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Excerpt

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I N T R O D U C T I O N

The Context of Police Use of Force

WE LIVE IN A WORLD that increasingly displays distaste for the use of physical force to direct or control the behavior of others. Democracy as a form of governmental decision making is winning out over totalitarianism, and war is less tolerated as a solution to conflict. On a nongovernmental level, there are severe penalties for fighting and bullying in schools and spanking is increasingly viewed as inappropriate parenting. Similarly, the movement to end violence against intimates is growing ever stronger with increasingly severe penalties for spouse abuse. There is one profession in Western society, however, that has not only retained the right to use physical force against its citizens, but has its members trained and encouraged to do so. The police are prepared to use force on a daily basis and while there may be considerable pressure to limit and restrict the use of force by the police against citizens, no one is calling for them to abandon its use. Indeed, it would be unconscionable to make such a demand.

Despite the fact that the police represent the last bastion of civilian government-sanctioned violence against citizens, research on police use of force is surprisingly scarce. David Bayley (1994) drew attention to the discrepancy between the significance of the police role in modern society and the amount of attention given to it by researchers. He argued that the paucity of research on the police is a function of their pervasive presence, their relatively routine occupational activities, and their absence as pivotal players in major historical events. The relatively recent interest in police research originates from their greater involvement in the major social and political events of the 1960s and 1970s; however, it was not until the 1980s that sufficient data on police use-of-force incidents became available to researchers. Prior to that time, police departments either did not keep sufficient records or refused to make them available to those who were interested in studying them. Recent reviews of the existing research on police use of force reveal severe

theoretical and methodological shortcomings (National Research Council, 2003). Police–citizen encounters have historically been considered a static event by researchers, who have focused almost exclusively on the officer’s point of view. This book evaluates police use of force from both the officer’s and the citizen’s perspectives. We introduce the interactive nature of police–citizen encounters that result in force and we present a theoretical basis to understand this process.

The purpose of this book is *not* to look at police officers’ routine or ordinary behavior, but to focus instead on extraordinary and rare officer behavior that develops during incidents where physical force is used. Whenever police officers come into contact with citizens, there is a chance that the encounter will digress to one in which force is used on a suspect. Fortunately, most police activities, such as traffic or investigative stops, or even arrests, do not result in the use of force.

The “known” frequency of police use of force varies depending on the ways the events are captured or counted. Similarly, the rate of force used depends on the definition of the baseline incidents against which they are measured. In this formula, the numerator, or lowest level of force counted, can range from verbal coercion, “pat-downs,” handcuffing, and come-along holds, to levels that include extremely physical tactics, both offensive and defensive, including the use of deadly weapons. Clearly, the stricter the definition, the fewer the number of cases that will be captured in the numerator. Additionally, the inclusion of handcuffing and pat-downs as use-of-force events can create a problem, as these actions may be required by policy or for officer safety, resulting in no officer discretion. As the measures used in previous studies vary considerably, it is difficult to determine a true rate of force used by the police. Different studies also use different denominators, which range from all police–citizen contacts to only discretionary contacts or arrests. As the denominator increases, the rate of force decreases.

Although there are significant methodological challenges in determining the frequency and rate of police force, it is unquestionably an uncommon occurrence. The instances where force is used are nonetheless of great interest to citizens. In fact, most complaints against the police are generated from this limited number of police–citizen contacts. A clamor of public criticism and legal entanglements frequently follow these rare incidents where significant force is used, often affecting the stability of a police department and its relationship with the community. Therefore, an examination of the behavior and environment surrounding the rare use of significant police force is of vital importance. This book seeks to examine these issues and to provide a conceptual framework for further study.

This introductory chapter frames police use of force in the broad socio-historical context of the development of American policing. It demonstrates a process of parallel change with respect to society’s views toward the use

of force, its regulation, and the types of research conducted on it. This context will provide a framework for interpreting the findings of our own research. Chapter 1 reviews the research literature on police use of force and provides a base of knowledge on what we know. Our research sites are discussed in Chapter 2. Chapters 3 through 7 present the various phases of our research. Finally, in Chapter 8, we conclude with an interactive theoretical construct in order to begin the process of building an explanation for this type of police–citizen interaction and to provide a framework to guide future research.

Before we discuss the details of our research, it is necessary to provide some background information on the police and their use of force. Many aspects of policing have changed over time, as have the purpose and practice of using police force to manage or control citizens. There exists extensive literature on the general changes in policing; conversely, information on the specific changes in the context of police use of force over time is lacking. Peter Manning (1997) explored and analyzed the nuances that shape police work. He investigated and evaluated the changing role of the police in society. While he did not focus on police use of force specifically, his cogent arguments concerning the control features of the police are convincing and offer an important contribution to our understanding of how the role of police use of force has changed. His key conceptual work, linked with that of police scholar Samuel Walker (1998), explained why, in the nineteenth century, the police had very little discipline, how excessive use of force was commonplace, and how organizational changes occurred over the years. The arguments put forth by Manning and Walker, among others, remain relevant to contemporary policing issues as well as to the purposes and uses of force more specifically.

According to Walker (1998), hostility toward the police was the rule in the nineteenth century. Citizens had little respect for the police and expected them to be corrupt and brutal. There are numerous recorded incidents in which juvenile gangs taunted officers and threw rocks at them. Similarly, adults would fight back when being arrested. Public disrespect and police brutality were an open and accepted aspect of police–citizen interactions during this period, and inappropriate police behavior generally went unpunished. Today, most police departments have comparatively strict and extensive policies controlling their use of force. They provide training to limit the types and levels of force and many use violence-reduction techniques. Most departments also have internal investigative units and many have civilian boards to review officer use of force (Walker, 2001). Departments tend to have progressive disciplinary policies and procedures for those who use force improperly. In addition, municipalities and individual officers are subject to civil and criminal liability for such misconduct. Clearly, policing has undergone considerable change, and views on police use of force and its

regulation have undergone as much if not more change than other aspects of policing (National Research Council, 2003).

Periods of Change

Changes in the purpose, use, and regulation of force employed by the police can be best understood through examination of three major periods in the history of policing. The first period, that of *nonregulation*, occurred when the police used whatever level of force they saw fit in order to control the population. During that time, police ignored and/or silenced criticism of what might be called their excessive force, except in the most extreme cases of abuse. As a result of nonregulation, police abuse of force was rampant during this era.

The second period coincides with the movement to *professionalize* the police; it is characterized by self-regulation through the principles of professionalization. However, in spite of this attempt at change, abuses continued, albeit at a lower rate. During this period, the police began regulating their own use of force, and while there was a move toward accountability, it had not yet reached a functional level.

The third period began in response to a series of recent historical events, including civil disobedience, increased legal liability, and the development of community-based policing. This period is noted for the change in the regulation of police from internal to *external control*. Key to these events was the emergence of a new group of regulators located in the courts, political arenas, and community groups. During this period, social science research on police use of force became a new source of information for the police as well as for critics, and it brought a new form of accountability to the police.

Peter Manning made a powerful point when he suggested that researchers must look beyond the police and their explanations of events to understand the use of force. This book builds on his central notion and introduces an interactive process to study police use of force. The three periods outlining the changes in perception with regard to police use of force will be examined in greater detail before any assessment of the previous research is broached.

The Era of Nonregulation

Greene and Alpert (1999) argued that the history of policing in the United States has been a struggle to resolve two basic issues. The first issue is the definition of police work, or what the police should be doing, and the second involves how best to oversee or regulate police operations. During the era of nonregulation, the police role was poorly defined and the police had little, if any, supervision. Greene and Alpert (1999:532) argued that the

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“police were seen as mercenaries who worked for the wealthy to control the working class and to maintain hierarchical authority.” As a result, the lower and working classes continually challenged the legitimacy and actions of the police. Drunkenness, corruption, and brutality were commonplace, and the police were expected to do very little for the lower and working classes except to keep them under control. Because police officers were expected to be brutal, it was futile for citizens to protest any abuse of power, nor were they in a position to do so. Since they did not expect to be able to control police brutality, only a minimal effort was made. The routine response to police brutality was simply to fight force with force. Because citizens had little respect for the police and expected them to be corrupt and brutal, they often showed open hostility toward them. Brutality was such an integral part of policing that it usually went unpunished. Albert Reiss quoted a former police officer employed in the New York City Police Department at the beginning of the twentieth century:

For 3 years, there has been through the courts and the streets a dreary procession of citizens with broken heads and bruised bodies against a few of whom was violence needed to effect an arrest. Many of them had done nothing to deserve an arrest. In a majority of such cases, no complaint was made. If a victim complains, his charge is generally dismissed. The police are practically above the law. (Reiss, 1970:274)

One recurring task of the police around the turn of the century was controlling strikers and breaking up strikes to protect the capitalist enterprise by ensuring cheap labor. The police were known for aggressively breaking up labor’s business meetings by using physical force and for the “wholesale clubbing of strikers” (Stretesky, 2002:15). Clearly, many types of police–citizen interactions resulted in violence during this era. Fear of citizen-initiated violence against the police was so great at one point that in New York City, many officers refused to wear their badges for fear of being identified and assaulted (Stretesky, 2002:14).

One explanation for this unfortunate situation was the close relationship between the police and the political machines in major cities. The police had no presumptions of being bound by constitutional principles or of being impartial in the administration of the law. Officers were drawn from the lower classes, were poorly paid, and lacked uniforms, training, and permanent professional status. Historian Mark Haller (1976) summed it up best when he pointed out that although the police were formally engaged in law enforcement, they had little orientation toward legal norms.

As has been noted, police brutality was an accepted aspect of life and was directed at controlling the lower and working classes, many of whom were recent immigrants with no means to change police misbehavior. Stretesky (2002:12) concluded his analysis of policing during this time period by

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noting, “It is clear that early American police came out in force to violently repress strikes, maintain order among the working class, ensure racial oppression, and control threatening populations.” These targeted populations did not have the power to change the role of the police or to regulate police behavior. Furthermore, the more politically powerful classes, who could exert some control over the police, were not targeted by the police, and often had a vested interest in controlling the “threatening populations.” As Walker noted, “What a later generation called ‘police brutality’ was a routine part of American policing in the nineteenth century” (Walker, 1998:62).

During the era of nonregulation, meaningful social science research on police use of force and brutality was nonexistent. The citizens affected most by police brutality were in no position to do anything about it. The idea of conducting research to investigate and document police use of force, establishing a commission to review claims of brutality, and formulating recommendations to control it were not realistic goals at the time. Police scholars have noted the lack of research on the police in the United States and have attempted to explain it. For example, Bayley (1994) noted the discrepancy between the importance of the police in American social life and the amount of attention given them by scholars. It was not until the beginning of the twentieth century that concerns about police abuse of force were transformed into a meaningful movement for serious reform: the Progressive Movement.

The Era of Self-Regulation

By the beginning of the twentieth century, police departments were under serious attack by the social and political reformers of the Progressive Movement. This movement focused much of its criticism on the political machines in large cities and their partisan political organizations. The influence of the reformers had grown. Now a serious threat to the corrupt political machines of the previous epoch, reformers wanted to instill ethical and democratic values into the political and administrative processes of metropolitan governments. Since police departments were embedded into the political machines, they necessarily became a critical target. Reformers sought to take the politics out of policing, given the assumption that a large part of police corruption and brutality was due to the partisan and corrupting influences of the political machines. If police departments could be removed from these corrupting influences, it was hoped that their officers would be less brutal and apply their powers more equitably. Therefore, progressive reformers sought to solve the problem by “removing the police structure and function from the political apparatus of the cities” (Greene and Alpert, 1999:533). Once the corrupting influences of the political machines were removed, reformers sought to establish internal administrative

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procedures to ensure ethical policing from within the department. Greenberg (1976) argued that the police had become semiautonomous from the controlling capitalist class by the turn of the twentieth century. This was essential if the police were to be accepted as legitimate agents of social control. It was also a first critical step toward the establishment of internal control through principles of professionalism.

Indeed, many of the changes suggested by reformers were influenced by the objectives of professionalism. Initiatives included making the police organization more systematic, increasing the standards for hiring and promoting officers, introducing (better) training, and regulating police practices, such as the use of force. Most of the measures focused on providing internal processes to regulate police behavior. One important step was to establish civil service procedures to ensure objective decision making and thereby eliminate the partisan practices of the past. While reformers recommended some civic control of the police, progressive police chiefs emphasized professional values as a more effective solution to better management and regulation of officers. This change emphasized reform of internal mechanisms of control and favored the idea that refined and professionalized police organizations could regulate their own behavior. A number of the early progressive police chiefs, including August Vollmer, the chief of police in Berkeley, California, and O. W. Wilson, the chief of police first in Wichita, Kansas, and later in Chicago, Illinois, all stressed the creation of a “professional” police force. They emphasized professional administration, policies to control discretionary action, and a college education for officers so that they could understand the importance of their role in the social order.

Greene and Alpert (1999:534) contended that “between 1920 and the early 1960s policing reform focused on improvements of the organization and management of the agencies, almost to the exclusion of other equally important concerns.” A major stimulus for reform was the establishment of the National Commission on Law Observance and Enforcement (the Wickersham Commission) by president Herbert Hoover in 1929. This was the first national study of the American criminal justice system, and the Commission’s report, published in 1931, provided support for police professionalization. The report shocked the country with its exposé of police brutality and called for major reforms of the police (Walker, 1998; Walker and Katz, 2002). Reformers believed that establishing professional police organizations with professional practices would not only make the police more effective at crime control, but would also increase their legitimacy in the eyes of citizens. Officer decisions were to be controlled by new and enhanced policies and training and then further scrutinized by improved supervision and accountability systems. Furthermore, new technologies, such as police cars, radios, and telephones, would allow departments to have a greater degree of supervision and control over patrol officers. More rigorous training

of officers was suggested, and higher standards for hiring and promotions were set. All of these reforms were enhanced by new and strict policies on police violence.

There is little doubt that police professionalism and the reforms it brought had a significant impact on police violence and on legitimizing the police (Stretesky, 2002). However, police brutality and violence did not disappear. For example, the civil unrest of the 1960s was met with considerable police violence, indicating that internal controls of police use of force were deficient and incapable of controlling police violence in many situations.

Most of the social science research on police use of force during this period came late in the era. Garner, Maxwell, and Heraux (2002), who reviewed research findings on police use of force, placed the first meaningful social science research in the late 1960s and early 1970s, a development that was linked to the political climate. As Herman Goldstein noted (1990:9), "Crises stimulate progress. The police came under enormous pressure in the late 1960s and early 1970s as they were confronted with concern about a rapidly rising crime rate, civil rights demonstrations, racial conflicts, riots and political protests of the war in Vietnam." This recent research interest in the police was therefore largely generated by their greater involvement in major social and political events of the time. The concerns of the public about police practices led to increased federal funding for police research and a corresponding improvement in methodological sophistication. Before this time, most information on police brutality and violence was in the form of personal narratives of independent observers, including those who were involved in the incidents. In the words of Garner et al.,

The narrative accounts by independent researchers tended to emphasize the researchers' personal interpretations of police work and to highlight alleged and sometimes confirmed incidences of unusual, dramatic, illegal, or inappropriate behavior by officers or civilians. These descriptions and insights provide a valuable basis for generating hypotheses about the nature of force and the situations in which force is used. However, because they have been limited to personal observations of a few officers in a few precincts in a few jurisdictions and have relied on qualitative assessments of single observers, these personal narratives provide an incomplete and potentially inaccurate picture of normal contact between the police and the public. (Garner et al., 2002:707)

This type of research tends to focus mainly on finding enough evidence of police misconduct to support the ideological concerns of the observers. It has generally been prescriptive and has rarely provided important information such as the frequency with which the police use specific types or levels of force or the individual, situational, and organizational characteristics

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associated with using various types and levels of force (Garner et al., 2002). The third era would bring a new form of regulation and would stimulate a new focus for research.

The Era of External Regulation

The social and political crises beginning in the 1960s led to a new emphasis on reforming society in general and, more specifically, the police (Skolnick and Fyfe, 1993). Reform had become a popular cause among most segments of society, and for the first time in the history of American policing, reformers were able to establish significant controls over the police that were external to the police department and to local political organizations. This type of control challenged entrenched aspects of the internal organizational and workforce cultures that were the foundation of most police agencies. Greene and Alpert (1999) pointed out that police cultures have consistently rejected the idea that the police should be more directly accountable to those outside of that agency (Crank, 1998). Against such strong resistance, the new reforms would need to be backed by powerful social forces if they were to succeed. In spite of this resistance, the social movements of the 1960s and 1970s generated sufficient social power to accomplish many important police reforms.

Samuel Walker (1998) argued that social issues at this time had a significant impact on public attitudes toward the police, and subsequently on the police officers and their organizations. The civil rights movement challenged police discrimination and resulted in a series of race riots that placed the police in the eye of a social storm. The police were harangued by angry minorities and political leaders. The dramatic rise in the crime rate in American metropolitan centers, the protests against the unpopular Vietnam War, and the growing concern over drug use among the baby boomers all brought additional pressure to bear. The controlling role of the police and their willingness to use significant levels of force, and occasional extreme violence, to contain political protests caused public confidence in the police to plummet, reaching its lowest level in decades. The new burst of reform stimulated by these events was aimed directly at the police (Walker, 1998).

The Courts as Police Overseers

The new reformers focused more than those before them on establishing controls over the police from outside the police departments and the local governments that managed them. The courts therefore became an important source of control in two ways. First, the courts were used to assess the appropriateness of many longstanding police practices and procedures

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through legal challenges. Second, both individual officers and their governing entities were increasingly subject to civil and criminal liability for unreasonable actions, policies, and practices.

Samuel Walker (1998) made the argument that the Supreme Court's decision in *Mapp v. Ohio* (1961) established the Court as a significant source of external control over the police. The *Mapp* decision set a national standard for police searches and seizures and instituted the "exclusionary rule" for evidence seized illegally. This represented the most intrusive and overt control the police had experienced to date. What followed was a series of federal and state court decisions that focused on various police procedures. Each decision had an impact on the police, and many were related to the police use of force. The most notable Court decisions with respect to police force were *Tennessee v. Garner* (1985) and *Graham v. Connor* (1989). In the former, the Court ruled that police were not justified in their use of deadly force to seize a nondangerous fleeing felon. In the latter, the Court ruled that force used by the police had to be evaluated objectively and without the benefit of hindsight. By restricting police use of deadly force and by analyzing objectively lower levels of force the Court tailored the ways in which police departments had to manage their use of force against citizens (Alpert and Smith, 1994).

In *Critical Issues in Police Civil Liability*, Victor Kappeler (2001) documented a judicial trend toward allowing governmental liability in cases involving police misconduct or negligence. He stated that civil liability exists "when police officers fail to perform their assigned duties, perform them in a negligent fashion, abuse their authority or just make poor decisions" (Kappeler, 2001:1). Specifically, there have been an increasing number of civil liability cases involving police use of excessive force or brutality. While it is difficult to get an exact count, Kappeler (2001) reviewed available information on civil cases filed against the police and concluded that there has been "an explosion" of cases since the 1960s, a trend he found "alarming." He concluded that while many police chiefs argue that they have a good record against these types of suits, what was once a 4 percent rate of successful verdicts against the police has doubled in recent years (Kappeler, 2001). In addition, many claims against the police are settled prior to trial. Given the current situation with increasing numbers of lawsuits and growing success in obtaining settlements or judgments against the police, civil litigation has become an important concern for police administrators as well as rank-and-file officers. Studies of officer concerns over liability show an increasing number of officers who worry (some excessively) about civil liability. Kappeler (2001:6) reported that police chiefs, seasoned officers, and new recruits are all seriously concerned about civil liability. Civil litigation is becoming one of the most significant sources of regulation of police use of force outside of the police organization.