International Center for Transitional Justice

The *Force* of the Police

An Analysis of Police Violence Based on Experience in the United States and the Imperative to Restore Legitimacy

November 2022

ICTJ | Justice Truth Dignity

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November 2022   Roberto Cornelli

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Part 1: Events and Politics

What Happened in Minneapolis Should Never Have Occurred

Egon Bittner, an early scholar of policing, noted that one of the peculiarities of the institution of the police is that it swings into action in response to "something that ought not to be happening and about which someone had better do something now."[1] The situations in which the police are called on to act are often emergencies, and it is at junctures such as these that, paradoxically, police officers sometimes take actions that ought not to happen.

This is precisely what occurred in Minneapolis, Minnesota on May 25, 2020, when George Floyd, a 46-year-old Black man, was stopped by the police and subsequently killed by an officer who knelt on his neck for over nine minutes, ignoring his frequent pleas for help. The words he spoke as he suffocated under the officer's knee—"I can't breathe"—became an instant rallying cry for the protest movement that started in Minneapolis and quickly reverberated throughout the United States and the world.

Floyd's death reignited existing anger over American society's deep and festering racial wounds. The litany of historical abuses in the United States is long and includes the deportation and enslavement of millions of Africans; the flagrant yet often misunderstood genocide of Native Americans (one of the first in modern history); the Civil War, which tore the United States apart over the issue of slavery and its abolition; the forms of racial control enacted via forms of systematic collective violence, such as lynchings, which were widely accepted by great swathes of the American people; and the affirmation of an openly segregationist socioeconomic and legal-institutional system. Indeed, systemic racism is a lens through which to observe evolutions in American society and read its tensions, divisions, turning points, and resistance to change, including in the period beginning with the 1960s civil rights movements.

In recent years, particularly after the killings of Amadou Diallo in New York City in 1999, and, more decisively, Michael Brown in Ferguson, Missouri, in 2014, a cohesive civil rights movement regained visibility on the streets through the Black Lives Matter movement. Prior to these and other emblematic killings, the movement had been most active decades earlier when pushing for major changes to racist and segregationist legislation, including the set of laws known as the Jim Crow laws.

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1   Egon Bittner, *Aspects of Police Work* (Boston: University Press, 1990), 335.

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Floyd's death triggered significant social uprisings that have challenged the methods of policing that have emerged over the course of several decades. These uprisings have attributed greater responsibility to the police than in the past, for their perpetuation of stereotypes and discrimination. The "Defund the Police" catchphrase, which espouses cutbacks in police funding and reductions in numbers of officers, has steadily gained ground among protesters.[2] This particular movement draws public attention to the nexus between increasingly pervasive and aggressive urban police tactics (which primarily affect young people and marginalized communities) and ever-expanding police budgets, which allocate increasing amounts of money to staff, as well as to military equipment and surveillance technology. Also at issue is that these increased budgets come at the expense of social and educational programs. The Center for Popular Democracy, for example, has calculated the percentage of municipal budgets earmarked for policing in many American cities and has shown that over the past three decades, police and prison system spending has drastically increased both locally and nationally, while funding for basic infrastructure, crime prevention, and social security programs has been cut.[3]

The anti-racism protests have had some immediate impact,[4] but it remains to be seen whether they will truly succeed in creating significant and lasting reforms to methods of policing, which for the most part, have long enjoyed the support of a large majority of Americans.[5] The emergence of the 'penal state,' an expression often used by French scholar Loic Wacquant, entrusted tasks and powers to the police which, in welfare democracies, should be handled by social, psychological, and educational institutions and agencies instead.[6] Inverting this trend is not simply a matter of defunding the police. It requires the adoption of a political program that centers on creating a welfare-based state instead, a concept which struggled to come to the fore in the United States, even when it was considered an undisputed utopia in Europe.

It is possible, however, that the Black Lives Matter movement and its widespread endorsement by certain cultural, entertainment, and sports institutions have led to a greater awareness among the political class of the risks that discriminatory policing practices pose to community safety and the need to engender wider legitimacy for law enforcement strategies, especially those that affect communities of color. What is needed is a rethinking of law enforcement agencies. This process was set in motion under the Obama Administration with the Task Force on XXI Century Policing, though its treatment of racism was marginal and overly cautious.

American society remains deeply divided. In describing the United States as a nation riven by deep-rooted, and in many ways new, anger, Joseph Margulies highlights the fact that the uprisings the followed George Floyd's murder are not simply an expression of pain over a single act of police violence, but rather a rejection of a political and economic system that has metaphorically had its knee on Black peoples' necks for centuries.[7] Floyd's murder represents a crystallization of the rage and hate that has long-divided Americans.

> [It] was not simply a single black man killed on a single summer evening by a
> single white police officer. For millions, it captured perfectly the many ways the

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2   Jennifer Cobbina-Dungy, Soma Chaudhuri, Ashleigh LaCourse, Christina DeJong, "'Defund the Police': Perceptions Among Protesters in the 2020 March on Washington," *Criminology and Public Policy* (2022) 21, 1: 147-174.

3   Center for Popular Democracy, Law for Black Lives, and Black Youth Project 100, *Freedom to Thrive: Reimagining Safety and Security in Our Communities* (Washington, DC: Center Poplar Democracy, 2017), https://populardemocracy.org/news/publications/freedom-thrive-reimagining-safety-security-our-communities.

4   For example, Nick Sibilla, "New York City Bans Qualified Immunity for Cops Who Use Ex-cessive Force," *Forbes,* April 29, 2001.

5   Sarah Elbeshbishi and Mabinty Quarshie , "Fewer than 1 in 5 Support 'Defund the Police' Movement," *USA Today,* March 7, 2021.

6   Loic Wacquant, *Punir les Pauvres : Le Nouveau Gouvernement de l'Insécurité Sociale,* (Marseille: Agone, 2004).

7   Joseph Margulies, "An Angry America: Understanding the Murder of George Floyd and the Anger in America," *Sistema Penale,* June 6, 2020, Opinion.

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country has betrayed its promise, especially to low-income people of color—its
promise to be a land of opportunity; of equality; of even-handed justice. A land
where power answers to law, rather than the other way around.[8]

The police are increasingly seen as both highlighting and embodying the racial divides that
permeate American society. But a key question is why police have become such a prominent
[or emblematic] representation of these divides? First and foremost, law enforcement bodies are
seen as "street-level bureaucracies" because they are more visible and directly in contact with the
population than most other public institutions.[9] Entrenched discrimination and systemic rac-
ism, where they exist, are more evident in the institutional actions of those most in contact with
the public. Furthermore, the police often act in problematic situations and have the capacity for
and right to the legitimate use of force. Thus, the impact of discriminatory practices is intensi-
fied because there are direct implications for the physical safety and well-being of those with
whom the police is interacting.

Lastly, it should also be remembered that the police actively participate in political life. Not
only do they depend on the support of politicians, but they also wield influence over political
decisions. Moreover, they are tasked with implementing government laws and decisions, and
translating them in circulars, guidelines, and protocols, which are the basis of everyday police
work. In practice, police often enjoy wide discretionary leeway in responding to situations
precisely because, in the face of the unforeseen circumstances which arise when something is
happening which should not be happening, it is not always possible to foresee how to act and
on the basis of which laws a priori. For this reason, great importance is accorded to "practical
police know-how," a phrase that is sometimes referred to in the literature as "canteen culture."
Canteen culture is a reference to the cultural transmission of values, experiences, and practices
that takes place in workplace canteens or other informal venues, both among those working
there and between police and those seeking to modify police behavior. Here, experience and
intuition are considered to have great value. On the other hand, less attention is paid to a
police officer's politics, and the impact they have on police organization, functions, strategies,
and working methods.[10]

Starting from the beginning of the 21st century, there has been a great deal of debate in the
literature about the central importance of the police in zero tolerance policies, in new forms of
urban policing and management of anti-social behaviors, and in the rise of a mass surveillance
society.[11] To contribute to such debates, it is worth understanding how the current American
policing model was inspired by the promulgation of a new policing policy in the 1960s.

The 1960s in the United States: A New Policing Policy Begins

It is no coincidence that police violence entered the public and academic debates precisely at
a time when collective awareness of racial segregation systems in certain southern states was
changing rapidly. Boundaries were being pushed with a view to building a society that was
more inclusive of Black Americans. The police, along with other institutions, were caught up
in these changes and faced new social demands. At the same time, there was a growing plea for

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8   Ibid.
9   Michael Lipsky, Street-level Bureaucracy: *Dilemmas of the Individual in Public Services,* (New York: Russell Sage
Foundation, 1980).
10   Namely, how more generalized political-cultural orientations influence significant police work issues, such as
defining deviant behaviors and what is meant by order.
11   Among the rich literature available, see Bernard E. Harcourt, *Illusion of Order: The False Promise of Broken Windows
Policing,* Harvard University Press, Cambridge MA, 2002; Ber-nard E. Harcourt, *Against Prediction: Profiling, Policing and
Punishing in an Actuarial Age* (Chicago: University of Chicago Press, 2006).

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safety from the white middle class, which resulted in the police finding new ways to apply old forms of discrimination.

The first institutional attempts to improve relations between the police and Black communities date back to the civil rights movement of the 1950s and 1960s. On July 28, 1967, the Kerner Commission was set up by President Lyndon B. Johnson to investigate the causes of the various uprisings, periods of disorder, and clashes with the police that occurred in many American cities throughout 1965 (in the Watts neighborhood and surrounding areas in Los Angeles, 1966 (especially in Chicago), and 1997. Mid-1997 was christened the Long Hot Summer for the approximately 160 racially motivated uprisings that took place across the length and breadth of the United States.

In its final report, titled *Report of the National Advisory Commission on Civil Disorders*, the Kerner Commission explained the causes of the riots in terms of the inequalities and divisions present in American society, Black Americans' frustration at their lack of economic opportunities, and white racism. In one of its most significant passages, the report described the United States as a nation with two separate and unequal societies, one Black and one white, and it pointed a finger at white communities for the "ghettoizing of minorities."[12] Considerations such as these in an official report opened the eyes of many Americans, including prominent thought leaders, about what was going on in American society. The findings encouraged them to see beyond the violent tone of the protests. Chairperson Otto Kerner and the other members of the commission were very clear that the country was becoming increasingly divided. The report raised the need for the United States to finally take stock of its centuries-long history of racial injustice and division.

Over 40 years later, many of the policy recommendations included in part three of the report remain topical, especially regarding the need for increased federal funding and support for more equitable (and de-segregated) education, employment, welfare systems, and housing (chapter 17). The same applies to its recommendations for local governments in chapter 10. These called for new and more effective communication channels with communities of color, improved responses to these communities' needs before protests get triggered, and the participation of residents of *de facto* segregated areas in both public decision-making and the development of programs and initiatives that impact their lives. Chapter 11 names the police's "abrasive relationship" with communities of color as one of the greatest and most explosive underlying causes behind the protests and increasing tensions.

The recommendations to address this fraught relationship are less robust than in other sections, but they are clear-cut in diagnostic terms. On the one hand, chapter 11 recommends the establishment of an oversight mechanism, including a more effective system for managing reports of abuse, and recruitment of young people to police work, presumably as a way to improve the relationship between youth and the police. On the other hand, the report reiterated the need for police presence in areas with large populations of people of color as a way to respond to the feelings of insecurity in those same communities. Chapter 12 of the report also points to the importance of improving anti-riot response work. The report's condemnation of the tendency to see police departments as "weapons of mass destruction" and its emphasis on the need for dialogue with community leaders and investment in research into alternatives to deadly force equipment constituted a last-ditch effort to redirect the steps being taken at the time toward the militarization of protest policing.

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12   National Advisory Commission on Civil Disorders United States, "Report of the National Advisory Commission on Civil Disorders," 1967.

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The period of Democratic predominance in the government ushered in by John F. Kennedy was coming to an end, and so, too, was government and legal support for Democratic priorities such as civil rights claims (including the Civil Rights Act), the War on Poverty, and the concept of the Great Society. President Johnson failed to implement the Kerner report's recommendations, and, after the assassination of Martin Luther King Jr. in April 1968, protests erupted once again in hundreds of American cities. Response to violence featured prominently in Richard Nixon's presidential campaign, thus ushering in a new era of a law and order-focused approach that favored the use of harsher protest suppression measures. This led to a proliferation of instances of police brutality and a further intensification of social divisions.[13]

Nixon consolidated a *de facto* policing model that was increasingly geared toward public order and safety. At the same time that the demands of the civil rights movement were spreading like wildfire across the United States, a fear-mongering approach to crime grew from a discrete institutional issue under the Johnson administration to a full-blown priority under Nixon. Murray Lee has identified the precise historic moment that this shift took place by examining the network of institutional, political, and disciplinary strategies and narratives used to build a "fearing population."[14] New statistical enquiry techniques developed in the context of building a "knowledge society" enabled detailed descriptions of the behavior of American citizens in every sphere of their social lives, including in victimhood experiences. It was these first surveys that revealed people's concerns about criminality and put them on the public agenda.

The same years also saw a rise in official crime rates. This, together with the ongoing uprisings in Black, Latinx, and other communities of color, rocked the white middle class and led to their concerns being recorded and disseminated as so-called scientific data. This, in turn, resulted in robust police action and ushered in an era-defining shift from penal welfarism to law and order policies. Even congressional debates about proposed welfare policy bills were dominated by this obsession with safety. Richard Harris's 1969 book, *The Fear of Crime*, described the emergence of social panic around criminality as the result, at least in part, of political stratagems. Specifically, he outlined the passage through Congress of a law approved in 1968 known as the Omnibus Crime Control and Safe Streets Act. The act was initially inspired by the guidelines set out in the Katzenbach Commission's 1967 report, *The Challenge of Crime in a Free Society*.[15] As it moved through parliament, the act increased police authority to stop and arrest suspects and obtain confessions. According to Harris, several factors contributed to the bill's expansion: the

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13   Some of Nixon's most famous 1968 electoral footage featured images of people protesting alone or in processions, injured people, weaponry, police officers in war mode, buildings razed to the ground, urban guerrillas, and destroyed streets while voice-overs spoke of violence and disorder in cities and argued for the need for change on the grounds that "the first civil right of every American is to be free from violence."

14   Murray Lee, "The Genesis of 'Fear of Crime,'" *Theoretical Criminology* 5, no. 4 (2001): 467-485.

15   "This report of the President's Commission on Law Enforcement and Administration of Jus-tice -- established by President Lyndon Johnson on July 23, 1965 -- addresses the causes of crime and delinquency and recommends how to prevent crime and delinquency and improve law enforcement and the administration of criminal justice. In developing its findings and rec-ommendations, the Commission held three national conferences, conducted five national surveys, held hundreds of meetings, and interviewed tens of thousands of individuals. Sepa-rate chapters of this report discuss crime in America, juvenile delinquency, the police, the courts, corrections, organized crime, narcotics and drug abuse, drunkenness offenses, gun control, science and technology, and research as an instrument for reform. Significant data were generated by the Commission's National Survey of Criminal Victims, the first of its kind conducted on such a scope. The survey found that not only do Americans experience far more crime than they report to the police, but they talk about crime and the reports of crime engender such fear among citizens that the basic quality of life of many Americans has erod-ed. The core conclusion of the Commission, however, is that a significant reduction in crime can be achieved if the Commission's recommendations (some 200) are implemented. The recommendations call for a cooperative attack on crime by the Federal Government, the States, the counties, the cities, civic organizations, religious institutions, business groups, and individual citizens. They propose basic changes in the operations of police, schools, prosecu-tors, employment agencies, defenders, social workers, prisons, housing authorities, and pro-bation and parole officers." The President's Commission on Law Enforcement and Admin-istration of Justice, *The Challenge Crime in a Free Society: A Report by the President's Commission on Law Enforcement and Administration of Justice* (Washington, DC: United States Government Printing Office, February 1967), https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/42.pdf

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central role played by Senator John L. McClellan, the subcommittee chairman and a Democrat from the state of Arkansas who was openly opposed to the civil rights movement; the populist climate at the time; the concerns of many Democratic senators regarding their political future; and the support of certain Republican senators, including future President Nixon.

From the 1970s onward, the war on crime and its intersection with the war on drugs (and more recently, the war on terrorism) has, in Jonathan Simon's textbook analysis, become the American governmental keystone.[16] These so-called wars are now embedded in the government's foundations and have pushed politicians in the direction of heightened forms of control and surveillance. Similar practices have been adopted by a number of other Western and Latin American nations as well. Since the adoption of the 1973 drug laws by then-governor of New York State and eventual United States vice president, Nelson Rockefeller, it has been clear that controlling Black youth, who have come to be seen as the principal threat to public wellbeing, is a primary factor underlying many public decisions. In her 2010 book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness,* author Michelle Alexander convincingly argues that the theory that underpinned the systemic racial discrimination in the United States in the 1970s has not diminished. Rather, it has morphed into a system of control delegated to the police and prisons.[17]

That the war on drugs, which associated "hippies" and Black people with heroin and marijuana in order to legitimize severe forms of control and repression against them, was part of a larger political strategy devised by Nixon to combat anti-Vietnam war and civil rights protests is the subject of much historical study.[18] There is no doubt, however, that a culture of racial control took root in the criminal justice field in the 1960s and culminated in radical legal amendments in the decades that followed. This push, which contributed throughout the presidential administrations of Republicans Ronald Reagan and George W. Bush, as well as Democrat Bill Clinton, led to a drastic increase in prison occupancy levels, with young Black Americans accounting for the majority.[19]

These repressive policies were further intensified in the 1990s with the widespread implementation of a zero tolerance approach, which once again mostly impacted communities of color.[20] Bernard Harcourt's studies have shown that "broken windows policing"[21] a key feature of New York mayor Rudolph Giuliani's tenure, and the approved use of racial profiling by police for the purposes of forecasting deviant behavior essentially publicly sanctioned the existence of a link between policing models and racial discrimination.[22] It should be noted that there were simultaneous efforts by police forces to attract people of color through different modalities under the general, and somewhat misleading, term community policing.

The evolution of policing policies as described so far has placed law enforcement agencies on the front lines of perceived urban warfare and has armed police with significant resources and weaponry that is increasingly borrowed from the arms industry.[23] Attempts to introduce other

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16   Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007).

17   The theory was also taken up in Ava DuVernay's 2016 multi-award-winning film documentary, *13th*.

18   David Garland, *The Culture of Control. Crime and Social Order in Late Modernity* (Oxford: Oxford University Press, 2001).

19   Michael Tonry, "Why Crime Rates Are Falling throughout the Western World," *Crime and Justice* 1 (2014), 1-63.

20   Alessandro De Giorgi, *Zero Tolleranza: Strategie e Pratiche della Società di Controllo* (Roma: DeriveApprodi, 2000).

21   For a brief description of what is broken windows policing see: Center for Evidence-Based Crime Policy, "Broken Windows Policing," https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing/

22   Bernard Harcourt, *Against Prediction: Profiling, Policing and Punishing in an Actuarial Age* (Chicago: University of Chicago Press, 2006).

23   For more about the elements of continuity between urban safety policies and anti-terrorism measures, see Roberto Cornelli, "La Politica della Paura tra Insicurezza Urbana e Terrorismo Globale," *Criminalia* (July 17, 2018).

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policing models have always come up against the deeply-rooted belief that only harsh and ro-
bust responses to all forms of criminality, even minor forms such as vandalism, can effectively
combat crime and restore social order.

If the contribution of such approaches to reducing crime rates is tenuous at a minimum, it
would certainly seem that their effects on police-community relations have been adverse. Statis-
tics also leave no doubt that deaths occurring in the context of police work in the United States
have increased.

The Rule, Not the Exception: Police Killings in the United States

George Floyd is only one recent name on an ever-growing list of people who have died in police
custody or been killed in the course of police work. In 2015, after a series of deaths rekindled
protests against police violence in the United States, *The Guardian* created a project designed to
record the numbers of people killed in the course of police work, along with their stories.[24] The
initiative revealed considerable gaps in the official statistics, and the results were alarming. There
were 1,146 deaths in the course of police work in 2015 and 1,093 in 2016. Race-variable-
sensitive analysis showed that although the majority of deaths were among white individuals, in
proportional terms, deaths of Black, Native American, and Latinx persons were predominant
(Figure 1). For example, Black Americans were an average of two and a half times more likely to
die during police work than white Americans.

**Figure 1. Deaths During Police Work by Demographic Group in the United States in
2015 and 2016**
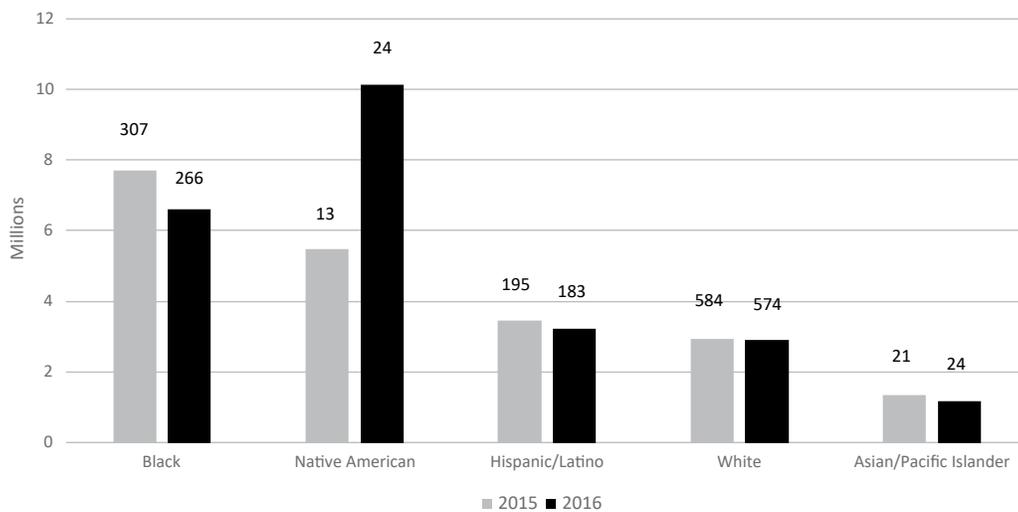
Source: Jon Swaine, Oliver Laughland, and Jamiles Lartey, "The Counted: People Killed by Police in the US,"
The Guardian, 2015.

A federal government pilot program based on information gathered from a range of sources,
including the project published by The Guardian, led to the development of a new data-gath-
ering methodology for deaths caused by law enforcement agencies known as the New Hybrid

24   Jon Swaine, Oliver Laughland, and Jamiles Lartey, "The Counted: People Killed by Police in the US," *The Guardian,* 2015-2016.

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Counting System. This system counts deaths regardless of the legitimacy of an officer's conduct and has generated results coherent with those obtained by *The Guardian*.[25]

Data from the Mapping Police Violence, an independent data collection agency, confirm these results and show an increasing trend of police killings in the period 2013-2021 (Figure 2).

Figure 2. Trend of Police Killings in the United States in the Period 2013-2021

Source: Mapping Police Violence, https://mappingpoliceviolence.org/
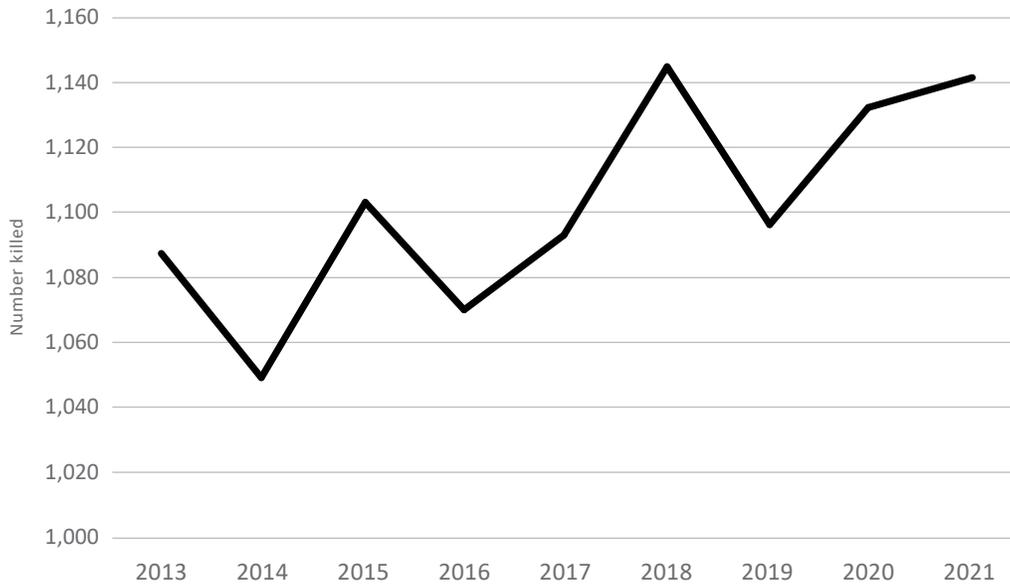
A look at the past also confirms the greater incidence of deaths among Black Americans compared to other groups. The 2001 report by the United States Bureau of Justice Statistics on police work and murders throughout 1976-1998 shows a clear predominance of Black American victims, primarily male, among justifiable instances of homicide committed by generally white police officers.[26] Nearly all of the victims died from gunshot wounds.[27] This trend decreased in the first decade of the period under review before increasing in the first part of the 1990s and then falling again until 1998, when figures were on par with those in the late 1980s. (See Figure 3.)

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25   For official 2015 and 2016 data, see Duren Banks, Paul Ruddle, Erin Kennedy, and
Michael G. Planty, United States Department of Justice, Office of Justice Programs, "Arrest-Related Deaths Program Redesign Study: 2015-16 Preliminary Findings" (December 2016).
26   Eighty-four percent of officers were recorded as white, while only 15 percent of officers were recorded as Black. Jodi M. Brown and Patrick A. Langan, United States Department of Jus-tice, Office of Justice Programs "Policing and Homicide, 1976-98: Justifiable Homicide by Police, Police Officers Murdered by Felons" (March 2001), 10.
27   Ibid.

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Figure 3. Justifiable Homicides Committed by Police Officers in the United States from 1976 to 1998
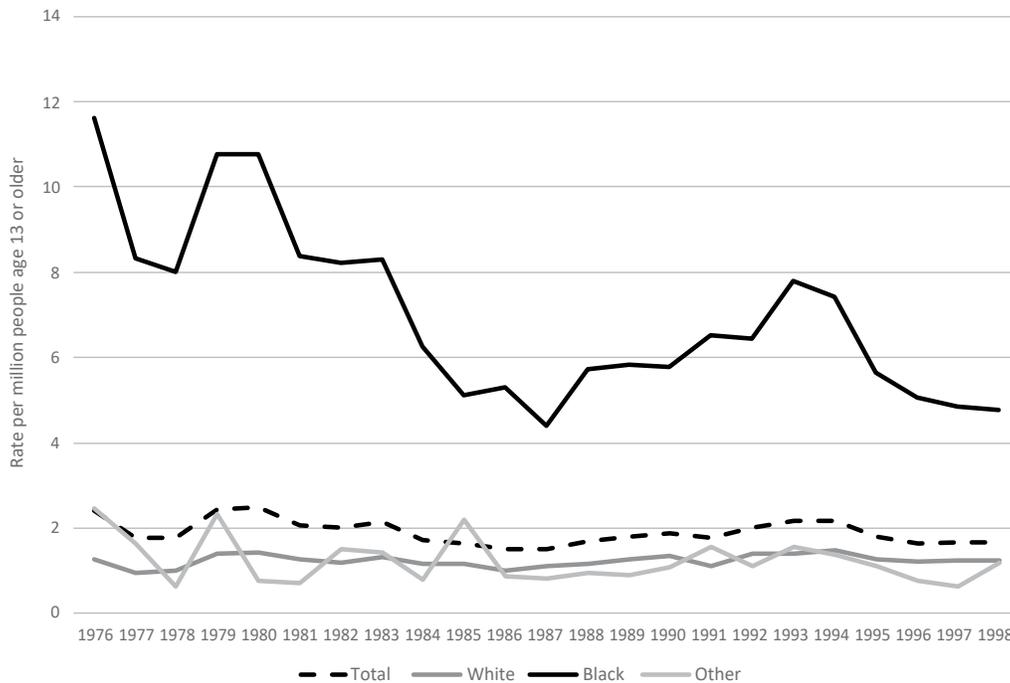
Source: Brown and Langan, "Policing and Homicide, 1976-98," 5.

Data published by the United States Federal Bureau of Investigation (FBI) shows that an average of 79 police officers were killed in the same period (1976-1998) by individuals with criminal records, primarily as a result of firearm injuries.[28] This trend shows that the levels of tension between police and citizens, especially young Black men, have adverse effects on police officers, too. Over the course of the period, the number of deaths among police forces dropped, from 111 in 1976 to 61 in 1998 (Figure 4), above all as a result of a drop in the number of police deaths during arrests, from 44 percent of total deaths in 1976 to 26 percent in 1998.[29]

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28   A majority of the officers killed were white (86 percent) compared with 13 percent Black. Brown and Langan, "Policing and Homicide, 1976-98," 24.
29   Ibid., 44.

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Figure 4. Police Officers Killed in the United States from 1976 to 1998
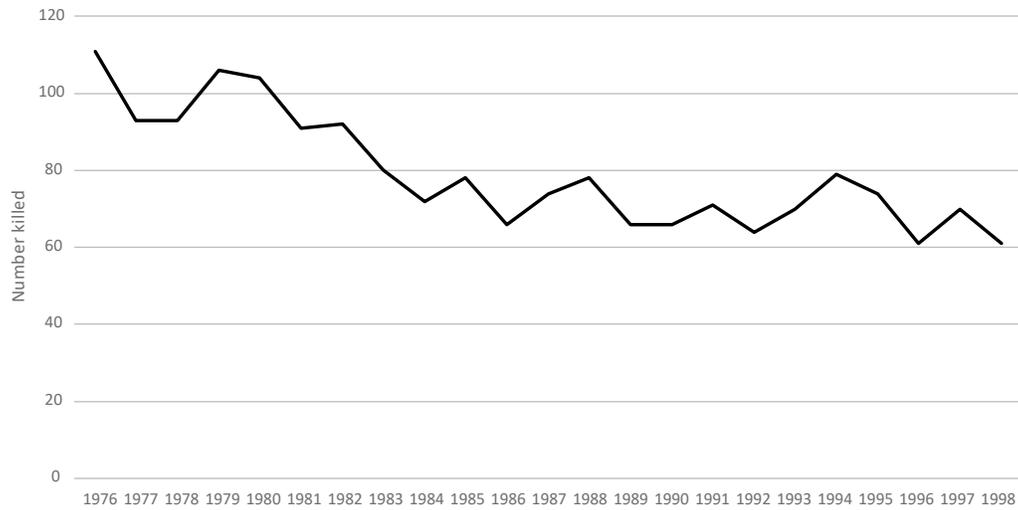
Source: Brown and Langan, "Policing and Homicide, 1976-98," 19.

In 2019, the FBI set up the Law Enforcement Officers Killed and Assaulted (Leoka) Program, which provides data and information on law enforcement officers killed or attacked in line with the National Use of Force Data Collection initiative announced in 2018, whose data is not yet available. The Leoka Program reveals that the numbers of officers killed have steadily diminished in recent years, from 66 in 2016 to 48 in 2019 (Figure 5). Preliminary data from 2021 provided by the FBI go against this trend: 73 officers died in felonious killings in the line of duty. It is the highest total recorded by the agency since 1995, excluding the 9/11 attacks.[30]

Figure 5. Police Officers Killed in the United States from 2016 to 2019
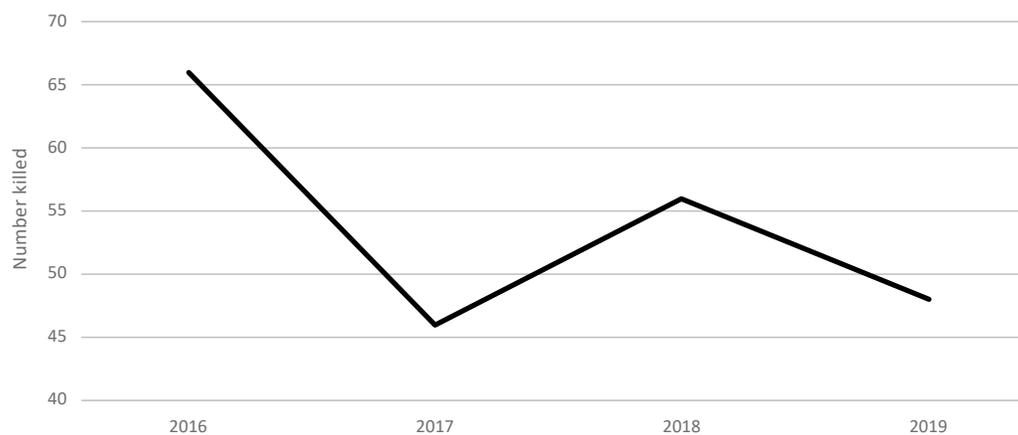
Source: FBI, "Law Enforcement Officers Killed and Assaulted," https://ucr.fbi.gov/leoka.

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30   Emma Tucker and Priya Krishnakumar, "Intentional Killings of Law Enforcement Officers Reach 20-Year High, FBI Says," *CNN*, January 14, 2022, https://edition.cnn.com/2022/01/13/us/police-officers-line-of-duty-deaths/index.html

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Despite the fact that deaths have diminished, the figures remain remarkably high. In Canada, for example, between 1961 and 2009, 133 police officers were murdered in the line of duty. Most of these deaths (65 percent) occurred in the first half of this time period, between 1961 and 1984.[31]

The Situation in the United States Troubles Western Consciences

Episodes of police violence are certainly not exclusive to the United States. On closer examination, the use of force is the rule rather than the exception in police action in many parts of the world. Recent reports of police brutality in the Philippines provide a pertinent example. These instances have occurred in the context of the anti-drug policies introduced by President Rodrigo Duterte, which have led to soaring numbers of state killings in a nation marked by corruption and authoritarianism.[32] In Kenya, the enforcement of laws and directives designed to tackle the COVID-19 pandemic was accompanied by acts of police brutality. The excessive use of force sparked widespread protests, particularly in Nairobi and caused international alarm.[33] In Brazil, 1,814 people were killed by the police in 2019 in Rio de Janeiro alone.[34] A quantitative analysis by *The New York Times* on 48 episodes of police violence in Rio showed that in the presence of an imminent threat, officers tend to shoot at will, often at unarmed people and often in the back. This is despite legal limitations on the use of deadly force.[35] The impunity that often follows instances of police violence stems both from police officers' perceived political license to do anything required to combat criminality and from the support of middle-class residential district dwellers.[36]

In countries, with authoritarian regimes in which the right to information and research is seriously limited, no reliable information on police operation deaths is available, although it seems likely that in these contexts, state violence is a favored method for maintaining power and social control. China is a good example. From the Tiananmen Square demonstrations in 1989 to the recent protests in Hong Kong after the handover of the British protectorate to the People's Republic of China and the implementation of limitations on certain fundamental freedoms, police violence to suppress dissent has scaled up.

However, the fact remains that episodes of police brutality on American soil are especially shocking. Its occurrence may seem paradoxical in a nation that is widely considered to be an advanced democracy with solid constitutional roots and a social model founded on the primacy of the individual and individual rights, but statistics are clear. A comparative study conducted by the Prison Policy Initiative, based on official data, journalistic sources, and advocacy group reports, constitutes a first attempt to shed light on the peculiarities of the United States as compared to other nations defined as wealthy. In the most recent available data covering the first part of 2020, there were over 1,000 civilian killings by police officers in the United States, compared with only 36 in Canada, 21 in Australia, 11 in Germany, four in Holland, three in

31   Sara Dunn, "Police Officers Murdered in the Line of Duty, 1961 to 2009," *Juristat* 30, 3(2010), https://www150. statcan.gc.ca/n1/pub/85-002-x/2010003/article/11354-eng.pdf

32   Steffan Jensen and Karl Hapal, "Police Violence and Corruption in the Philippines: Violent Exchange and the War on Drugs," *Journal of Current Southeast Asian Affairs* 2 (2018): 39-62.

33   International Center for Transitional Justice (ICTJ), "The Persistent and Widespread Need for Police Reform; Lessons Form Kenya's Police Vetting Process" (June 24, 2020).

34   Manuela Andreoni and Ernesto Londoño, "'License to Kill:' Inside Rio's Record Year of Police Killings," *The New York Times*, May 18, 2020. See also Laura Squillace, "Juventude e Controle Social: A Operação Verão no Rio de Janeiro Através do Olhar de Agentes de Segurança," *Revista Crítica de Ciências Sociais* 121(2020): 25-48.

35   Ibid.

36   Teresa P.R. Caldeira 2002. "The Paradox of Police Violence in Democratic Bra-zil." *Ethnography* 3,3 (2002): 235-263; Jonathan Jackson, Krisztián Pósch, Thiago R. Oliveira, Ben Bradford, Sílvia M. Mendes, Ariadne Lima Natal, André Zanetic, "Fear and legitimacy in São Paulo, Brazil: Police–Citizen Relations in a High Violence, High Fear City," *Law and Society Review*, 56,1 (2022): 122-145.

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England and Wales, two in Japan and one in New Zealand. This equates to 33.5 deaths per 10 million people in the United States, three times more than Canada and 30 times more than Germany (Figure 6).[37] In the words of sociologist Alex Vitale in his book *The End of Policing,* "there is no question that American police use their weapons more than police in any other developed democracy."[38]

Figure 6. People Killed by Police Officers in Various Countries from January 1 to June 5, 2020
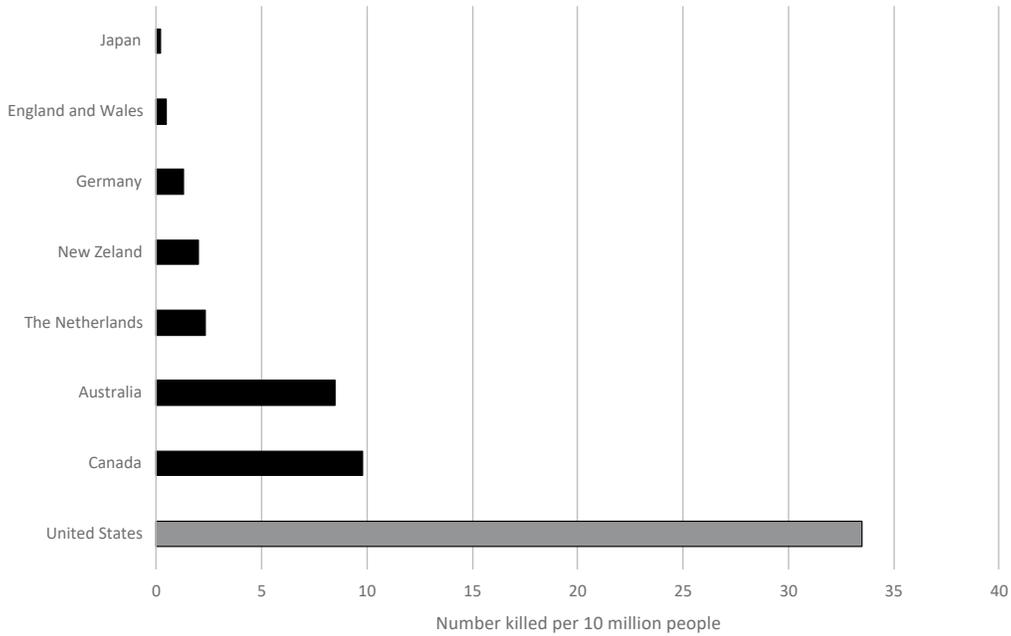
Source: Jones and Sawyer, "Not Just 'A Few Bad Apples.'"

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37   Alexi Jones and Wendy Sawyer, Prison Policy Initiative, "Not Just 'A Few Bad Apples:' U.S. Police Kill Civilians at Much Higher Rates Than Other Countries" (June 5, 2020).
38   Alex Vitale, *The End of Policing* (London-New York: Verso, 2017), 7 and 237.

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Part 2: Expectations, Legitimacy, and Constraints

Existing Research on Police Brutality

Academic interest in police brutality has long been a feature of studies on policing. Much of the literature on the use of force focuses on three factors: individual police officers' characteristics and attitudes, situational factors, and the organizational environment in which police officers operate.[39] In 1996, in an overview of a wide range of studies on the causes of police brutality, Robert E. Worden identified three general categories of explanations along the lines of the three factors: first, a psychological approach. designed to identify the personality traits prompting diverse responses to similar situations; second, a sociological approach, which views individual behavior as the outcome of the social dynamics at play during encounters between officers and citizens; and third, an organizational approach, which emphasizes the characteristics of the organizations within which officers work.[40]

A considerable part of the research has focused on communities of color, especially Black Americans, who have been shown to be the most frequent victims of police action. The most recent United States Bureau of Justice Statistics report on the nature and frequency of contact between police and civilians confirms this. It shows that the percentage of Black people who have been threatened with or subjected to physical force by the police is more than twice the percentage of white people (5.2 percent compared to 2.4 percent) and similar to that of Latinx individuals (5.1 percent). The same report also shows that young men are more frequently involved in these confrontations than young women (4.4 percent compared to 1.8 percent).[41] Low education levels have also been linked to greater use of force.[42] Thus age, gender, education levels, and ethnicity have all been shown to correlate to more aggressive police action.[43]

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39 The conceptual ambiguity underlying these empirical studies should be highlighted as they often speak generically of the use of force without distinguishing between legitimate and illegitimate uses. The result is that police brutality sometimes refers to the straightforward use of force and sometimes denotes illegitimate or unnecessary force, which distorts the representation of this phenomenon and its causes. See Robert E. Worden, "'The 'Causes' of Police Brutality: Theory and Evidence on Police Use of Force," *in And Justice for All: Understanding and Controlling Police Abuse of Force,* eds. William A. Geller and Hans Toch, Police Executive Research Forum (New Haven: Yale University Press, 1996), 31-60. Also see Charles F. Klahm, *Reconceptualizing Police Use of Force: Comparing the Determinants of Force Across Alternate Measures* (Cincinnati: University of Cincinnati, 2009).
40 Worden, "The 'Causes' of Police Brutality."
41 Elizabeth Davis, Anthony Whyde, and Lynn Langton, United States Department of Justice, Office of Justice Programs, "Contacts Between Police and the Public 2015" (October 2018).
42 Astrid Galvan, "Study: Educated Cops Less Likely to Use Force," *Albuquerque Journal* 11 (2010); Jason Rydberg and William Terrill, "The Effect of Higher Education on Police Behavior," *Police Quarterly* 13, no. 1 (2010): 92-120; Eugene A. Paoline III and William Terrill, "Police Education, Experience, and the Use of Force," *Criminal Justice and Behavior* 34, no. 2 (2007): 179-196.
43 Christopher Chapman, "Use of Force in Minority Communities Is Related to Police Education, Age, Experience, and Ethnicity," *Police Practice and Research* 13, no. 5 (2012): 421-436.

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Discrimination against Black and Latinx people is not limited to police action. It extends throughout the entire criminal justice system. Data show that, as compared to white people, Black people are more frequently stopped by the police,[44] convicted of crimes,[45] and denied bail[46] and are more likely to receive longer prison sentences.[47]

Other research has focused on the impact that the attitude of those who are stopped has on a police officer's subsequent behavior.[48] Factors that have been shown to correlate with higher use of force include resisting arrest, showing a perceived lack of respect, or otherwise behaving in an uncooperative way. This is partly because officers are more tense in such situations, regardless of ethnic background of the citizens. Similarly, interactions with individuals who are deemed problematic, such as those under the influence of alcohol or drugs or who suffer from mental illness, are more likely to trigger the use of force.[49]

In addition to examining the significance of the individual characteristics of suspects and police officers, a 2010 review of 41 studies on the use of force also looked to understand the importance of contextual and organizational variables.[50] The report concluded that research on community-related factors and organizational-related factors is limited but promising.[51] For example, those who have studied the use of force in prison contexts have identified a combination of elements that influence the likelihood that staff will use illegitimate violence. Researcher Marie Griffin conducted a multivariate analysis of the effects of individual characteristics, environmental factors, and general professional orientation on officers' readiness to use force.[52] Based on the responses of 617 prison guards from seven jails, the study concludes that a punitive attitude among prison guards seems to be significantly correlated with age (younger guards are more punitive), gender (women are more disposed to rehabilitation), and having a custodial orientation (focused on surveillance and control) to service tenure.[53]

Fear of violence by inmates, perceived limited authority over inmates, poor supervision of guards' work, and levels of organizational support all affect an officer's orientation. Officers who are more fearful tend to be more punitive, as are those who perceive themselves as having less authority in the prison. Conversely, those who feel listened to and involved in decision-making processes are less inclined to react harshly. Officers who feel that their organization supports its staff and is concerned with the actions of its individuals are more disposed to rehabilitation.

44 Emma Pierson et al., "A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States," *Nature Human Behaviour* 4 (2020): 736-745; Stanford Open Policing Project, "Stanford Open Policing Project," Stanford University, https://openpolicing.stanford.edu.

45 Shamena Anwar, Patrick Bayer, and Randi Hjalmarsson, "The Impact of Jury Race in Criminal Trials," *The Quarterly Journal of Economics* 127, no. 2 (2012): 1017-1055.

46 David Arnold, Will Dobbie, and Crystal S. Yang, "Racial Bias in Bail Decisions," *The Quarterly Journal of Economics* 133, no. 4 (2018): 1885-1932.

47 M. Marit Rehavi and Sonja B. Starr, "Racial Disparity in Federal Criminal Sentences," *Journal of Political Economy* 122, no. 6, (2014): 1320-1354.

48 Richard J. Lundman, "Routine Police Arrest Practices: A Commonweal Perspective," *Social Problems* 22 (1974): 127-141; Richard J. Lundman, "Demeanor and Crime? The Midwest City Police-Citizen Encounter Study," *Criminology* 32 (1994): 631-656; David A. Klinger, "Demeanor or Crime? Why 'Hostile' Citizens Are More Likely To Be Arrested," *Criminology* 32 (1994): 475-493; Robert E. Worden and Robin Shepard, "Demeanor, Crime and Police Behavior: A Reexamination of the Police Services Study Data," *Criminology* 34 (1996): 83-105.

49 Michael Rossler and William Terrill, "Mental Illness, Police Use of Force, and Citizen Injury," *Police Quarterly* 2 (2017): 189-212.

50 Charles F. Klahm and Rob Tillyer, "Understanding Police Use of Force: A Review of the Evidence," *Southwest Journal of Criminal Justice* 7, no. 2 (2010): 214-239.

51 Two reports that examine community factors, such as districts' violent crime levels, are: Hoon Lee et al., "An Examination of Police Use of Force Utilizing Police Training and Neighborhood Contextual Factors," *Policing: An International Journal of Police Strategies and Management* 33 no. 4 (2010): 681-702 and Hoon Lee, Michael S. Vaughn, and Hyeyoung Lim, "The Effect of Neighborhood Crime Levels on Police Use of Force: An Examination at Micro and Meso Levels," *Journal of Criminal Justice* 42, no. 6 (2014): 491-499.

52 Marie L. Griffin, "The Influence of Professional Orientation on Detention Officers' Attitudes Towards the Use of Force," *Criminal justice and Behavior* 29, no. 3 (2002): 250-277.

53 Griffin, "The Influence of Professional Orientation on Detention Officers' Attitudes Towards the Use of Force."

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Officers with more punitive and custodial orientations tend to resort to force more readily. Similarly, certain organizational and context-related variables, such as ambiguous job demands, are a source of frustration and can lead to officers feeling justified in their use of force. This is particularly true where there is considerable fear of falling victim to violence.

Gaps in Existing Literature

While academic research is moving decisively toward the study of the relationship between situational and organizational factors as key to understanding individual propensity or inclination toward violence and discriminatory practices in police action,[54] the focus remains on officers' individual characteristics, particularly where the elaboration of coping strategies is concerned.[55] Much greater research is needed on the former.

The vast literature on police brutality shows several other significant limitations. First and foremost, Stephen D. Mastrofski has noted that a great deal of research has been done on various aspects of arbitrary behavior and the mechanisms by which it is controlled. However, he has found that there has been insufficient conceptualization to move this work beyond "situational features, officer characteristics, organizational characteristics, and environmental characteristics."[56]

There is a predominant view of police as solely a "street-level bureaucracy."[57] This view has kept much of the existing research narrowly focused on everyday police practices, such as stop and search (also known as stop and frisk),[58] or on the management of public order during situations such as large sporting events or street demonstrations (known as protest policing).[59] There are only a few studies—in part because they are difficult to conduct—that examine the work of the police in situations other than jails where individuals' freedoms are deprived in some way. Yet, there are particularly serious cases of police brutality that occurred in police lockups, decentralized control rooms, and other such settings. High policing, which refers to the essentially secret work of police and state intelligence agencies during national emergencies or during intelligence gathering work,[60] has also been studied very little. The same is thus also true for violence committed in the course of this work.

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54   One study that compares police malpractice rates in different American police departments provides empirical support to Richard J. Lundman's organizational product thesis, according to which excess use of force by police officers is partly the result of the specific organizational model adopted by the police. Liqun Cao, Xiaogan Deng, and Shannon Barton, "A Test of Lundman's Organizational Product Thesis with Data on Citizen Complaints," *Policing: An International Journal of Police Strategies and Management* 23, no. 3 (2000): 356-373.

55   Stephen D. Mastrofski, "Controlling Street-Level Police Discretion," *The Annals of the American Academy* 593 (2004): 100-118.

56   Mastrofski's article, "Controlling Street-Level Police Discretion," examines the weaknesses inherent in the report by the National Academy of Sciences Committee to Review Research on Police Policy and Practices, titled *Fairness and Effectiveness in Policing*. Ibid.

57   Lipsky, *Street-level Bureaucracy*.

58   Assessing the limited efficacy of stop and search practices for prevention or deterrence purposes, scholars Ben Bradford and Ian Loader have suggested that they should be considered order maintenance and social marginality management tools rather than crime prevention measures. Ben Bradford and Ian Loader, "Police, Crime and Order: The Case of Stop and Search," in *The SAGE Handbook of Global Policing*, eds. Ben Bradford et al. (London: Sage, 2016).

59   A great deal has been written about public order, though much of it is not relevant to the excess force issue. One relevant work is Donatella della Porta and Herbert Reiter, eds., *Policing Protest: The Control of Mass Demonstrations in Western Democracies* (Minneapolis: University of Minnesota Press, 1998). For a social-historical analysis of the Italian experience, see Donatella della Porta and Herbert Reiter, *Polizia e Protesta: L'Ordine Pubblico Dalla Liberazione ai 'No-Global'"* (Bologna: Il Mulino, 2003).

60   The expression "high policing" was coined by Brian Chapman in 1970 in his analysis of the European secret police forces. It has since become its own unique research paradigm thanks to Jean-Paul Brodeur. See Brian Chapman, *Police State* (London: Pall Mall, 1970); Jean-Paul Brodeur, "High Policing and Low Policing: Remarks about the Policing of Political Activities," *Social Problems* 30, (1983) 507-520; and Jean-Paul Brodeur, *The Policing Web* (Oxford: Oxford University Press, 2010). As Peter K. Manning has noted, "the concept has not been fully accepted in the sense that Jean-Paul intended: as a function carried out by *all democratic police all the time* as a central or core function. North American scholars remain wedded to the idea that high policing is an exception, a periodic malfunction and a minor theme in what properly should be the study of an efficient, crime-focused, semi-accountable organization." Peter K. Manning, "Jean-Paul Brodeur on High and Low Policing," *Champ Penal/Pe¬nal Field* IX, (2012).

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Other glaring gaps include research into police interactions with extremely vulnerable populations, such as the unhoused,[61] as well as research on mobbing in the workplace and other forms of discrimination within the police force.[62] Both should be explored in terms of how the stress of such situations could influence officers' predisposition toward violence, and the latter should be investigated as a form of police violence to which officers themselves fall victim.

Lastly, the majority of existing studies conceptualize excessive use of force as separate and distinct from legitimate use of force. In doing so, this perspective bases its interpretation of acts of violence on the belief in the distinctiveness of violent individuals. This approach is a way of distancing the majority of officers from the violent ones and reaffirming the health and integrity of the institution of the police. Anyone who deviates from acceptable behavior is labeled as sick or compromised. What follows is a legitimation of the "bad apples" cliché, which asserts that those who commit violence beyond the limits of the law are problematic individuals. The only concession made by this position is that working environment of these so-called outliers may be at the root of the problem (bad barrels).

Overcoming the various limitations of existing research requires expansion beyond specialist police brutality literature and approaches that ascribe to the rotten apple theory.

Limits of Police Force: The Legitimation Process

It is unsurprising that the police are generally associated with violence since, in the words of Bittner, police are defined by their mandate to use force to enforce the law.[63]

However, thinking of the police solely in relation to the use of force risks impoverishing the analysis of other means available to the police for carrying out its tasks. Jean-Paul Brodeur, an influential scholar on policing, wrote in his book, *The Policing Web*:

> Policing agents are part of several connected organizations authorized to use in more or less controlled ways diverse means, generally prohibited by statute or regulation to the rest of the population, in order to enforce various types of rules and customs that promote a defined order in society, considered in its whole or in some of its parts.[64]

Here, Brodeur identifies the ability to use means that are usually denied to others. He is referring not only to physical force but also to other means that are available to the police, such as profiling and surveillance, that are otherwise prohibited. From this premise, Brodeur developed a theory of policing that is founded on the concept of legal lawlessness, or the ability to legally use a range of otherwise illegal means.[65] Brodeur's studies are critical because they brought

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61   For context, see Robert H. McNamara, Charles Crawford, and Ronald Burns, "Policing the Homeless: Policy, Practice, and Perceptions," *Policing: An International Journal of Police Strategies and Management* 36, no. 2 (2013): 357-374. It is worth noting two works that are emblematic of contemporary research into the police: Jerome H. Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society* (New York: John Wiley & Sons, 1966) and Egon Bittner, "Police Discretion in Emergency Apprehension of Mentally Ill Persons," *Social Problems* 14, (1967): 278-92. Bittner accompanied police in their everyday work in uniform and was struck by the wide-ranging discretionary powers and violent methods used in certain situations, above all with the homeless and marginalized.

62   Mobbing is a form of bullying in which several people band together in an attempt to force a particular individual out of the workplace through rumor, intimidation, discrediting, humiliation, and other, similar practices. See Noa Davenport, Ruth Schwartz, and Gail Pursell Elliot, *Mobbing: Emotional Abuse in the American Workplace* (Civil Society Publishing, July 9, 1999).

63   Egon Bittner, *Functions of the Police in Modern Society* (Rockville, MD: National Institute of Mental Health Center for Studies of Crime and Delinquency, 1970).

64   Jean-Paul Brodeur, *The Policing Web*, Oxford University Press, New York, 2010, 130.

65   Ibid. Fabien Jobard similarly explained this concept as "the ability to legally infringe on the shared law." Febien Jobard, "Proposition on the Theory of Policing," *Champ Penal/Penal Field* IX, (2012).

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together research sectors that had gradually moved apart, essentially reconnecting the study of high policing to that of street-level policing.

Identification of other means notwithstanding, it is clear that the use of force is still a potent symbol of the exceptional nature of police work. It is perhaps for this reason that the use of force is a significant theme in both academic literature and public debate. It is therefore important to closely examine the idea that the ultimate aim of the police (and their use of force) is to enforce the law.

A key feature of the institution of the police is the fact that its actions, and perhaps even its very institutional value, are legitimized by its law enforcement function. The police have become an increasingly crucial institution for the purposes of establishing and maintaining state order by acting as a bulwark against social violence as a precondition for guaranteeing peace, stability, and prosperity. If this essential function is not acknowledged, it is difficult to understand the police's relationship with violence. The role of the police is closely connected with a social and institutional duty that requires maintenance work well beyond combating violence. This is a fundamentally important axis around which this specific institution finds social legitimation.

While the use of force is a unique facet of police work that is validated by the need for social order, it should not be taken for granted that this suffices to make the use of force legitimate in the eyes of the community. Quite the opposite, the use of force can be highly problematic, both when it breaches the limits of legality and when it is technically legitimate but out of line with changing attitudes and collective sensibilities.

Two examples from history illustrate the way social attitudes can influence how the use of force is perceived. The two police officers who arrested and detained Rosa Parks in 1955 for an action that contravened the law on segregation were using force legitimately to apply that law, though that same law was repealed shortly thereafter on the grounds that it was no longer perceived as acceptable. Does the same go for the four police officers who used violence against Rodney King in 1991? Over the course of 36 years, the boundaries of legality shifted. Establishing limits to the use of force is an increasingly uphill battle in contexts in which racism is socially pervasive, including from the spatial segregation perspective,[66] and in which it is firmly rooted in institutional and judicial practices themselves.

Like other public institutions, the police depend on some sense of legitimacy. No institution can survive for long without finding an equilibrium between diverse and necessary forms of legitimacy. Thus, social trust in the police is as decisive as legal legitimacy in order for the police to adequately carry out what is expected of them. These bottom-up and top-down forms of legitimacy are essential for the use of force to remain within the threshold of acceptability.

While the equilibrium between various forms of legitimacy is fundamental, it is not always easy to obtain in everyday police work, particularly at times of transition and change. However, limitations to police action often derive from this equilibrium. Because police action impacts directly on personal freedoms, the risk of police acting in ways that do not align with social and legal expectations is ever present. A police practice that is accepted as normal in one place may not be so in others. Institutions must show a certain willingness to change their behavior in order to align with sociocultural changes, since practices that were once considered legitimate (or perhaps even contributed to granting social legitimacy to the police) can easily become delegitimizing factors over time.

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66   Mike Davis, *City of Quartz: Excavating the Future of Los Angeles* (Vintage, 1992).

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Studying levels of trust and mistrust in the police is useful for various reasons: it gives us an idea of the social legitimacy enjoyed by the police; it helps identify the critical issues in their relationship with the community or specific social groups; it informs the understanding of whether the goals of police work are shared across groups; and, ultimately, it provides useful elements upon which to reflect in terms of models of policing. Beyond that, such enquiry can also contribute to an understanding of the quality of current democratic systems since police behavior and the contexts in which they use force are often practical markers of where a particular place is in its democratization process.

As an example, the Pew Research Center's November 2018 data showed that 84 percent of interviewees stated that they believe the police do a good job protecting people from crime. This figure dropped to 62 percent when interviewees were asked about their perceptions of equality in the police's dealings with the public. Respondents were clearly split along racial lines in their answers. This suggests that support for the police in the United States is constructed at the expense of the communities of color, a critical issue in democratic terms. Black and Latinx respondents were more skeptical than white respondents about police performance. Seventy-two percent of white respondents believed that the police treat various groups equitably, while only half of Latinx respondents and a third of Black respondents felt the same. Such uneven and low levels of support ring alarm bells, particularly if they are considered in relation to the disproportionate use of force by police against Black Americans.

The Significance of Democratic Culture in Constraining Police Use of Force

Regardless of ethical and political considerations, the balancing point for use of force is found when high levels of trust denote coherence between how the authorities define police action and its limits and how the general public defines its expectations for police work and their treatment by police.

In democratic policing, the nature of and limits to police action set by democratic legal systems are in line with social democratic sensibilities. Social legitimacy is stronger when the police are responsive to both legal and social expectations.

In authoritarian regimes, too, there can be a convergence between legal orientations and collective sensibilities, indicating wide-ranging discretionary powers for the police and leading to the concrete possibility of their using or threatening force to resolve critical situations. In contrast to democratic policing, authoritarian policing tends to feature a lack of constraints on police use of force, unless they are imposed by executive powers when required. The multifaceted nuances of policing are a grey area in which democratic standards, institutional cultures, and social drives of various sorts intersect, generating various levels of conflicting institutional and social expectations. The two other identifiable models of policing are legalistic policing, in which the *de facto* weakening of democratic feeling can legitimize police violations of standards, even though democratic standards do exist; and conflictual policing, in which the police are caught up in social tensions within a legal framework that is considered inadequate and can thus feel authorized to act both in conformity with social expectations and in line with existing laws.

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Figure 7. The Use of Force in Different Policing Models
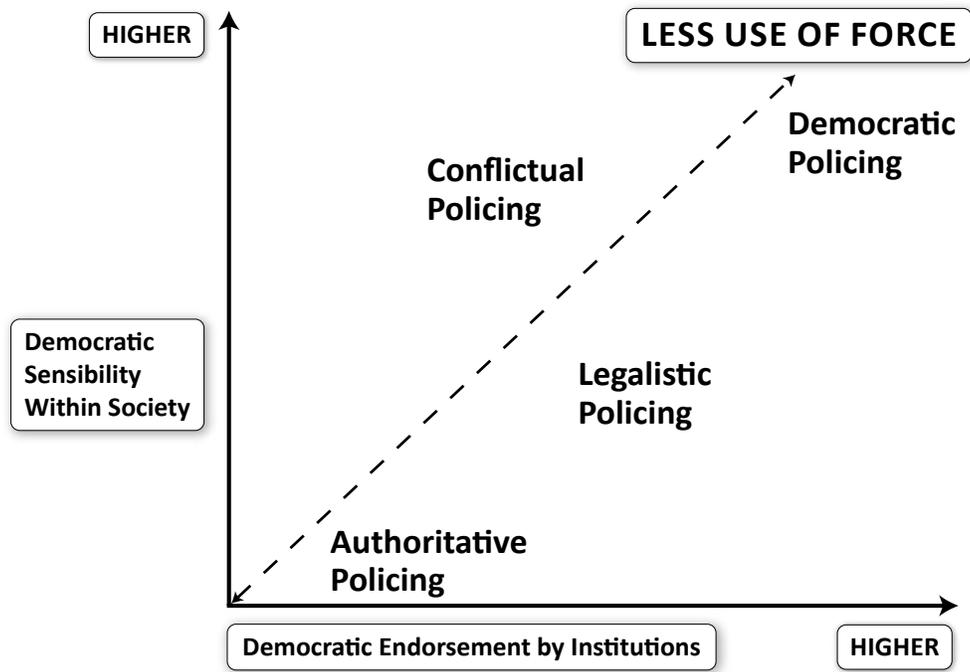
Source: Jones and Sawyer, "Not Just 'A Few Bad Apples.'"

Excess use of force by the police can be viewed from the perspective that force is not always legitimate just because it comes from legitimate institutions. Excess force can only be conceived of if state power itself (and with it, the criminal justice system and the police) has been progressively reined in with a system of rules designed to safeguard individual liberties and affirm liberal principles.

Literature on the decline in violence revolves mainly around external (the modern state's monopoly on violence) and internal (internalization of demands for order and civilized behavior) containment factors. These factors have led to a reduction in the recourse to violence as a strategy to manage social relations.[67]

It was only with the affirmation of a liberal culture, which stressed individual autonomy (as opposed to state interests) and a democratic culture, which granted dignity to all human beings and defined a nucleus of fundamental and inalienable rights (thus untouchable by any power), that the legitimacy of the use of force began to be questioned. The lowering of the threshold of acceptable violence in social relations ultimately affected the police's use of force, requiring that it be limited to what is strictly necessary and urgent.

In brief, in the vast field of policing, the legal boundary separating legitimate force from illegitimate violence and defining what is to be considered excessive is the outcome of continuous and dynamic cultural transformations in the citizen-state relationship.

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67   S. Pinker, *The Better Angels of Our Nature: Why Violence Has Declined* (New York: Viking, 2011); T.D. Gurr, "Historical Trends in Violent Crime: A Critical Review of the Evidence," *Crime and Justice* 3 (1981): 295-393; M. Eisner, "Modernization, Self-Control and Lethal Violence," *British Journal of Criminology*, 414 (2001): 618-638.

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As such, it is insufficient to look exclusively to legal guidelines and how these will be inter-preted in a court of law in order to decide upon legitimate boundaries for the use of force. Police work takes place in the context of everyday life in which events cannot be foreseen and are shaped by the way individual police officers interpret them.[68] In critical situations, a close connection develops between an emergency situation, the need for action, uncertainty as to the right course of action, and the decision ultimately taken. It is precisely at such junctures that the democratic culture, understood as a complex whole of demands, pressures, and expecta-tions regarding power and policing, lowers the social acceptance of police violence and reduces public legitimation of the use of force.

Three general conclusions can thus be drawn: (1) the legitimacy of police use of force derives from the political and institutional system and is closely linked to its critical function to contain widespread violence; (2) constraints on police use of force derive from the evolution of the sys-tem itself in a liberal and democratic direction, so as to safeguard citizens from abuse of power and limit institutional violence; and (3) practically speaking, the use of force in specific police action depends on overall perceptions of the acceptability of police violence.

The Police Violence Acceptability Threshold

How much violence is acceptable is a delicate matter to be dealt with by courts after an instance of violence. It requires a practical determination of the abstract boundaries of necessity during the flow of events, as retraced via police reports, witness accounts, and video. But determining how much violence is acceptable is, first and foremost, an urgent matter for the police to define.

In a study of media coverage and social constructions of police brutality starting with the Rod-ney King case, political scientist Regina G. Lawrence spoke of the delicate nature of defining appropriate and inappropriate use of force:

> I have been impressed throughout my research by the profoundly difficult situa-tions that police officers face in using force appropriately and effectively….What is most painful and disturbing about such events is that quite often, no one can know if a split-second decision to use force could have been avoided and lives saved, or if hesitating to use force would have brought greater tragedy….It is the very uncer-tainty and ambiguity of these events that makes them so politically volatile and that generates the event-driven debates in which I am interested. Even more than I am drawn to the difficulties faced by grassroots groups in defining policing problems, I am drawn to the difficulties our society has in talking fully and openly about the deep dilemmas inherent in policing a democratic, violent, and fear-ridden society.[69]

Whether force could have been avoided and lives saved is a key question in police action. Police officers must make decisions about the use of force in a split second, often during rapidly evolv-ing critical situations. Whatever decision is made will ultimately have to be declared legitimate or illegitimate after the fact.

Certain researchers categorize the urgent nature of this decision-making as an actual syndrome known as the split-second syndrome, which applies to situations that do not allow dispassion-ate, carefully thought-out analysis.[70] Emergency situations are seen as inhibiting diagnostic

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68   See Regina G. Lawrence, *The Politics of Force: Media and the Construction of Police Brutality* (Berkeley and Los Angeles: University of California Press, 2000): XII-XIII.
69   Lawrence, *The Politics of Force*, XII-XIII.
70   James J. Fyfe, "The Split-Second Syndrome and Other Determinants of Police Violence," in *Critical Issues in Policing: Contemporary Readings, 7th Edition*, eds. Roger G. Dunham and Geoffrey P. Alpert (Long Grove, IL: Waveland Press, 1995), 451-467.

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abilities to the extent that the literature makes reference to full-blown impairment resulting from the stress caused by urgency and calls for careful assessment of such situations in order to improve individual decision-making.[71] The risk this approach runs is focusing solely on the individual decision-making process, thus implying that the correctness of a violent act depends on the rationality of the decision made by the individual police officer.

In this view, excessive force is the outcome of a series of judgment deficits deriving from an inability to manage stress in critical situations. Individuals using excessive violence are thus seen as problematic, and one explanation could be that they are not receiving adequate support from the environment in which they work. With this line of thinking, brutality is seen as a form of deviance, which allows "bad cops" to be distinguished from "good cops." This is simply a variation on the rotten apple theory in which the institutional and cultural dimension of police action that permeates the subjective judgment of an individual police officer is lost in critical situations.

What is needed is a change of perspective that inquires less about the reasons behind a particular use of excessive violence and seeks instead to understand the dynamics that lead to violent actions in the first place. Only then can the rotten apple perspective be set aside and the range of potential steps for reducing police violence broadened.

It is ultimately a matter of understanding the police through a new lens. The current body of interactionist research that looks at both individual and collective violence can provide a much-needed new perspective on use of force.[72] In fact, there are a number of studies outside the existing literature on police brutality that could be helpful for the study of police use of force because of the way they have broadened the understanding of individual and collective violence. Insights offered by this research highlight the importance of the meaning and value of violent action on two levels. On one hand, there is the way social players interpret such violence *from the inside*, on the basis of their cosmologies,[73] and subsequently decide whether and when force is necessary and appropriate, and in which modalities. On the other, there are the socio-moral aspects that establish the conditions for acceptable violence for a group or community from the outside, in relation to the significance that a specific act of force or violence is likely to have.

The interconnectedness between the meaning a violent act has for the actor and the meaning it has for the community, which in turn implies an intersection between inward and outward definitions of acceptable violence, will be the cornerstone of the analysis of police use of force in the next chapter.

The intention is to demonstrate how the decisions of individual police officers are made at the crossroad between various legitimation processes on one hand and subjectivity, situational, institutional know-how, and cultural systems on the other.

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71   Research has examined various "cognitive, perceptual, and physiological impairments," including memory malfunctioning, among others. Memory malfunction is presented as an explanation for excessive use of force by police officers, intentional and unintentional. See Kelly A. Heine et al., "Exploring Police Use of Force Decision-Making Processes and Impairments Using a Naturalistic Decision-Making Approach," *Criminal Justice and Behaviour* 45, no. 11 (2018): 1782-1801.
72   Lonnie Athens, *The Creation of Dangerous Violent Criminals, Second Edition* (Piscataway, NJ: Transaction Publishers, New Jersey, 2017); Adolfo Ceretti, Lorenzo Natali, *Cosmologie violente. Percorsi di vite criminali* (Milan: Raffaello Cortina, 2009); S. Alexander Haslam, and Stephen D. Reicher, "Beyond the Banality of Evil: Three Dynamics of an Interactionist Social Psychology of Tyranny," *Personality and Social Psychology Bulletin* 33, 5 (2007): 615-622
73   The concept of cosmology is based on the definition used in Adolfo Ceretti and Lorenzo Nata-li, "Exploring Violent Cosmologies From a 'Radical Interactionist Approach,'" *Critical Criminology* 7 (2020). "A 'personal cosmology' can be defined as the multiple ways in which an indi-vidual constructs his/her universe and thinks and feels about himself/ herself and the other human beings within it. Thus, it is an attempt to create order in their ethical, personal, and symbolic worlds in the midst of the chaos-and-order of the "external" socio-cultural world. This quest for order is not isolated from the rest of an individual's life in some philosophical "never-never land." Every personal cosmology is situated, and our knowledge of ourselves is the outcome of a process based on our reflexive negotiations with other social actors within situa-tional contexts."

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Part 3: Police Use of Force and Reform Insights

A Framework for Analyzing Police Use of Force

It is not difficult to imagine officers in a patrol preparing to intervene in a critical situation. This is what the police are there for: to take action when something that should not happen is happening and someone must do something right away. According to researcher Didier Fassin, boredom is an essential part of police work (at least for the French anti-crime brigade he observed), and such work is frequently less engaging and adrenaline-filled than television and film portray.[74] Low risk desk tasks are an important part of police work that even uniformed police officers must engage in. Nonetheless, the ever-present possibility that social order may be disrupted is a distinctive, and legitimizing, feature of police work. Force is most often used in these moments.

Critical situations vary considerably and could consist of tasks such as managing groups of fans outside a stadium, corralling large demonstrations, intervening in fights that break out, stop and search work, or criminal investigations in places or contexts that are perceived as problematic. However, these do not all necessarily culminate in crisis situations. They are critical precisely because someone, at some point, decided that police action was required. How critical they are, however, can only be decided in situ by police officers.

In other words, there are two opportunities to deem a situation as critical. The first is before or early in the course of an action. In the case of a fight, for example, this would be when it is reported by someone else and thus deemed as meriting police action. The second is in situ when the police become involved of their own volition and measure the critical nature of the situation themselves.

The first instance depends on the social, institutional, and subjective approach taken toward the situation: four or five young people sitting on a bench in the middle of a neighborhood late at night chatting, joking, and laughing loudly only becomes critical if the residents of the houses nearby see this as intolerable and decide to call the police.[75] If that happens, the intervening officers must then also interpret the group's words and actions as threatening, deviant, or dangerous. If, for instance, a fight is under way when police arrive, the call for intervention takes on a more solid foundation.

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74   Didier Fassin, *La Force de l'Ordre: Une Anthropologie de la Police des Quartiers* (Paris: Éditions du Seuil, 2011).
75   It cannot be taken for granted, however, that the police are always called in critical situations, since this can depend on how the police are perceived by the public in a particular context.

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How a situation is described to police and the cultural climate in which it is taking place are influential in how a situation evolves and what decisions are made about a possible intervention. Defining what is to be considered critical, including in social and cultural terms, is considerably affected by ideas about order, perceptions of threat, and the identification of dangerous individuals. How situations are interpreted and experienced vis-à-vis the police's institutional culture (including in relation to their role, responsibilities, and tendency to use force) matters as well.

Police officers, along with everyone else who is present during a critical situation, do not simply assess whether critical situations exist a priori; they also actively contribute to the evolution of the situations through their response to what is happening. In the process of deciding what is threatening and what or who is worthy of police action (whether protection or force) can influence the situation. Sometimes, it is precisely their actions that can lead to circumstances that then require the use of force.

In many cases, emergency situations and the need for intervention that they require can end up revealing various deficits, failings, and differences in police action. Critical situations are interpreted through the lens of the perceptions, beliefs, and political orientations of the individuals involved, as well as the institutional culture that informs each individual's approach to maintaining law and order and meeting the social expectations set for the police. Police officers often speak of hunches and experience as key elements of an officer's personality that can influence their choices about the best course of action in a given situation. The goal is to acknowledge the significance of the subjective qualities of an individual officer while also shining light on the thinking, process, and cultural dimensions that are so frequently undervalued. Even when excessive enough to be considered an act of police brutality, the use of force must be assessed within the legal, cultural, and institutional framework through which it was filtered by the individual police officer in that situation.

Responses to critical situations are the product of an ongoing interplay between past experience, subjective attitudes, institutional know-how, applicable laws, cultural norms, the need to act, and beliefs about whether the use of force—and to what extent—is appropriate and acceptable. The interpretative framework adopted ultimately drives the actions of individual police officers, including actions involving force, and allows for an understanding of any excesses in their response. The framework's elements are described below.

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Figure 8. Analytical Framework for Understanding Police Use of Force
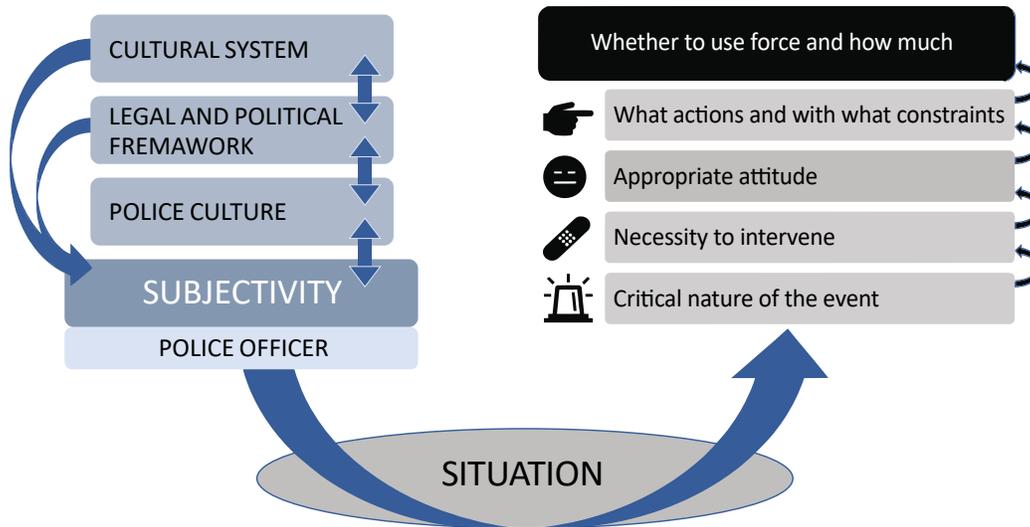
Subjectivity

Subjective interpretation of a situation. Police practices must always be understood through the "live and in person" subjective experience of the police officer interpreting a situation and attributing meaning to what is happening. This happens on the basis of their personal beliefs and feelings, how they see their role in the situation, what they believe they can do, and the perceived social and institutional expectations placed upon them.

An example of this might be an officer's views on immigration. Their views may be shaped by their personal and professional experiences, the threats and opportunities they associate with the presence of foreign nationals, how inclusive their idea of society is, what they see as their role as regards to immigration, and what they feel they can or should do to ensure order. All of this will affect the way they interact with immigrants and how they deal with situations related to immigration. Each event experienced, action observed, and expression intercepted will influence an officer's actions in that context and the meaning and place they find for a situation within their personal cosmology. There may sometimes be moments of disorientation that throw their consolidated meaning frameworks into disarray, but the road to prejudice confirmed is an easier one, as it relieves the burden of an ex-novo reading of a situation and is already associated with a known response. A person's attempt to escape from a migrant center might be considered by some to be illegal but understandable, while others may see it as destabilizing and perhaps even an indicator of a dangerous and deviant nature. The same is true in other contexts, such as in the case of a person suspected of shoplifting. How critical the situation becomes will depend more on the way the officer involved interprets the situation than on protocols or guidelines.

Normative and performance elements in police officer interpretation. Police officers differ from other social players to the extent that their interpretation of what is happening becomes the first institutional definition of events, and this has specific legal and performance implications. An officer's words, appearance, and attitude influence their perception of the situation and how it differs from what the law says it should be. The officer's individual interpretation can also shape the thoughts and actions of other individuals involved.

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The interpretation of another person's actions, including those of a police officer, involves an inevitably subjective and personalized attribution of normative meaning to that action, starting with the perception of the consequences certain actions can have. It is thus understandable that parents of Black children often advise them not to run away from the police and to keep their hands visible if approached by them. Similarly understandable is the tendency of French teenagers to take flight when they see police patrols, regardless of whether they have done anything wrong. In a contrasting interpretation, the police tend to believe that people are fleeing for a reason, namely that they are frightened of what might happen to them. Fassin described these tendencies in his ethnographic studies.[76]

With this in mind, Ghanaian national Amadou Diallo's decision to put his hand in his pocket when approached by police in New York, presumably to reach for his residence permit, was a logical one. This time, however, the action cost him his life because *that* action from *that* person was interpreted differently by *those* police officers. Many people see authorities rather than individuals when approached by police and thus may act in accordance with what they expect from law enforcement officers and what they think will be asked of them.

Field legitimation. In the eyes of a police officer, a critical aspect of their work is the need to take immediate and effective action to restore peaceful coexistence and to ensure their own safety, as well as that of their colleagues and community. In police work, the idea of legitimacy is critically important in the field and is usually conferred on the basis of interpretations and definitions that are situational, subjective, and institutional. Individual officers feel their intervention is legitimate when they assess a situation as critical and requiring intervention. The decision to use force—and how much to use—is influenced by an officer's perceptions of the legitimacy of their actions and by their interpretation of the situation at hand. The use of physical force is not necessarily required as a consequence of an escalation of violence in order to assert control. Use of force is only one of the possible legitimate reactions available to police officers to fulfill their institutional mandate. An officer must first determine that a situation warrants some sort of intervention to preserve safety and security. It is then that they may legitimize the use of force as the necessary intervention.

Institutional and social approval of violence as suitable and appropriate to ensure social order can perpetuate its use in critical situations and can contribute to a greater risk of excess use of force. But violence per se is not the axis around which the cosmologies of police officers using force necessarily revolves. With a few exceptions, the institutional mission of the police to protect law and order remains foremost in mind, and violence should be considered internally and externally as a last resort. In most cases, an individual police officer will not see his or her actions as violent. Rather, they will consider them to have been legitimate uses of force, even when the legitimacy is in serious doubt or has been ruled out in a court of law. Police officers who repeatedly use force or excessive violence generally do not see themselves as violent people, but rather as guardians of the social and institutional order which is, in their eyes, under threat and requires urgent action. In other words, to them, violence is instrumental, not essential, and it does not define who they are.

Police Know-How

Technical knowledge and subjective interpretation. The subjectivity of an individual officer can be mitigated with technical knowledge and professional expertise on events, context, and common practices. It can also be influenced by the institutional culture, both official and

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76   Didier Fassin, *La force de l'ordre: Une anthropologie de la police des quartiers* (Paris: Éditions du Seuil, 2011); Didier Fassin (ed.), *Writing the World of Policing: The Difference Ethnography Makes* (Chicago: University of Chicago Press, 2017).

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unofficial (canteen culture). Police "know-how" encompasses an individual's approach to police work, the institutional norms within which they are operating, and the legal and social framework being applied and interpreted by that individual.

Long days working shoulder to shoulder with colleagues; conversations in cars and canteens; anecdotes shared by older colleagues or superior officers; the way work is organized; and internal standard operating procedures and guidelines can all shape an individual's perception about the how the real world should be interpreted. Taken together, these factors form ready-to-use operational instructions which enable individual officers to develop pre-conceived ideas of what might happen and the problems they might encounter so that they can eventually act without hesitation. This is referred to as stereotyping. Classifications are used to interpret the real world in a simplified way, and while this allows individual officers to more easily interpret what is happening around them, it also perpetuates individual prejudices.

Defining a critical situation as such is less complex when officers can interpret what is happening consistently with the thinking of the reference professional group. When action is needed, what action to take, whether to use force, and to what degree are all decisions that need to be made in a split second. The more a situation is seen as adhering to operational guidelines, the less emotionally stressful decision-making becomes.

Professional legitimacy. Professional know-how, as processed by individual officers, thus constitutes a further police practice legitimation process that frequently reinforces officers' judgements about the critical nature of a situation and their perceptions about the need to act and the appropriateness of their behavior. Legitimation in the field and institutional legitimacy interweave to help officers decide whether to use force and to what extent in a given situation.

Tensions in police know-how. Operational guidelines linked to police know-how are not homogenous. In any institutional environment (which is always influenced by wider institutional, normative, and social contexts), diverse cultural orientations leading to different views of police work coexist, as do conflicting definitions of what constitutes appropriate behavior. While institutions may appear monolithic, they are always subject to tensions and transformation, both of which can lead to evolutions in institutional know-how that mirror the cultural changes underway in a society. Given the nature of institutions, however, change is generally slow. There is often some initial denial of divergent tendencies that eventually turns into gradual acceptance due to changes in attitudes and sensibilities.[77]

Drivers of change occur as a result of legal or *de facto* inclusion of new elements within the citizenship space and the eventual specific integration of these trends into police know-how for the purposes of greater institutional responsibility to citizens. These changes take the form of "novelties" to be absorbed into the founding nucleus of the modern police, namely its responsibility for maintaining order and containing violence. Novelties initially manifest as constraints on the way things have always been done, practices which had not previously raised significant ethical questions. When police know-how comes under pressure, the tendency to take refuge in what has always been done may be reassuring, but it can lead to the consolidation of a form of policing that is no longer in line with social trends. This is true even if old practices are still supported by the institution of the police and some segment of the population.

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77   Olta De Leonardis, *Le Istituzioni: Come e Perché Parlarne* (Rome: Carocci, 2001).

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Once again, the United States would seem to be paradigmatic and should cause alarm bells to ring in Europe, too. Racism, especially with regard to Black Americans, is still central to social life. Institutional habits that are in tension with conflicting cultural orientations end up taking shape in defense of a traditional vision of police work that is based on highly discriminatory and force-driven action models. Traditional models maintain legitimacy by the sector of society that sees equality between white and Black people as a social threat and harbinger of disorder. In turn, these models of police know-how authorize individual police officers to use force, since they suggest that situations involving Black Americans (seen as inherently dangerous) should be interpreted at a higher level of criticality. Force is thus more often seen as necessary to defuse critical risk. What police officers may see as appropriate practice in a particular situation constitutes police brutality in the eyes of the public. The differences in interpretation become especially divisive when an incident is portrayed widely throughout the media and internal inquiries are activated to ascertain legitimacy and responsibility.

Divergent subjectivity. In any situation, there is potential for individual behavior to diverge from institutional, departmental, or professional norms. This is precisely because officers' personal cosmologies are not carbon copies of institutional culture and can be built on experiences, beliefs, feelings, and affinities to the approaches of certain social and professional groups. Certainly, divergent attitudes and behaviors may require a specific thought process: the feeling that one is not alone, that there is an institution behind the individual, that the individual and his or her peers are acting in accordance with a widespread cultural milieu, and that enforcing the law can be helpful to mitigate differences in opinion and approach. The fewer the cultural tensions between various interpretations of police work within the professional environment, the greater the effort involved to overcome cultural barriers and connect with partially unabsorbed cultural and legal orientations.

Institutional and Political Order of the Police

The political and legal compass orienting police know-how. However highly structured it might appear, police know-how is never definitive or self-sufficient. Quite the contrary, it is one piece in a wider institutional and legal jigsaw that is influenced by the definitions and tensions therein. "Police politics" refers to normative aspects that relate directly or indirectly to the institution of the police and the way these take shape and come to the fore. These can include guidelines, institutional protocols, circulars, official reports, and public statements relating to the police, both internal and external to the institution. They can also include broader policies and laws that define the particular situations in which the police are called on to act.

The process of shaping police know-how builds on political-normative coordinates that indicate how a *good police force* should be organized, what a *good police officer* should be doing, what their business is, and how they should be doing it. These coordinates also dictate exactly what order the police should be tasked with preserving, what constitutes a threat to that order, what the response to those threats should look like, who is to be considered dangerous, and how they should be approached. Policies on deviance, safety, criminality, and control influence the way the police normatively define the meaning of their social presence and institutional actions. These policies also affect police's self-image and the social pressure they feel to maintain a certain level of safety and control. As only one element in an institutional, normative, and social network, the police are not straightforward recipients of policies developed elsewhere. Rather, they play an active role in building those policies. Their voice is anything but marginal. Because they embody practical, on-site experience, police opinion tends to be seen as authoritative in the halls of power.

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Political legitimation. It is unlikely that there will ever be perfect harmony among police politics and police know-how. The same normative guidelines as outlined above trigger diverse interpretative processes in all workplace contexts on the basis of how institutional know-how and personal cosmologies are structured, how they can lead to diverse practices as regards to managing situations, the need for action, and the choice of the most appropriate behaviors. However, when the institution of the police forcibly determines one policing model to be adopted without question, presenting it as the only effective and appropriate option, developing an alternative or divergent approach is challenging, though not impossible.

One example of this comes from New York. Former mayor Rudolph Giuliani implemented a "signs-of-crime policing" approach, known globally as a zero-tolerance approach, during his tenure. This led to a doubling of police malpractice reports by civilians in general. Only in two South Bronx districts, the trend of civilian complaints was the opposite, even though crime rates stayed the same. Researchers from the Vera Institute of Justice investigated this discrepancy and concluded that the drop in civilian complaint levels in the two districts was the result of the way the police commanders in those districts interpreted and implemented the directives of the New York Police Department. They focused on training officers in peaceful conflict resolution, managing community relations by working with a representative array of community leaders, and early intervention with police officers subject to malpractice reports.[78] This approach was an exception in the New York police tradition, and the example is indicative of the way that top-down instructions can be open to professional and subjective interpretation.

Cultural Systems

Classifying norms. Individual cosmologies, institutional know-how, and police politics take shape within a broader cultural system. This system is a provisional but no less determinant outcome of constant tension between the various social demands jostling for recognition or exclusive affirmation as acceptable. It carves out meaning by assigning objects various positions in a classification system that identifies what is right, who comes first, what is important, whom to protect, what is a threat, and what is acceptable. These are fluid meaning attributions resulting from constant explicit and implicit tensions that define the boundaries of the social, institutional, and moral order within which policies, institutional practices, and individual behaviors can effortlessly fit.

Divergent subjectivities. It is possible to swim against the tide but only to a limited extent, even when individuals perceive that it is the right thing to do. This is because of how difficult it is to make divergent actions comprehensible to others. However, there is generally some room for developing divergent or alternative approaches, given the provisional and dynamic nature of the cultural dimension of policing. Doing so is frequently the harbinger of new historical trajectories. However, choosing to change and acting in a divergent way from the majority require enormous effort, particularly when culture is dominated by a given perspective that pervades society, institutional culture, and the production of know-how.

Such deeply entrenched norms mean that current practice is seen as the right way of seeing things, even by those who suffer the consequences. As an example, the stereotype of Black Americans as "domesticized"—visible in popular culture, including the 1939 film *Gone with the Wind,* which won eight Oscars and was a huge box office success—was, for decades, the cornerstone of a cultural model in which passivity was seen as the model for interracial relations.

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78   Robert C. Davis and Pedro Mateu-Gelabert, Vera Institute of Justice, "Respectful and Effective Policing: Two Examples in the South Bronx" (March 1999).

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This stereotype was in place through to the rise of the civil rights movement and led to forms of activism being seen as deviant and dangerous.

Cultural legitimation. Cultural legitimation of individual police action is very powerful and can lead to certain actions and their consequences being taken for granted and seen as natural. In the absence of a critical, divergent, or alternative cultural vision, the opportunities to think critically or question standard actions are significantly reduced. The notion that a Black person who runs away from police must be guilty of something and therefore needs to be stopped at all costs is still culturally prevalent and visible in certain episodes of police brutality. It is an especially illustrative example of a stereotype.

The cultural system influences the way criticality is defined in a given situation, the violence acceptability threshold that is applied, and judgments about the appropriateness of the means with which violence is implemented. In societies in which firearms circulate freely and are considered appropriate tools for personal and property defense, their use in policing is inevitably less restricted and more socially legitimate. The fact that anyone could potentially have a gun in their pocket or car glove compartment makes every situation potentially lethal. This increases the assessment of possible danger and the perception that drastic action with increasingly performant weaponry is required.

Proposals for Reform: How to Stop What Should Not Happen from Happening

What a police officer says and does in a particular situation is the outcome of the interplay between subjective perceptions, police know-how, laws, and popular culture. Individual police officers build their own definitions of what is happening to them in a specific situation at the intersection point between these factors. These definitions enable them to act to defend law and order, protect themselves, and affirm their own decisions about the appropriateness of certain actions. When police officers use excess pressure on someone's neck, firearms, or other physical attack methods, they perceive them to be legitimate in accordance with the cultural, institutional, and professional expectations of police and their personal interpretations of them.

What is appropriate for one police officer may well not be appropriate for another or for his or her superior officers, just as it may not be appropriate for the public, the media, politicians, and judges. When the gap between perceptions is wide, public condemnation of an excessively violent and brutal police act may lead to the individual police officer who used it being deemed a rotten apple. In court, such an officer will have to answer personally for what he or she did, and nothing less should be expected of a liberal democratic criminal process.

If effective prevention policies are to be envisaged, uniform categorizations of the criticality of social situations are essential. The same is true for what are to be seen as legitimate police actions and for violence acceptability thresholds. Police officers' perceptions, personal life stories, and work environments must not supersede these agreed upon categories. Placing progressive limitations on the institutional power of the police—a critical practice in any democracy—requires setting aside the rotten apple thesis and adopting a police force analysis framework. Let us examine this point by point for the purposes of identifying the levels of potential reform intervention:

1. Rather than observing an individual police officer's personality, it would be more useful to consider police officers as social players interpreting specific situations and defining levels of criticality for themselves by assessing the need to act and choosing which attitude to adopt, what action to take, and how much (if any) force to use.

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2. The interpretation and definition of a situation occurs in a matter of seconds or minutes. It is within this short timeframe that expectations and legitimacy, which are derived from the cultural system, the institutional order, and formal and informal professional know-how, are condensed in accordance with the way these are understood by the officer on the basis of his or her personal, subjective world.

3. Reducing the tendency to resort to force therefore requires a shift in the way police officers define specific situations.

4. Changing how police officers define specific situations requires action along the various levels of expectation formulation and police action legitimation processes.

Figure 9: Arriving at the Use of Force
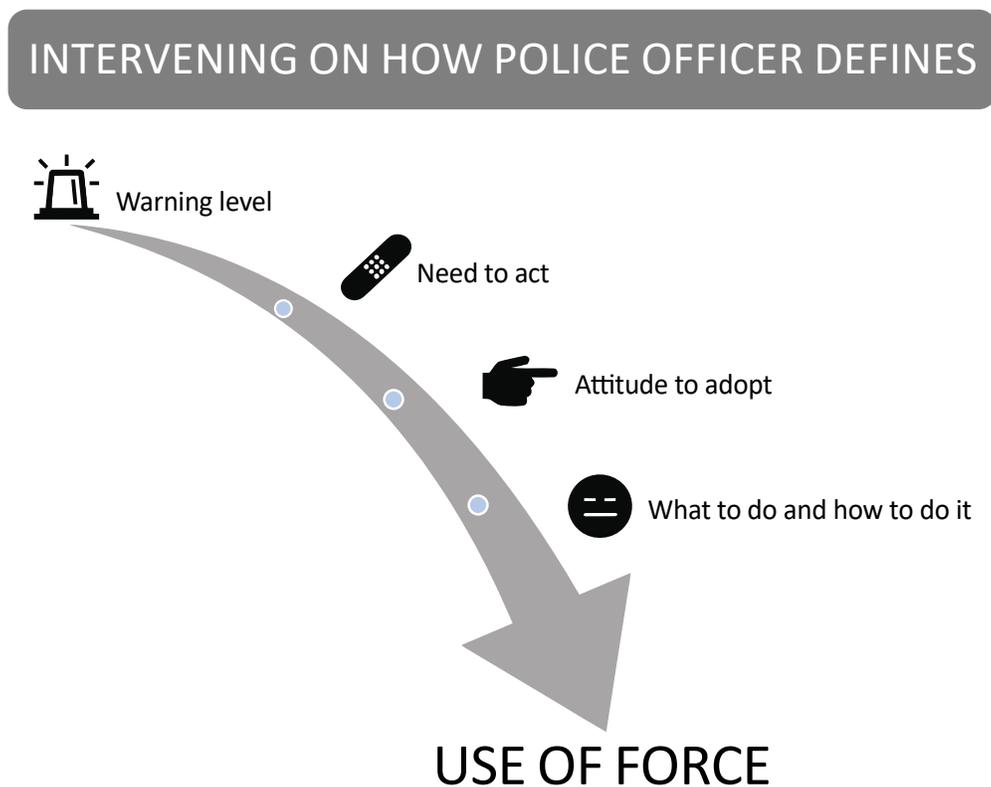
Democracy should limit institutional power over a particular body, democratic rules must harness the power to protect individual freedoms, and democratic feeling should lower the social acceptance threshold for institutional violence. Intensifying democratic rules and feelings by acting on the cultural system, institutional order, and police know-how is important. If viewed through a filter of subjectivity, doing so channels the construction of a police officer cosmology in the sense that the organized whole of attitudes that guides individual officers in their vision and interpretation of the world, and in finding their place within it, gives meaning to their individual experiences.

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Officers' perceptions of their role (also referred to as their role identity) are closely bound up with this cosmology-building process. Who we are, how we think, what we feel, what is important to us, and how a good police officer behaves are all important questions around which cultural, institutional, and professional policing models revolve. At the same time, these are questions that individual officers are continually responding to on a personal level.

The subjectivity filter means that the outcomes of any cultural, social, legal, or professional reform are not automatic and will vary from person to person. This means that there can be no single police cosmology in the sense of a single perception of one's role, nor can there be a single way of safeguarding order, even within one police department.

Cultural, social, legal, and professional reforms cannot, therefore, be expected to have the same effect on everyone in the same time frame. In fact, all action, however radical or even revolutionary, activates mindset and collective sensibility transformation processes. This requires timeframes that are longer than what may be desirable. Not only that, but change may also take irregular paths, with frequent setbacks and U-turns. A new order of things should eventually evolve as a network of meanings that shape the way people interact and make sense of what they do. For such a new order to come to fruition, individuals must be able to fit their personal experiences into that new horizon. At the very least, this should be true for the large majority. Cultural resistance as a lingering consequence of a disappearing past is always possible.

The questions that individual officers' must ask themselves and answer based on their own subjective perceptions are the same questions that should be defined within the confines of the new order of things to be established, which should formulate best practices and imperatives. A move away from individualized answers is possible, but it requires decisive cultural resistance. Resistance is more likely if the current order of things is seen as less imperative. Otherwise, it leads to a conflict in which different ways of being compete and clash. This is considered negative and dangerous by institutions because it implies the emergence of value confusion and loss of professional identity. From a different perspective, however, it constitutes a necessary transitional stage in all radical reform processes, as it implies a transformation in mindset and collective sensibility.

It is thus preferable that democratic reform in the policing field that is designed to limit police brutality rest on the awareness that it is necessary to (1) open up conflictual spheres on police action priorities, expectations, and legitimacy; (2) activate individual officers' thinking; and (3) facilitate the building and dissemination of less violent cosmologies. Standards, protocols, and guidelines regarding the use of force can be useful, but these should be only one thread in the dense web within which individual police officers act and give meaning to their personal experiences. As researcher Clifford Geertz has argued, this is a web that human beings both weave and are caught up in.[79]

What, then, are the other threads in this spider web? Let us try to name them, since the existing knots in these threads must be undone if the police are to be democratically reformed.

Typically, the lion's share of drives to reform generally focuses on the standards, protocols, and guidelines designed to restrict the use of force to a minimum. This includes steps such as eliminating specific practices (such as neck pressure) from use of force protocols; establishing a rigid progression in coercion techniques that starts with the least invasive action and ends with the most lethal; and setting up training courses that entail both theory and learning-by-doing to raise officers' awareness of standards, protocols, and guidelines. Each of these steps is intended to increase the pressure on officers to limit their use of force.

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79   Clifford Geertz, "Religion as a Cultural System," in *Anthropological Approaches to the Study of Religion,* ed. Michael Banton (Tavistock Publications, 1966. Reprint, New York: Routledge, 2004).

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These steps are frequently supplemented by action designed to make internal and external control tools, such as increasing transparency over malpractice and adjudicating instances of brutality. Specific steps in this regard could include implementation of hierarchical oversight methods and procedures; more effective activation of disciplinary processes leading to cases being reported to the authorities; and taking disciplinary action (including mandatory training and psychological support) regardless of the outcome of the legal process. They could also entail extending public oversight over police work; setting up an independent police malpractice report system; and eliminating automatic reflexes that constrain judicial decisions on police malpractice (for example, the much-debated theme of qualified immunity).

Standards, protocols, and guidelines prescribe behavioral models while internal and external controls and the elimination of automatic systems for judgments increase malpractice visibility and make inappropriate behavior easier to monitor. While both types of action are important, they do not tackle perceptions about the need to use force, which rest on the definition of a specific situation's criticality. In other words, both types of interventions target the actual use of force but not the process by which officers determine whether the use of force in a specific situation is necessary, appropriate, and legitimate. The effect of eliminating certain practices from police protocols is negligible if they are immediately replaced by equally lethal options and if the way situations are perceived does not change. Once again, public oversight certainly helps to punish inappropriate behaviors, but it may not have much impact on the number of excess use of force cases.

Thus, democratic policing reforms must take cultural, legal, and professional aspects into account as each is critically important in shaping subjective definitions of reality.

Unresolved cultural issues need to be taken on decisively. These are issues that are now weighing dramatically on both the political-institutional system as a whole and the social legitimation of policing practices in particular. The issue of racism in American society can no longer be reduced to individual disposition, partly because individual officers may not view themselves, or be viewed by friends and relatives, as racist, and yet, they may still act in a discriminatory way in their professional lives. This can be summed up in the expression "racism without racists."[80] Certainly, there are white supremacists and racists in the police force, as there are in other social and professional contexts, but understanding the role of the police in a profoundly divided society requires looking beyond the attitudes of individual police officers.

The United States, a mature democracy and model of a liberal society, still exhibits several transitional features linked to racism. The white middle class has channeled their demands for protection into the police in an attempt to keep young Black Americans "in check" in a post-segregationist period characterized by a fear of crime. Black people have been the recurrent recipients of social concern and repression since slavery was abolished, and the police views itself as the main player in upholding law and order policies. It is as if, once the openly segregationist social and legal system was abolished, systemic racism was funneled directly into criminal justice and police work. Racism has left a deep cultural mark on the institution of the police and everyday police action. Police in the United States are in the midst of a social legitimacy crisis, in which officers are too inclined to shoot at or use other forms of violence against civilians, the majority of whom are Black. In the eyes of much of the public, the police no longer appear willing or capable of taking on demands for social and institutional change.

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80 Eduardo Bonilla-Silva, *Racism without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States* (Lanham, MD: Rowman and Littlefield, 2003).

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In brief, racism is a primary facet of a cultural system in transition that impacts the police on three interconnected levels:

1. The individual level, in which individual police officers act in a discriminatory way, since they live in a society in which it is by no means rare to have racist attitudes. This propensity toward racism ultimately influences officers' perceptions about the legitimacy of certain ways of acting.

2. The political and social level, in which police action is discriminatory regardless of the attitudes of individual officers as a result of the fact that they are called upon to respond to the demands of a profoundly divided society on the basis of race-driven risk categorizations.

3. The professional culture level, in which the police act in a discriminatory manner partly as a result of the way they have interpreted the demands placed upon them, which leads to their active contribution to the construction of race-driven risk categorizations.

In this sense, reducing discrimination among police requires action that combats the widespread racism present in American society as a whole. Essentially, less racism in American society not only means fewer officers with racist attitudes; it also means fewer race-based social order demands and lower political, social, and professional legitimation of discriminatory action.

Conceptualizing the United States as a country in transition with regards to racism means that any attempt at reform should be rooted in a transitional justice perspective. The International Center for Transitional Justice has noted:

> Transitional justice can guide the discussion to focus on root causes of violence and racial injustice and provide ideas for what steps can be taken to undo systemic abuses and redress harms linked to the legacy of slavery. …With an emphasis on truth, justice, reparations, and reform, these approaches have helped countries emerging from periods of conflict and repression deal with large-scale or systematic human rights violations and take steps to prevent their recurrence….Initially conceived as a set of approaches to achieve justice and redress in the aftermath of war or authoritarian regimes, it is now seen as relevant to established democracies and has been increasingly applied in them to address legacies of abuse and historical injustices.[81]

In short, as long as laws, policies, and institutional practices continue to discriminate against Black people in the United States, both directly and indirectly, reforms are needed in virtually every sector of government and society: the criminal justice system, the electoral system, the economy, housing, education, social safety, health, and policing. It is important that in following a transitional justice approach, these reforms respond to the dominant cultural demands for change.

As a start, truth-seeking processes must be implemented. They may vary in their forms, but their purpose must always be to construct a collective memory of what has happened in the past in order to accord dignity and grant recognition to those affected and to create a connection to present-day injustices, grievances, and violence. Furthermore, a reparations process, which can encompass material compensation, symbolic measures (such as the full and public disclosure of the truth, an official apology, and commemorative activities), individual and col-

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81   Virginie Ladisch and Anna Myriam Roccatello, ICTJ, "The Color of Justice. Transitional Justice and the Legacy of Slavery and Racism in the United States" (April 2021), 2.

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lective benefits, and urgent and long-term relief programs, is essential on its own and could also help map out necessary reforms.

Against this backdrop, it is of paramount importance that special attention is paid to reforming law enforcement authorities, since they are directly involved in the current affirmation of systemic racism. There should be significant efforts to build trust between police and Black communities. The implementation of truth and reparations processes can be a first step in the creation of durable reforms that promote a diverse institutional vision of deviance and social control.

This approach is coherent with the underlying direction of all democratic reforms in the social and institutional field, which can be summarized into four points:

1. Healing social divisions and the citizen-institution gap (trust);

2. Narrowing the economic, social, educational, and cultural gap between people and between social groups (social justice);

3. Broadening existing spaces to exercise one's citizenship and rights (inclusive democracy);

4. Bringing these perspectives together by asserting a culture of equal respect (democratic feeling).

These four points are useful because they allow for a thorough examination of situations in which injustice and abuses occur as the outcome of discrimination based on race, ethnicity, or other factors. The four points reaffirm the need for a democratic culture that combats the tendency toward segregation, exclusion, and the expulsion of whole social categories. In an era like the current one, which is dominated by the employment of fear and social suspicion as means to justify the misuse of democratic principles in the name of crises to be dealt with by force, what is needed is to rediscover the basis for the inauguration of a new age of rights. This should be an age that forges social and institutional change in a concretely democratic way, both formally and in practice. The criminal justice and policing fields lend themselves especially well to the experimentation of new equilibria between social order and individual freedoms.

The consolidation of a democratic culture, including through legislative changes, is integral to both the construction of professional know-how and the definition of critical situations requiring police intervention. As such, there are several broad levels of reform relating to society, politics, and institutional culture onto which more specific action relating to police training, recruitment, and organization can be latched, creating a spider web-like system of change.

Reducing Emergency Spaces

A state of emergency, both explicit and as the outcome of long-lasting and widespread social panic (labeled as perpetual panic), can lead to an extension of the social order demands for behaviors and situations not previously subject to limitations. It can also contribute to a strengthening of social threat perceptions regarding new and old categorizations of "dangerous" individuals. A state of perpetual panic grants greater discretionary powers to police based on the belief that they will be the ones to manage the situations that have culminated in the state of emergency in the first place, in place of other, non-police institutional action.

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Investing in a Welfare-Based Society Rather Than a Penal State

Mitigating problems resulting from prolonged public perception that emergency police action is necessary to maintain public order requires the construction of an institutional network made up of a range of social, psychological, and educational bodies capable of acting to deescalate critical situations, not only in emergencies, but also on a structural level. To this end, it is critical to work on several cultural, political, economic, and legal fronts. Shifts in resource allocation are essential, as are changes to criminal policy, including, but not limited to, reducing the scope of crimes. This would be particularly effective for crimes such as drug-related offenses in which the severity of punishment has exacerbated social tensions and led to a so-called war on drugs that has had few, if any, beneficial effects.

Limiting the Circulation of Firearms

Homicide rates are not simply higher where firearms are more widely owned; a higher prevalence of firearms in a community also directly affects police officers' perceptions of danger. Individual police officers come to expect those with whom they are dealing to possess firearms, and this renders any given situation potentially lethal and highly critical. On the other hand, individuals who are stopped by the police may experience tension when they imagine what the police officer may think of them and what they might do. The interaction between citizens and police officers is symbolically mediated by guns, which influence the meaning attached to one's own actions and those of other people.

Eliminating the Toxic Culture of War and Creating a Culture of Peace

Perceptions of increasingly uncontrollable social violence (which ignore the decline in fatal force that has been occurring in the United States since the 1990s), the affirmation of a culture of fear that sees others as potentially violent, and the relatively unrestricted ownership of firearms by civilians all act as powerful driving forces in the militarization of the police. While other orientations toward policing, such as community policing, do exist, police know-how is increasingly channeled into the battleground logic that categorizes people as friend or foe. Police techniques and equipment resemble those of paramilitary troops called to overcome episodes of urban warfare, even when they are simply patrolling neighborhood streets. The backgrounds of many police officers include direct and indirect experiences with conflict, which affirm their perceived need to act decisively with certain categories of people. The recruitment of soldiers who have fought in various wars is another clear factor in the affirmation of a battleground mentality toward policing. If these policies are not rolled back, it seems unlikely that the use of force can be scaled down, as the latter is closely linked with the adoption of a militarized approach to policing.

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Part 4: Final Reflections on Police Use of Force in the United States

The time for an in-depth rethinking of the legitimacy of law enforcement bodies in the United States is ripe, and not only as a result of the new political approach ushered in by President Joe Biden and the greater awareness of police brutality triggered by demands of the Black Lives Matter movement.

An even deeper and more insidious issue is generating a shift in public perceptions of danger and the violence acceptability threshold, moving the United States closer to Europe and other nations with less militarized perceptions of the police. Americans' fears seem to be gradually moving from the heart of society to its margins. In the United States, as in Europe, immigration is reshaping political priorities and is evolving into an ever-present dividing line between "insiders" and "outsiders" in all social programs. The internal divisions that led to the exclusion of American communities of color may gradually give way to a new dividing line that pushes non-citizens to the margins of the democratic space instead. For the outsiders who are at the borders—literally and metaphorically—institutional discrimination and police violence may become easier to apply because it is deemed legitimate.