struck out of the usual course without being sent back, it is very apt to be the case that others are found disposed to follow, including such as would never have thought of taking the lead. With every additional one allowed to go wrong, the number increases of those whose scruples yield. In this way thickets which had stood uninjured for years have, this summer, in a very short time been seriously damaged, and paths so trodden as to kill the turf, while a disregard of the ordinances and of good customs has been made familiar to thousands.

As park norms eroded, police found themselves overrun. "The number of persons plainly disregarding the common requirements is sometimes so great," Olmsted lamented, "that the keepers are forced to abandon their duty, except with reference to aggravated cases, and chiefly of such a class of disorders as would call for the police outside of the park."[96] As less serious violations became common, any enforcement the keepers *could* muster came to seem capricious and bred resentment.[97] In these ways the keepers lost control of their distinctive task.

95. "General Order," 304, 302, 304.

96. FLO to BCDPP, October 23, 1872, *FLOP VI:* 580–81.

97. FLO to BCDPP, October 23, 1872, *FLOP VI:* 575 ("disregard of some of the park ordinances passes so frequently unnoticed that … an attempt to enforce them … seem a

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Two organizational factors exacerbated these challenges. First, Olmsted believed, the Tammany board's patronage appointments had increased the size but eroded the quality of the force, making discipline among the keepers uneven. (Shortly after he returned to the park, Olmsted discharged half the keepers at Andrew Green's insistence; many had been identified by their recently reappointed captain as incompetent, and others had been deemed by their surgeon to be physically unfit.) It was a bad bargain, he thought, because lazy and incompetent keepers undermined the authority of the rest. Each time one of them ignored a small violation of the rules, he helped convince visitors that the rule was a dead letter, making the more dutiful keepers seem capricious when they tried to enforce it.[98] Such inconsistency made it hard to deliberately establish any set of tacit behavioral norms at all.

Second, the number of visitors varied dramatically depending upon the weather, the day of the week, and scheduled events. To cope with that challenge, Olmsted created a reserve force of maintenance workers and gardeners who could temporarily serve as park keepers when the need arose.[99] It is telling that this arrangement attracted more criticism from Tammany officials than any other feature of Olmsted's approach to park keeping. Perhaps the patronage-hungry Tammany machine simply wanted access to more positions on the park police force, but overtly, its supporters argued that temporarily pressing manual labors into service led to bad policing. One ridiculed the temporary officers as "a class of 'mongrel' officials —half sweepers, half keepers," insisting that the public would never allow this kind of arrangement in the municipal police.[100] Already in the 1870s,

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capricious exercise of authority"); "Report on Turf", May 1875, *FLYA* 428–32 ("it is so evidently absurd to interfere with a single visitor in doing what hundreds of others may be doing that the regulations for preserving the turf and tender plants are practically regarded by the keepers themselves as a dead letter"). These considerations presumably made it unattractive to pursue the strategy of discretionary nonenforcement and forbearance used in other fields to soften the sharp edges of alien imposition: Parrillo, *Against the Profit Motive,* 39–40, 245–47, 277–79, 288–92. Olmsted wanted a moderate but consistent response to violations, and he turned to the educational approach to provide it.

98. For Olmsted's concerns about the erosion of quality during the Tammany period, and the way inconsistency undermined the keepers' authority, see FLO to BCDPP, October 23, 1872, *FLOP VI:* 575–76, 579–82.

99. FLO to BCDPP, October 23, 1872, *FLOP VI*: 580–1; cf. FLO to Green, December 21, 1860, *FLOP III:* 290.

100. "A proposition to discharge 600 of our regular patrolmen and in their stead invest 1,000 street-sweepers with brown jackets and power to order idlers to move on would hardly find much popular favor"; see "Central Park in Danger," *New York Daily Tribune,* May 28, 1873, 4. (The author of this article was almost certainly a former keeper writing pseudonymously.) Tammany Commissioner Henry Hilton expressed similar complaints about

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some sense of the police as having a distinct professional identity shaped judgments about the park police function in a visceral way. For Olmsted, by contrast, it did not take a full-time, armed police officer to perform the educational tasks at the heart of park keeping; he had already come to the conclusion that full-time officers often found such work "beneath them." A few years later, distressed about the condition of the park's lawns, he proposed a resolution requiring *all* park employees to "civilly advise, caution or remonstrate with" anyone who walked on the turf against the rules. If the wayward visitor refused, the employee should contact a park keeper to make an arrest.[101]

## Education and Coercion

If education lay at the core of Olmsted's preferred approach to park keeping, he recognized that it could not function successfully by itself. In its unqualified form, the educative approach to park keeping made optimistic assumptions about the park visitors' motivations. It assumed that park visitors would usually defer to the prevailing standards of behavior that the park police had cultivated, and to the keepers' reminders when they proved necessary, without any need for coercion. Olmsted thought the park's early experience demonstrated that this approach could work, maintaining that "a lawless habit was rare among visitors" during its first decade and that "the admonitions of the keepers were generally received in good spirit and willingly heeded."[102] He recognized, however, that park visitors would

Olmsted's hybrid policing arrangement, although without the contemptuous language about "mongrel" officials: "Interview with a Park Commissioner," *New York Herald,* October 23, 1871, 5; *DPP Minutes* October 24, 1871, 277.

101. *DPP Minutes,* May 14, 1875, 28–29; the board approved the resolution unanimously. Commenting on the issue a few days later in a letter to the board, Olmsted once again expresses resignation about the keepers' commitment to this kind of work; perhaps he sought to enlist the *rest* of the park workforce to help with this job because *they* would not find it "beneath them" (FLO to Stebbins, May18, 1875, *FLOP VII:* 139–43).

102. FLO to BCDPP, October 23, 1872, *FLOP VI:* 574; cf. "General Order," 304. There is of course no way to verify Olmsted's 150-year-old perceptions, but for what they are worth, contemporary newspapers (including those that criticized park officials on other occasions) uniformly complimented the keepers' effectiveness and restraint during this era. One report described the force as "ubiquitous but unobtrusive," whereas another praised "the universally polite demeanor of the intelligent policemen stationed on the grounds" and suggested that city police should take notes from them: "The People in the Central Park," *New York Times,* August 1, 1859, page 4; and "The Day in Central Park and Jones' Woods," *New York Herald,* July 25, 1859, page 5. Widespread criticism came later. The derogatory term "sparrow police" first appeared in print in 1876, 3 years after

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sometimes prove more intransigent and require a different response. "While the great mass readily recognize the propriety of reasonable rules and yield to them a cheerful acquiescence," an early annual report noted, "our community is not entirely free from individuals of that peculiar temperament that chafes against the restraints necessary to insure general gratification," or even, "like a school-boy," take "peculiar satisfaction in evading a rule."[103] From the beginning, Olmsted distinguished between "thoughtless" or "careless" park visitors, on the one hand, and those who were "evil-disposed" or "wanton," on the other, and he accepted that conventional police work emphasizing surveillance and arrest made sense for the latter. (When the park's skating pond first opened, one of the keepers' duties was to watch the crowd for pickpockets.[104]) In cases in which persuasion failed, the keepers had to fall back on coercion.

The state legislature had built that recourse into the enabling legislation for Central Park, granting the commissioners the authority to pass ordinances "as they may deem necessary for the regulation, use, and government of said Park," empowering the park keepers to enforce them by making arrests, and making violations punishable by as much as a $50 fine or 30 days in jail.[105] Park officials recognized that magistrates and the public might contest this authority if they invoked it carelessly: "It is essential that these [ordinances] should be carefully drawn and thoroughly discussed," the Board insisted; "otherwise, constant collisions with the wrong doer will arise, and the power of the Board will be lost, by failures on the part of the Courts to punish offenders, on the pretext that the ordinances are indefinite and illegal."[106] Olmsted instructed the keepers' sergeants to carefully review any arrests their officers made before forwarding them to a magistrate.[107]

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Olmsted had lost considerable control over the force, and after it had turned to a more conventional approach to policing: "City Notes," *Commercial Advertiser*, August 26, 1876, page 3. A few years later, the board became concerned about the declining reputation of the force (*DPP Minutes,* September 3, 1879, 183), and public discourse about the force became more and more critical in the course of the following decade; by 1887 the *Albany Law Journal* openly satirized its reputation: "Notes," September 3, 1887, 200.

103. *BCCP Annual Report,* 1862, 27–28.

104. "Our Winter Amusements," *New York Herald*, December 27, 1858. Olmsted's own concession about the need to police predatory crimes like pickpocketing appears in FLO to BCDPP, October 23, 1872, *FLOP VI:* 572.

105. David T. Valentine, *A Compilation of the Laws of the State of New York, Relating Particularly to the City of New York* (New York: Edmund Jones & Co., 1862), ch. 171, sec. 14–15 (adopted April 17, 1857), 331.

106. BCCP, Doc. 2, July 21, 1859, 23.

107. "The sergeants must be carefully instructed in the duty of the preliminary examination of prisoners and the determination of the question whether they shall be sent before a

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The courts generally *did* sanction the offenders the park police brought them, albeit lightly. During the years when park documents report consistent data on punishments (1863–69), exactly half of the offenders brought before a magistrate received fines (invariably under $10), and another 11% received some sort of confinement (typically less than 10 days). The rest—somewhat more than one third—were "discharged with a reprimand."[108] Thus even the carefully screened "last resort" cases the park keepers and their supervisors brought before the police court magistrates received light punishment.

That fact underlines the basic challenge Olmsted struggled with as he developed his philosophy of park policing. If the keepers took aggressive action against the kinds of offenses that posed the most distinctive threat to the park environment, they risked undermining the fragile authority that park officials had been granted. How should they handle offenses that did not even warrant a $5 fine or harsh words from a magistrate but that, left unchecked and multiplied by thousands, might cumulatively corrode the unique environment that New York had invested so much to create? The conception of park police as educators provided Olmsted's answer to that question: It directed the keepers to cultivate the tactics of persuasion and instruction on the park grounds before resorting to blunter forms of legal authority in the courtroom.[109] As regulatory concern in the crowded

magistrate": "Memo on Supervision of the Force," 1872, *FLO Mss.* Cases were usually tried in the Yorkville police court.

108. *BCCP Annual Reports,* 1863–1869. Confinement included the house of corrections, the asylum, and the almshouse. If anyone challenged these sanctions, no challenge appears in reported cases or news reports of police court proceedings.

109. By contrast, social historians have interpreted the park keepers' educative mission as a tool of social uplift for the lower classes; for example, David Scobey, *Empire City* (Philadelphia: Temple University Press, 2003), 213, 240; Rosensweig and Blackmar, *The Park and the People,* ch. 9; and Dorceta Taylor, "Central Park as a Model for Social Control," *Journal of Leisure Research* 31 (1999): 420–77. By locating Olmsted's philosophy within the story of nineteenth century legal development, it is easier to see the keepers' educational mission as a distinctive regulatory strategy tailored to the challenges posed by shared urban environments (and the complexity of the modern world more generally). The discussion so far should make clear that the "education" Olmsted wanted the keepers to provide was not an education about virtue or general habits of life but an education about specific behaviors toward the park environment. The behaviors themselves, in turn, required education not because they embodied upper-class standards imposed on an unruly lower class but because they embodied the alien demands that a new kind of (shared, designed) environment imposed on *all* classes. (Recall that most arrests were for fast driving, and many of the rest involved damage to the park's physical environment, such as gathering flower bulbs and birds' nests.) Although there is surely more to say about the strengths and weaknesses of social historians' interpretation of the park police, here I want to focus on developing an alternative interpretation rather than on critique.

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and fragile urban environment expanded its scope to a wider range of less culpable behavior, the tools of regulation had to expand as well.

By contrast, Olmsted implied, the more conventional approach to park keeping he struggled against lacked the tools to handle the park's distinctive regulatory challenges. Under the guidance of a one-time Metropolitan Police commander such as Nathaniel Mills, the park police were simultaneously too lax in outright ignoring many venial violations and too aggressive in the response they made to the violations they did detect. "Gradually the force has assumed the character of an ordinary street police," Olmsted complained. "Its members have lost pride and interest, and consequently use less skill and tact, in their special park-duties, and, perhaps unavoidably, appeals are made more and more to fear of punishment as a means of maintaining order."[110] Thus arrests surged in the early 1870s at the very same moment that many park rules were becoming dead letters.[111] The combination was not paradoxical. By overemphasizing their coercive powers at the expense of educational tools, the park police restricted the range of offenses they could reasonably tackle.

## Conclusion

In our minds and in our histories, we associate the police closely with urban life, but we still have not fully absorbed what the urban environment means for their work. Many of the earliest police reformers saw cities as atomistic places plagued by anonymity and anomie, and by establishing full-time professional police forces they hoped to reassert the social controls that urban life had frayed. But that is not all that cities are. They are also, ironically, especially communal places, where much of the environment that people experience every day is produced and shared with others, and where wealth and cultural meaning often get invested in collective enterprises such as public parks, rather than in private consumption alone. The problem of order in the urban realm is not just how to protect isolated

110. *DPP Annual Report,* 1871–72, 16.

111. For the uneven enforcement of many park rules under Mills, see the discussion earlier in this article. The surge in arrests is evident from the park's annual reports, which show that the keepers made nearly four times as many arrests in 1871 as in any previous year. (Throughout the 1860s the keepers never made more than 135 arrests in a single year, but in 1871 they made 489, and in 1872 they made 367; by 1873 the number of arrests in Central Park fell back to 150.) Olmsted's report on the keepers' force in the fall of 1872 (after Tammany lost control of the park board) computes the number of arrests per visitor and finds that during the Tammany era that rate tripled—not, he speculates, because misbehavior rose but because the keepers shifted from a preventative to a law enforcement orientation: *DPP Annual Report,* 1871–2, 16.

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individuals from each other but how to regulate the use they make of these shared environments.

Central Park is a case in point. In an era sometimes viewed as a high point of privatism and individualism, New York City expropriated more than 600 acres from private ownership to create an elaborate public park. The task of regulating its use was not, Olmsted pointed out, the familiar one of defending private interests from deliberate predation. It was to defend the purposes for which the public had created this collective asset against both thoughtless and deliberate attempts to commandeer it for private ends.

That task posed at least two challenges, each of which had more or less obvious echoes in other areas of modern governance. First, many of the necessary rules seemed trivial when considered in isolation—as Olmsted put it, they could "be broken without harm perceptible to the breaker"[112]—so it could be hard to convince either the police or those who violated them to take the violations very seriously. The park was hardly the only place where this challenge arose. Regulations against industrial pollution also remained controversial through much of the nineteenth century for similar reasons; for example, smoke pollution clearly mattered in the aggregate, but many courts overturned sanctions against polluters unless it could be shown that their emissions materially harmed a particular person or property interest.[113] The idea that individuals had to use their property and freedom in ways that would not harm others or the common good was well established,[114] but what counted as "harming" others in the burgeoning urban environment was in flux. In particular, accumulative harms[115] became especially significant in the intensively shared environment

112. FLO to BCDPP October 23 1872, *FLOP VI:* 578.

113. David Stradling, *Smokestacks and Progressives: Environmentalists, Engineers, and Air Quality in America, 1881–1951* (Baltimore, Johns Hopkins University Press, 1999), 64–65. Christine Rosen shows that this pro-defendant attitude toward nuisance industries applied selectively to the new industrial nuisances, not traditional nuisances such as slaughterhouses and tanneries, and she notes in passing that some mid-nineteenth century judges failed to recognize how industrial nuisances could become intolerable by accumulation. One judge rejecting a nuisance complaint "segued seamlessly from the chiming of church bells and the lowing of cattle to the sound of *the* forge hammer and the whistle of *the* steam engine. This kind of thinking, which reflected life in an earlier era when a solitary blacksmith would labor at a forge, did not speak to the objective reality of the noise and clamor emitted by the many trains arriving and departing and being switched at urban freight and passenger depots or by the huge banks of forges operating in locomotive factories, steel and iron mills": Rosen, "'Knowing' Industrial Pollution: Nuisance Law and the Power of Tradition in a Time of Rapid Economic Change, 1840–1864," *Environmental History* 8 (2003), 580. For an analysis of pollution as an accumulative harm, see Feinberg, *Harm to Others,* 227–32.

114. For influential discussion of the traditional *sic utere tuo* principle, see Novak, *The People's Welfare,* 44–45 and passim.

115. See note 13 and the accompanying text.

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of the late nineteenth century city, but such harms proved difficult to slot into familiar ways of understanding how one individual harmed others, and the legal tools that had been forged to handle less subtle offenses did not obviously suit them. Olmsted engaged with those challenges extensively throughout his time on the park.

Second, and more distinctively, the judgment that a particular park rule was necessary hinged on a prior judgment about the purpose of the park (or one of its components) that might always remain controversial. By contrast, despite the problems that accumulative harms often posed for them, even pollution and sanitation laws ultimately aimed at relatively obvious goals; they typically involved the clear-cut value of public health rather than the more ambiguous and discretionary value of a particular kind of shared environment. That ambiguity only added to the challenge of regulating the park. From the beginning, Olmsted's critics chafed at the idea that there was a proper way to enjoy the park, known to park officials but not individual park-goers; this idea has offended visitors at least since the intransigent carriage driver on the park walkways exclaimed angrily to a meddling park keeper that "the park belonged to the public, and he should drive where he pleased in it." Olmsted fueled such complaints with the arrogant certainty he expressed about his own interpretation of the park's purposes, and his rigid commitment to the original park plan left too little room for learning and adaptation to new circumstances. All of that conceded, the absurdity of the carriage driver's position indicates that some judgments about the "proper" use of park elements are unavoidable (the incident was, after all, Olmsted's paradigmatic example of tone-deaf individualism); by investing the resources needed to create the walkways in the first place, the public established a legitimate presumption against using them in a way that would undermine the purpose of that investment. More generally, Olmsted argued, the decision to claim hundreds of acres of private land for a particular kind of public environment was not a one-time decision but an opening move in a coordinated plan of public action, one that encompassed law as well as physical design, in that it imposed significant regulatory demands well into the future. A democracy that cannot sustain its commitments over time in this way is sharply limited in its scope for collective action,[116] but when it *does* sustain them it constrains future democratic choice in potentially troubling ways. As the

116. Years after he left New York, Olmsted wrote pessimistically: "The special perplexity of park business will be understood to lie in the fact that whatever determinations as to use you set out with. . . you have no assurance in law, custom, or public common sense, that they will not soon be thrown overboard." "A Consideration of the Justifying Value of a Public Park," *FLOP Supp. I*: 332.

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public environment of the developing city was transformed by more and more decisions like that, these constraints cast a wider and wider net over the urban landscape, restricting the way urban residents could legitimately use any particular corner of the public realm according to some official judgment about its purpose.[117] The specialized public realm of the modern city could never be regulated through custom the way so many of its predecessors had been.[118]

Both of these challenges reflect not the atomism but the intricate interdependencies of urban industrial society, in which individual actions ramify in complex ways, and almost every decision is made in the shadow of past commitments that still demand attention. Other legal domains eventually developed more-or-less tolerable ways of regulating behavior in the interdependent environment of urban industrial society, but criminal justice has proven to be a particularly blunt instrument in this regard.[119] Already in the 1870s, Olmsted concluded that the dominant ethos of policing that was taking shape around him fit badly with the task of policing the most prominent urban public space of his era. As I tried to suggest in the introduction, the mismatch has only deepened over time.

That mismatch has many sources, including the sense of mission the police have embraced and the nature of the tactics they have cultivated to accomplish it. Most simply, an institution that has become identified with the life-and-death issue of predatory crime poses a question of priorities. Why should police spend time on trivialities such as trampling the shrubbery when there is serious crime to fight? Instead of asking teenagers to turn

117. For example, for sidewalks, see *Roulette v. City of Seattle*, 97 F. 3d 300 (1996); for train stations, see *in re Hoffman*, 67 Cal. 2d 845 (1967); for subways, see *Young v. New York City Transit Authority*, 903 F. 2d 146 (1990); for public libraries, see *Brown v. Louisiana*, 383 U.S. 131 (1966); and for parks, see *Clark v. Community for Creative Non-Violence,* 468 US 288 (1984). In each case the appropriate use of some part of the public realm depended partly on the purpose for which it had been created. (The test, as *Brown* formulated it, was not whether a visitor used a public asset for its intended purpose but whether the use that visitor made of it interfered with that intended purpose.)

118. In Parrillo's terminology, the familiar impositions that governed traditional shared spaces gave way to the alien impositions of the modern public realm (*Against the Profit Motive,* 24–26). On the regulation of common properties through custom in Anglo-American legal tradition, and the decline of that model by the late nineteenth century, see Carol Rose, "The Comedy of the Commons," *University of Chicago Law Review* 53 (1986): 739 ff.

119. For the transformation of accident law, see, for example, Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865–1920* (New York: Cambridge University Press, 2001), part I; for environmental law, see, for example, Betsey Mendelsohn, "Environmental Law," in *Cambridge History of Law in America*, vol. 3, eds. Christopher Tomlins and Michael Grossberg (Cambridge University Press, 2008), 472–521.

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down their boom boxes, shouldn't they be looking for guns?[120] Contemporary attempts to answer these questions often invoke speculative links between minor misbehavior and more serious crime, but Olmsted outlined a different response. On his account, these common questions simply begin from the wrong frame of reference: The right context for understanding the importance of order maintenance work is not the rest of the police role but the rest of the task of providing public spaces. We might (and sometimes we do) just as easily ask why park officials bother trimming grass, scrubbing graffiti, and sweeping sidewalks when there is still violence and swindling in the city. But if we conclude that they should, then the police have at least as much reason to bother with order maintenance, which is no less important than physical maintenance to the vitality of public spaces. The spaces themselves are optional, but if we are going to create them it makes little sense to undermine their foundations by failing to provide the care their designs assumed. When he felt that the commitment of the park police to their order maintenance mission was at stake, Olmsted forcefully insisted that without it the decision to create and sustain Central Park along the lines that he and Vaux had originally proposed made no sense. In making that decision, the public had ipso facto committed itself to order maintenance over time. Of course city officials and the public can change their minds: They can pave over the flower beds and create a more utilitarian public realm where, as Olmsted put it, "there shall be little to lose through mere carelessness and rudeness." The bare, fenced-in fields of concrete and grass that so many park systems turned to in the twentieth century seem to reflect exactly that choice. The long slow decline of order maintenance over the past century may have contributed to that turn, and we will have to reverse it if we mean to reclaim the more ambitious ideal for the public realm that Olmsted advocated.[121]

Even when American police have accepted the importance of their order maintenance role, they have often approached it clumsily. Because our

120. See, for example, Bernard Harcourt, "Is Broken Windows Policing Broken?" *Legal Affairs Debate Club*, October 17, 2005, http://legalaffairs.org/webexclusive/debateclub_brokenwindows1005.msp; William Bratton. "New York City Police Department's Civil Enforcement of Quality-of-Life Crimes," *Journal of Law and Policy* 3 (1995): 450; George Kelling and Catherine Coles, *Fixing Broken Windows* (New York: Touchstone, 1996), 131; and Franklin Zimring and Gordon Hawkins, *Crime Is Not the Problem* (New York: Oxford University Press, 1997), 14.

121. For the retrenchment in public space design during the twentieth century, see Galen Cranz, *The Politics of Park Design* (Cambridge, MA: MIT Press, 1982), 123–25; for the decline of order maintenance since the end of the nineteenth century, see Monkkonen, *Police in Urban America,* ch. 2; Wertsch, "The Evolution of the Des Moines Police Department"; and Watts "Police Response to Crime and Disorder in Twentieth-Century St. Louis."

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main conception of police work focuses on the control of malicious wrongdoing through deterrence, we are easily drawn to ham-fisted approaches to order maintenance such as "zero tolerance," which insists on swift and unyielding punishment for even the most trivial public order violations. As many critics have pointed out, however, arresting and prosecuting someone for an offense that appears trivial on its own seems like an overzealous response no matter how serious the aggregate harm it comprises a part of.[122] Olmsted recognized this concern as well as anyone. In most cases, formal criminal sanctions were grossly disproportionate to the venial offenses the park keepers had to be concerned with, which aside from being small in magnitude were typically unintentional. Instead, the role of the police in regulating the use of public spaces was educational. It was a matter of teaching and reminding the users of those spaces about the norms they require, not enforcing clear-cut rules that everyone already understands.[123] Individual police officers must have always relied from time to time on something similar to the educative interventions that Olmsted emphasized,[124] but he elaborated that approach in greater detail than anyone, and he drew out its significance as a distinctive policy choice suited to the special challenges of regulating shared urban spaces.

That agenda led him away from the most familiar aspects of policing practice, and of legal regulation more broadly. Olmsted's voluminous writings about the park police lavished detailed attention on the pedagogy of park keeping, but they had almost nothing to say about arrest protocols, court procedures, and punishments.[125] In that respect, his engagement

122. For example, Harcourt, *Illusion of Order,* 180; Roger Matthews. "Replacing Broken Windows," in *Issues in Realist Criminology*, eds. Roger Matthews and Jock Young (London: Sage, 1992), 37.

123. John Stuart Mill recognized that education and coercion could often serve as substitutes for one another, and that an educative approach made sense when society had an interest in shaping behavior, but the justification for coercion was questionable; see Mill, *On Liberty* (Indianapolis: Hackett, 1978/1859), 74 ff.

124. Compare, for example, the New York Transit police's "take back the subway" campaign in the 1980s, which relied heavily on public education (Kelling and Coles, *Fixing Broken Windows,* 125), and the work of the New Haven Police department during the 1990s, which explicitly embraced an educative approach as their first recourse for their order maintenance work (Kelling, *Police Discretion and Broken Windows*, 50). For criticism of the generally stilted view that prevails today about the order maintenance role, see Wesley Skogan. "Broken Windows: Why—and How—We Should Take Them Seriously," *Criminology and Public Policy* 7 (2008), 195–202.

125. As I discussed earlier, Olmsted and other park officials were certainly cognizant of the need to safeguard the keepers' legal authority, but the topic appears rarely and as a background consideration rather than a direct preoccupation. Olmsted's most extensive discussion of the tactic of arrest over the years discouraged its use, and insisted that officers should avoid treating the people that they arrested with "indignity": "General Order,"

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with the challenges posed by shared spaces led him to emphasize methods of responding to deviance that bypassed the formal legal system to handle misbehavior informally where it occurred. The experience of park regulation mainly played out in the everyday practice of the park police, not in court proceedings or legal doctrine. The history of this aspect of law is typically harder to recover than the aspect that involves the meaning and determinants of formal criminal sanctions imposed in the courtroom, but it has probably become more important over time as modern administrative agencies have assumed a greater role in enforcement.[126]

It may seem strange to look back 150 years to the ideas of a man best known as a landscape architect to find a conception of the order maintenance function suited to present day policing. But unlike Robert Peel, Patrick Colquhoun, Richard Mayne, and other ancestral sources of our ideas about the police role, Olmsted thought seriously about the distinctive nature and requirements of the urban public realm. His sense that the fate of his landscape designs hinged on policing practice was one of the reasons he fought so hard to retain authority over the park police during the 1870s, despite the trouble they increasingly brought him. He worried that if the park deteriorated from poor policing, his design ideas and his reputation as a landscape architect would suffer. His interest in the police, then, was clearly self-serving; however, we might equally say that his position brought home to him more urgently than to anyone else how intimately urban design and policing intertwine. Carved out temporarily from New York City's larger municipal department, the force he oversaw provides a glimpse of a different approach to the order maintenance function than the one we have inherited. By looking back at its experience, we can perceive more clearly what the problem of order in the modern city is, as well as the limits and alternatives to our dominant tools for maintaining it.

Obviously the Central Park police were unique, and Olmsted's vision of their role was partial. He wanted to turn a single aspect of municipal police work into the heart of their job. Whereas contemporary thought about the police gives short shrift to the order maintenance role in favor of an almost-exclusive emphasis on crime control, Olmsted reversed the emphasis and said too little about crime control itself. That skewed emphasis became especially problematic as serious crime loomed larger in the

291. By contrast, 14 years after Olmsted left park management, reports about the park keepers specified arrest procedures in minute detail, while saying nothing about their educative tasks: DPP, Doc. 116, February 26, 1890. In that respect, they resemble the content of training and policy documents in contemporary police agencies.

126. Compare John Braithwaite, "What's Wrong with the Sociology of Punishment?" *Theoretical Criminology* 7 (2003): 5–28.

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park, particularly after the first murder on the park grounds in the fall of 1872.[127] We should view Olmsted's ideas not as a comprehensive model of policing, but as a single-minded analysis of its most neglected dimension, waiting to be integrated into a more holistic vision. It is precisely this unique focus, however, that makes his experience with Central Park such a useful case study of this troubled aspect of policing, as well as of the broader aspects of legal regulation that it exemplifies.

127. Olmsted's most extended discussion of crime control appeared a few months after this event, but even then he insisted that the central focus of the park keepers should be "the prevention of ignorant and inconsiderate misuse of the park" through "education." If they succeeded in that, he maintained, their more traditional law enforcement duties would fall into place, but if they treated crime control as their primary mission they would inevitably neglect their distinctive task: "Report of the Landscape Architect on the Recent Changes in the Keepers' Service," July 8, 1873, *FLOP VI:* 613–15.

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