DRAFT - cite published version:

Luke William Hunt, "Policing," in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Springer: 2023).

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Policing

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Introduction: Who Are the Police?

This entry offers an overview and analysis of policing, the area of criminal justice associated primarily with law enforcement. The study of policing spans a variety of disciplines, including criminology, law, philosophy, politics, and psychology, among other fields. Although research on policing is broad in scope, it has become an especially notable area of study in contemporary legal and social philosophy given recent police controversies.

The advent of modern policing is often traced to the formation of the London Metropolitan Police in 1829. John Kleinig characterizes the Metropolitan Police as a "legislatively mandated organization designed to provide round-the-clock service to a community confronted by diverse needs and fears" and to *prevent crime* (1996: 11). This suggests a focus on *proactive* law enforcement tactics, rather than earlier styles of policing that embraced a more *reactive* model of law enforcement. However, as Kleinig notes, law enforcement is but one of many police roles. Police also act as emergency operators (responding to emergencies such as vehicle accidents or natural disasters), social enforcers (using force in situations such as crowd control), and social peacekeepers (a combination of both law enforcement and social service roles) (1996: 25–29).

Within police culture itself, the police have embraced a range of archetypal identities (Hunt 2021a). The police institution is historically associated with a heroic ethos steeped in valor. In many countries (not least the United States), the heroic ethos has evolved into a distinct warrior identity, which is marked by militaristic equipment (military-style rifles and armored vehicles), methods (the widespread use of specialized weapons and tactics, or "SWAT," teams), and training (quick, reflexive use of force and "righteous violence") (Stoughton 2016). Fallout from the warrior ethos has led to calls for a somewhat milder "guardian" identity, which is said to be based more evenly on principles of protection (Yankah 2019). However, researchers have argued that these shifting, individuated archetypes (a sort of "identity crisis") can miss the central point that policing should be conceived as a *collective* (for example, "community policing") pursuit of justice (Hunt 2021a).

Naturally, concerns about policing are more pronounced in some countries than others. Comparing policing in, say, Denmark and the United States may not be fruitful given the vastly different populations, economies, crime rates, and other social problems – including gun ownership cultures. For a variety of reasons unrelated to policing itself, police in many countries do not have to

contend with the same amount of poverty, homelessness, crime, gun violence, mental illness, and racial tension as police in the United States (Shelby 2007). On the other hand, countries such as Nigeria have a much more pronounced problem of police bribery and corruption (though the police in the United States and other countries of course have their share of corruption) (Guttschuss 2010). The point is that it is important to note that there is a complex array of contemporary police roles that vary internationally, as well as domestically within a single country.

The diversity of police roles and responsibilities is often organized according to both subject matter and bureaucratic jurisdiction. For instance, in the United States, most states have a "state police" (or "highway patrol") force that has jurisdiction across the entire *state* – such as the Alabama Highway Patrol. And there is often a police force within each state *county* ("county police" or "Sheriff's Office"), such as the Tuscaloosa County Sheriff's Office in Tuscaloosa County, Alabama. Moreover, the city of Tuscaloosa (within Tuscaloosa County) has its own Tuscaloosa Police Department, which has jurisdiction within the *city* of Tuscaloosa. One can also add police departments on college campuses, such as the University of Alabama Police. To make things even more complicated, there are *federal* law enforcement officers such as FBI special agents, who have jurisdiction in matters of federal law across the entire United States.

Within each bureaucratic jurisdiction, officers may be generalists or specialists. There are uniformed officers who are generalists, responding to a range of issues they encounter on their shifts – from traffic accidents and violations to burglaries and domestic disputes. There are also "plainclothes" detectives and other investigators who become part of specialized squads that focus on a narrow range of crimes over the course of long-term investigations, such as a drug crime, white-collar crime, and violent crime (Hunt 2019). Although each polity and police institution is unique, these sorts of jurisdictional and subject matter boundaries can be found in police forces around the world.

Law Enforcement: Strategies and Tactics

There are countless police strategies and tactics that – as noted above – vary greatly from country to country and department to department. However, there are several prominent strategies and tactics that are familiar in one form or another in a wide range of police institutions.

Community Policing and Policing by Consent

Roughly, *community policing* is a philosophy and organizational strategy that promotes community empowerment and collective efficacy: policing that seeks community development through community partnership (Sampson 2011). An example would be coordination between the police and a neighborhood watch group, which might increase citizen empowerment and reduce citizen fear – thereby facilitating conditions that will help solve crime problems. There are three central aspects of community policing:

1. Citizen involvement in identifying and addressing public safety concerns
2. The decentralization of decision-making to develop responses to locally defined problems
3. Problem solving (National Academies 2020) AU2

These aspects of community policing become manifest through a variety of activities that emphasize relationships and partnerships with the community. Accordingly, community policing can be associated with the related idea of "policing by consent" (Torrible 2022), which is consistent with social contractarian political philosophy inasmuch as community policing promotes communication with community partners (rather than simply relying on force and power). Community policing is thus often associated with particular styles of political philosophy – including those steeped in democratic liberalism (Hunt 2021a).

Criticism of these strategies has come from two directions. First, some researchers have examined various community policing tactics and concluded they do not yield evidence of significant crime reduction (Sherman and Eck 2002). A second objection to community policing is

that – somewhat paradoxically – it might lead to increased bad behavior by the police. For instance, perhaps community policing increases police discretion and community engagement in a way that leads to increased illegal encounters with community members – such as expansion of police discretion to use unjustified stop and frisk tactics (Gould and Mastrofski 2004). In other words, poorly executed community policing may exacerbate both police legal noncompliance and police legitimacy. Jake Monaghan's conception of "legitimacy-risk profiles" provides insight on these points (2021).

In response to the second critique, researchers have suggested that community policing should be supplemented with "procedural justice policing," a distinct strategy that more narrowly focuses on "giving citizens police decision processes that manifest demonstrations of police fairness and regard for a person's dignity" (National Academies 2018). The basic idea, then, is that procedural justice policing promotes police legitimacy both directly (the people with whom the police interact) and indirectly (the community generally). Still, it is important to note that some scholars worry that the psychological underpinnings of procedural justice policing (which might encourage trust and compliance) will discourage citizens from asserting their constitutional rights to contest bad policing practices (Miller 2016).

Regarding the criticism that community policing may not reduce crime adequately, some researchers have responded by rejecting consequentialist ethics (Hunt 2021a). In other words, there are a great many policing strategies that might have the consequence of a reducing crime significantly. However, it might also be the case that states should embrace community policing because it is the right thing to do given the state's assumptions about political morality. A consensus study report put the point this way: "procedural justice reflects the behavior of police that is appropriate in a democratic society….[it] may not change citizen attitudes, but it encourages democratic policing" (National Academies 2018: 312). The idea, then, is that such strategies are needed (perhaps in conjunction with other crime reduction strategies) because they promote justice by bolstering legitimacy, autonomy, and respect for human dignity.

Algorithmic Policing
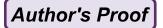
A second major policing strategy is policing by algorithm. Such strategies may be used in conjunction with community policing, procedural justice policing, and policing by consent, though there can also be tension between the various approaches.

Predictive policing is often categorized as person-based (targeting specific individuals based upon algorithmically generated predictions) and place-based (predicting when and where a crime will occur based upon an algorithm). Sarah Brayne describes the informal use of the term "algorithm" as the process by which computers make predictive, automated decisions based on a dataset (Brayne 2021).

One placed-based technique has been referred to as "prediction box" (Hunt 2021a, 2022), which is the technique of "forecast[ing] individual crimes in the immediate future in order to direct patrol officers into 500-by-500 foot areas (i.e., boxes) that are at a higher risk of a crime occurring during a particular 8, 10, or 12 hour shift" (Santos 2019: 372). The idea is simply for an officer to report to a specific geographic box and prevent a crime from occurring in that box (Ibid.). The location of the box is based upon data regarding time, date, and location of reported crimes, but there is often no human analysis (or qualitative analysis) of the box (Santos 2017).

Criticism of algorithmic policing has come from a number of directions. One of the central objections is based simply on the quality of the data used in the algorithm. If a state (and its police departments) has pervasive problems with racism (Shelby 2007), sexism, and other forms of discrimination, then there is a worry that any algorithm on which the police rely will necessarily be based on such discrimination – assuming that such discrimination is present in the accumulation of the data used in the algorithm (Mayson 2019).

More generally, researchers have argued that the use of algorithmic policing in isolation (without being augmented by community policing, for example) is dehumanizing to both the

community being policed and the police themselves (Hunt 2022). Regarding the former, the worry is that individual members of the community are treated as part of an indistinguishable mass rather than in accordance with the respect each person deserves given norms of political morality. Regarding the latter, there is a risk that undue reliance on algorithms may amount to "agency laundering," or stripping the police of their moral agency and responsibility (Rubel et al. 2019, 2020).

Deception as an Investigative Tactic

Moving from broad policing models and strategies to specific investigative tactics, there are several common practices that raise important legal, political, and moral questions. To what extent are the police justified in the use of deception and dishonesty as part of their law enforcement practices? Three common police tactics involving investigative deception are (1) the use of informants, (2) the use of operations giving rise to entrapment, and (3) the use of surveillance.

Police are trained to use informants to obtain useful information through a variety of authorized law enforcement collection activities. The informant's identity, information, and relationship with the police is confidential, allowing the informant to work their way into the confidence of unwitting suspects. Informants act as agents of the police for a great many reasons, but one the most common reasons they do so is because the police have leverage over them. An arrangement between a leveraged informant and the police is in many ways like a contract in that both sides voluntarily enter into an agreement with the intent that each side will assume certain obligations under the agreement (Hunt 2019).

The police might indicate that they have evidence that a person committed a crime that exposes the person to potential punishment. The police make the person an offer: If she acquires evidence or information for the police (including through conduct that would otherwise be illegal), then the police will consider advising the prosecutor (responsible for prosecuting the person's alleged crime) of the person's assistance so the prosecutor can consider recommending that the

person receive a downward department from the punishment for which she is eligible. The person accepts the offer and performs according to the terms of the bargain.

This sort of bargaining process raises normative principles underpinning contractual relations and gives those principles weight with respect to questions about the justification of the agreement between the police and the informant. For instance, did the informant have a "real choice" given the police's leverage? Was the substance of the agreement – what the police asked the informant to do – justified from a moral perspective? (see Miller and Blackler 2005; Harfield 2012; Hunt 2019).

Sting and undercover operations are another common form of investigative deception. These tactics often involve the use of informants, as when the police, say, use an informant to induce businesspersons to engage in a conspiracy to bribe government officials. In addition to general moral questions about the use of false scenarios to induce people to commit crimes, the use of sting and undercover operations often raises legal questions regarding entrapment.

Entrapment is a legal defense in the United States, and there are various legal tests used to determine when a person has been entrapped. Under the subjective test – the predominant test based upon federal precedent – a person is entrapped when the government induces the person to commit a crime that the person is not predisposed to commit (Jacobson v. United States 1992). In other words, the government must show that the defendant would have committed the crime even if (in some possible world) the defendant had not been induced by the government (Hunt 2019: chapter 5). Under the objective test – embraced by the Model Penal Code and adopted in a minority of jurisdictions – a person is entrapped when the police use unreasonable tactics: "Methods of persuasion or inducement...[that] create a substantial risk that...an offense will be committed by persons other than those who are ready to commit it" (American Law Institute § 2.13). Accordingly, the subjective test is about what is in the mind of the defendant (a question of criminal law), and the

objective test is about the reasonableness of the police's conduct (a question of criminal procedure).

On the other hand, entrapment is no defense in the U.K. and Australia. Although entrapment is no defense in English law, a series of court opinions confirm that there is a commitment in English law to the principle that the state should not lure citizens into committing legally forbidden acts and then seek to prosecute them for doing so (see R. v. Loosley 2001; Ashworth 2002). One of the underlying issues with the use of sting and undercover operations is thus preventing coercive police tactics through rule of law principles that shield citizens from oppressive executive agents.

Finally, surveillance is a deceptive investigative tactic that is common among police departments around the world – a tactic that is often conducted in conjunction with the police's use of informants and operations that may give rise to entrapment. At the most basic level, Gary Marx defines surveillance "as regard or attendance to others," which often involves "gathering some form of data connectable to individuals" that is "tied to the goal of control" (Marx 2015: 734–735). Marx also describes how surveillance occurs in the private, corporate sector, not just in the context of state actions (Marx 2016). This is an important point because the domains often converge, as when the state relies on data from the private sector to surveil and investigate its citizens.

Of course, this does not mean that surveillance is always unjustified. In the context of policing, surveillance can obviously help promote security – often in a relatively unobtrusive way. This might include instances in which only a specific suspect is targeted for surveillance (rather than vast numbers of people through mass surveillance), as well as surveillance that does not stem from investigations that deviate from rule of law principles (Hunt 2019). These different perspectives are just another way of describing how surveillance – as with all police tactics – involves competing values, with security being but one value among many that must be considered.
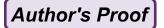
Constraints: General and Special Moral Requirements

The complexities noted in the first two sections raise a basic philosophical question about policing: How should the relevant legal, political, and moral questions be framed given the diversity of police strategies and tactics, as well as the diversity among police departments themselves? One way to approach this question is by focusing on special and general moral requirements (see Hart 1961; Rawls 1971) of the police.

General moral requirements are construed as nonvoluntary requirements that bind the police simply by virtue of background norms regarding commitments to personhood and moral equality, irrespective of any special roles or relationships entered. These requirements might be grounded in human dignity (such as one's high-ranking, equal, social status) or natural rights (such as rights that are not conventional and would exist in state of nature) (Simmons 2015). For instance, John Locke's political philosophy is known for a commitment to a natural right not to be coerced without consent, giving rise to one theory of legitimacy.

In the domain of policing, an officer may be justified in treating a person in a particular way based upon the person's unlawful resistance, but any force used by the officer must be done in a manner that does not denigrate the rights comprised by the person's high-ranking, equal, socio-legal status (given the assumption that there is a general moral requirement against affronts to one's human dignity). In a similar way, the police's use of informants is perhaps an indispensable investigative tool, but there are moral limits to the police's power to use persons (informants) as a means to a law enforcement end given one's status and value emanating from one's human dignity (Hunt 2019, 2021b).

Special (or positional) moral requirements are grounded in those special relationships that we have (or freely make) with other groups (see Hart 1961; Rawls 1971). This might include (voluntary) promissory or contractual obligations, or perhaps nonvoluntary associative obligations

owed to friends, family, and others. Accordingly, if a police officer fails to do her duty as police officer, then she is morally blameworthy because she voluntarily entered her position and undertook the duties of that position. Unlike most people, then, one of the explicit special obligations of the police is to obey the law.

Given recent attention to policing in the United States, consider how the police are constrained by legal obligations derived from the Constitution. The Fourth Amendment to the US Constitution protects the "right of the people to be secure in their persons . . . against unreasonable. . .seizures." A police officer's use of force (deadly, or otherwise) constitutes a seizure and must be reasonable. Courts have construed the "reasonableness" of force based upon "the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" Graham v. Connor, 490 US 386 (1989).

George Floyd was killed by a police officer in Minneapolis, Minnesota, on May 25, 2020. The officer knelt on Floyd's neck for over eight minutes while Floyd – who was handcuffed – exclaimed that he could not breathe. When Floyd became unresponsive, the officer continued to use his knee to pin Floyd's neck to the asphalt street. By any standard, the officer who killed George Floyd breached his special, positional obligation to follow law and policy. There was no threat of harm (Floyd was lying flat on the ground, handcuffed), and his actions (kneeling on Floyd's neck for over eight minutes) were clearly unreasonable and unnecessary.

Moreover, given basic assumptions of political morality, the officer failed to fulfill his general moral obligations regarding respect for one's human dignity. The upshot is a natural overlap between certain human rights and certain political and civil rights – as when the police have a general moral requirement not to brutalize persons, which is also prohibited by their special, positional duties as police (Hunt 2021b).

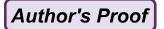## Conclusion: Police Abolition, Reform, and Nonideal Theory

The issues that have been raised in the preceding sections are at the heart of one of the more pressing contemporary debates about policing: Should states with police forces that engage in systemic injustices "defund" or "abolish" the police (Wertheimer 1975; Vitale 2017; McDowell and Fernandez 2018)?

"Defunding the police" can be described as reallocating funding away from the police to other government institutions funded by the state (Ray 2020). For example, a city might shift funding from the police to social services so communities can respond to mental-health crises, addiction, and homelessness more effectively. Some of these initiatives are politically possible (some cities have reallocated resources) and supported by research suggesting their efficacy (e.g., research suggesting that increased socioeconomic opportunity – not police – reduces crime) (Uggen and Shannon 2014). Researchers have thus argued that piecemeal reallocation is consistent with the background assumptions regarding the demands of justice: Core state functions (e.g., socioeconomic services) are handled by state agents with the relevant expertise, while other agents of the state (the police) retain core functions relating primarily to security (Hunt 2022).

On the other hand, arguments in favor of the actual *abolition* of the police raise several problems connected to the points discussed in the preceding sections. First is the *definitional problem*: Who counts as the police? Given the diversity of police roles and responsibilities – as well as the diverse administrative and bureaucratic manifestations of the police – there can be equivocation about which state entities count as "police" and which ones should be abolished. It is plausible to think that law enforcement – some sort of policing – is indispensable in any actual, existing (nonideal, nonutopian) society. Arguments regarding police abolition, then, can often be more like debates about what is meant by the term "police."

Second, police abolition raises a *socio-scientific problem*. As noted in the first section, it would be unusual to compare policing in the United States and Demark given the vast differences between the two countries. ~~Unlike Denmark~~, the United States must contend with~~, say,~~ the reality that there are more civilian-owned firearms (393 million) than people (326 million) in the United States. This and other important social-scientific issues raise difficult questions regarding police abolition in some countries but not others (Hunt 2022).

Finally, police abolition raises a *philosophical problem*: Would a reallocative model abolishing (or drastically limiting) the police be politically possible, effective, and morally justified given a polity's assumptions about justice? Policing scholars have embraced a variety of nonideal theory methodologies to evaluate philosophical problems in policing (see Hunt 2019, 2021b). For example, even if it were possible to privatize policing, reliance on private security forces would raise serious questions about the equal distribution of security to which most states are committed. Would efforts leading to the abolition of the police – rather than piecemeal reallocation and other reform efforts – improve the lives of those who are most in need of security (given that affluent citizens could simply hire private security without the police)?

The upshot is that any nonideal, nonutopian account of justice must have something to say about cases of unjust actions, such as those that create emergencies of security that might require just policing. From both a practical and moral perspective, many have thus argued that it is reasonable to take steps toward procedural and substantive police reforms that are politically possible, effective, and morally permissible given the assumption that states have a duty to promote the security of its members (Hunt 2022; Monaghan 2021).

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