

Innovations in Policing

THE POLICE IDENTITY CRISIS

HERO, WARRIOR, GUARDIAN, ALGORITHM

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Preface

This is not the book I set out to write. I had planned to begin a new project on a broader topic after my first book, *The Retrieval of Liberalism in Policing*, was published in late 2018. But the different threads I had in mind somehow converged into the present book. My return to the topic of policing was in part because policing continued to be such a pressing issue in public life. I also returned to the topic because—having spent several years of my life as an FBI Special Agent—I felt obligated to write something else about law enforcement. This was not because I believed I had some sort of privileged perspective. It is rather my belief that the voices of others are more important than the voices of law enforcement at this moment in history. Nor did I write about policing because I believed it would affect the social ethos (few, if any, academic books do that). I returned to the topic simply because I hoped to make a modest contribution to an ongoing conversation.

I began writing the first lines of what would become chapter 4 in January 2019, continuing to work on the manuscript through the end of 2020 with a publication date in 2021. The writing was done in both Blacksburg, Virginia and—after accepting a faculty position at the University of Alabama—in Tuscaloosa, Alabama. A fair amount of the work occurred during a pandemic (as well as a surreal presidential campaign and election in which policing was a significant issue). As someone who enjoys trail running, the pandemic provided even more reasons to spend time outdoors. Accordingly, this book benefited from many hours exploring the natural areas near my new home—especially the isolated forest service roads in the Oakmulgee District of the Talladega National Forest. The day I began sketching this preface—August 29, 2020—I saw a wild hog for the first time (along with a hawk and three turkeys) while running in Oakmulgee.

An early draft of chapter 4 was presented at a criminal law and legal theory workshop at the University of Toronto Faculty of Law in June 2019. I appreciate Vincent Chaio's invitation to participate, as well as his thoughtful comments on my work. An early draft of chapter 4 was also presented at the annual meeting of the Southern Criminal Justice

Association in Nashville, Tennessee, in September 2019, and at the University of Alabama Department of Philosophy in January 2020. I especially appreciate the comments and kindness from my new colleagues in Tuscaloosa. I am of course indebted to the many editors, anonymous reviewers, and other scholars with whom I engaged during this book's formation—including Ellen Boyne, Jack Call, Brian Clack, Raff Donelson, Barry Lam, Jake Monaghan, Stephen Owen, Daniel Quinlan, and Kate Taylor, among others. They have—each in different ways—improved the book tremendously.

This book is about identities, and it thus seems fitting to give special thanks to my parents, brother, and grandparents for the role they played in shaping my own identity. I do not mean simply instilling a particular set of ideas and values—we all go our own way eventually—but rather instilling a sense of unconditional love and support. If anything I do shapes my own children—Henry and Oliver, to whom this book is dedicated—I hope it is likewise giving them the knowledge that they are loved unconditionally. To my wife, Melissa, I owe more than I could possibly put into words. I am so very fortunate that we were assigned to share a mailbox at Governor's School on the Hendrix College campus in the summer of 1996.

L.W.H. Tuscaloosa, Alabama, November 2020

Introduction

A Multifaceted Theory of the Police

Looking back now—as an academic philosopher—it is strange to think of myself sitting in a shooting range classroom at the FBI Academy on Marine Corp Base (MCB), Quantico. It was my first week of New Agent Training, and I was sitting with my fellow New Agent Trainees in an early firearms session. Situated within thousands of mostly wooded acres—which are punctuated by random explosions and marine fire—MCB Quantico is both serene and eerie. The walls of the FBI Academy itself feel deeply oppressive. A relic of 1970s brutalist architecture, the stark academy buildings are linked together by a series of enclosed passageways that do not require one to set foot outdoors. This gives the distinct impression of scuttling back-and-forth in a hamster cage, waiting to escape to a wooded trail at the end of the day—or perhaps off base to a chain restaurant on the weekend. The point is that my four months of training at the FBI Academy was a thoroughly insular experience. At the same time, this insularity created a rich and rewarding experience, strengthening bonds between trainees who were pursuing a decidedly exclusive career path together. One of my fondest memories was spending my evenings with my suite-mates watching *Band of Brothers*, the miniseries produced by Steven Spielberg and Tom Hanks, based on Stephen Ambrose’s World War II book. Similar sentiments of exclusivity and bonding could be expressed about the other law enforcement academies—local, state, and federal—around the world.

In a sense, the juxtaposition between philosophy and firearms—between Quantico classroom and college classroom—is not so stark. We were discussing life and death in that first firearms session—a topic that is central to many areas of philosophy. The primary difference is that there are few actual discussions at a law enforcement academy. Police culture is quasi-military in nature and police training is typically a one-way affair: Trainees are told what to do and think, and, importantly, *who they are*. Their self-concept is nudged toward the mythic idea (a story we tell ourselves about how the world works) of a hero on a warrior’s path—sheepdogs guarding sheep in an eternal battle against wolves lurking within society. It is admittedly difficult to pin down the various facets of such a nebulous

account of the police role. And it is even more difficult—given the complexity of policing—to assess whether there is anything justified about the police mythos. That is the task of this book.

The thesis of the book: The many competing conceptions of the police role—heroes, warriors, guardians, and beyond—have given rise to a police identity crisis. The metaphor is remarkably apt with respect to contemporary police culture. “Identity crisis” is a term from within the history of psychology referring to a theory of psychosocial development: the progression of life stages, relationships, and crises. Roughly, an identity crisis is a life stage in which a person seeks to discover who they are and their role in society; it is thus a time of potential role confusion in which the person is unsure of their self-concept. The idea is that if one can resolve adolescent identity crises positively, then one may have a successful adulthood and later life.¹ This book argues that the police are struggling with an analogous form of role confusion. There is a debate within society and police culture about the very nature of the police role and how police should conceive of themselves.

The traditional method—within academia, at least—for analyzing problems is to take a narrow approach from within a single discipline. We are thus fortunate to have many insightful books and articles on policing from within philosophy, law, criminology, history, psychology, and other disciplines. These sorts of narrow, fine-grained analyses are vital for understanding the details of a problem. Accordingly, I employ a similar attention to detail where appropriate. However, this book will often take a novel departure from the traditional method. I suggest that a wide-ranging analysis encourages a more complete understanding of the problem of policing. By drawing upon a variety of disciplines—including those noted above—this book seeks to illuminate the police identity crisis by identifying larger patterns that become manifest within the human sciences. The book’s methodology thus gives rise to a *synthetic* theory about the police identity crisis: a synthesis drawing upon patterns observed from a broad array of disciplines. As the book moves towards its conclusion, this synthetic approach is complemented by an *analytic* inquiry into the various conceptions of the police role. In other words, given assumptions about the meanings of the basic legal, political, and philosophical tenets of liberal societies, the book examines the extent to which various conceptions of the police role are and are not justified.

The role of the police has become one of the most hotly debated, contentious issues facing society, and many of the contemporary conversations have implicit underpinnings from a variety of disciplines. The idea here is to make these underpinnings explicit, drawing out the different lenses through which law enforcement may be understood—each with its own implications. Although this approach will inevitably fail to please everyone, it is a genuine (and modest) effort to join a conversation with multiple scholarly and lay audiences. And while conceiving of the police as heroes,

warriors, and guardians is not a new phenomenon, the book's multifaceted explanation—combining several ideas and relating them to the problems western societies now face—is new. It is plausible to think this approach is justified given policing's inherently complex and multifaceted nature—a nature that I hope will benefit from having many “views of the cathedral,” so to speak.

The scope of the book: Despite the book's wide-ranging approach, it is of course impossible to do everything. There are deeply important accounts of the police role from within a variety of disciplines. Within philosophy, some have written insightfully about a peacekeeping model of the police, while others have offered normative teleological theories evaluating the police based upon the extent to which they realize collective ends and produce collective goods given collective moral responsibility.² I myself wrote a book examining the extent to which contemporary law enforcement practices are consistent with the basic tenets of liberalism—a book steeped in social contract theory, reciprocal rights and duties, and the entrustment of police to provide security.³ From within the field of law, there is a rather extensive legal literature about various dimensions of police legitimacy and what constitutional democracy requires of the police.⁴ The field of psychology has produced illuminating work on procedural justice and other areas vitally important to policing,⁵ while sociological work such as Sarah Brayne's *Predict and Surveil* provides detailed, on-the-ground descriptions of the police's use of big data.⁶

There are many who have made tremendous contributions to the scholarly conversation about the role of the police in a constitutional democracy, but it is beyond the scope of this book to give everyone the time and attention they deserve. I hope readers will further explore the growing literature on policing, a portion of which I have tried to acknowledge in both the text and the notes. This book reaches farther afield given the contention that the problems of policing are not limited to the administration of justice and given that the questions philosophers ask are not limited to academic theorizing. Regarding this last point, I will occasionally make general observations regarding the work of an FBI Special Agent (which includes working with local, state, and other federal law enforcement officers) to make points about the police. It should of course be noted that there are many differences between, say, an FBI agent working a white-collar crime investigation and a sheriff's deputy making a roadside stop. To be sure, the functions of federal agents are not exactly replicated by those of street-level bureaucrats such as police officers. In the coming pages, I suggest that the police are not typically known for deliberation, but rather looked upon as heroes who make decisive, split-second decisions under fire. Accordingly, one might contrast this with an FBI agent who spends large amounts of time behind a desk, connecting the dots in a complex white-collar crime or national security investigation. Although an FBI

agent's job is undoubtedly different from the job of a uniformed officer, there are fundamental, overlapping features of both jobs. This book focuses upon the concrete commonalities among all law enforcement officers.

A related point is that the book focuses upon policing in the United States. This is in part due to the proliferation of cases in the United States that have received international attention. That said, there are moral, political, and jurisprudential resonances among different states and cultures (such as human dignity, human rights, and the rule of law) that connect different manifestations of policing in a variety of ways. So while much of the context is American, the concept of policing and what the police should do are questions that virtually all societies must ask. The hope is that these connections make the book's framework applicable across the varieties of policing that are found around the globe. Consider, for instance, the cooperation and joint training between American law enforcement agencies and foreign military partners such as the Israel Defense Forces (IDF), leading Angela Davis to connect issues in American policing with ongoing political and human rights issues in Israel.⁷ Her work highlights connections between U.S. law enforcement officers—from sheriffs to FBI agents—and tactics employed by foreign defense forces. In other cases, the connections to the U.S. may be even more surprising, as William Finnegan's reporting in *The New Yorker* notes:

According to Paul Hirschfield, a Rutgers sociologist who has written about international law-enforcement practice, the difference [between the U.S. and other developed nations] is partly in the basic work environment. "American police encounter conditions that are more like Latin America than northern Europe.... These vast inequalities, the history of enslavement and conquest, a weak social safety net. The decentralization. Police are more likely to encounter civilians with firearms here. We don't have the levels of police corruption they do in Mexico, but we are not like other developed countries. The legal threshold for the use of force is lower." Another difference is training. In some Western European countries, police academies are as selective as a good American college.⁸

To be sure, international connections (and disconnections) abound. To take just one more international example, the "Toronto Police Force" replaced the word "Force" with the word "Service" to better reflect its approach to policing.⁹ That may sound trivial, but it helps illuminate how the themes in this book resonate broadly in the world of policing.

The use of terminology in the book: This book draws upon a variety of academic disciplines, and I have thus tried to make it accessible to a variety of audiences by avoiding unnecessary jargon. Still, it is sometimes necessary to use disciplinary terms given the book's multidisciplinary approach. For

example, the terms “individuation” and “archetype” are terms from within the field of psychology.¹⁰ In the context of this book, by individuation I mean the way the police are identified through a persona and archetype, distinguished from the rest of the community. One might characterize individuation as the course by which the police archetype develops in society. From a more traditional psychological perspective, this process is said to include both conscious experience and unconscious processes relating to life and death—issues that are uniquely relevant to a profession such as policing. As we will see, the police “warrior” concept creates a sort of archetype that lends itself to an exclusive brotherhood: a band of brothers tied together by the momentous responsibility and heroism that is inherent in their role. This emphasis upon one’s exclusive membership—one’s sharing in the archetype’s mythos and ethos—contributes to unique moral codes such as protecting members of the brotherhood at all costs. On this latter point, we will consider the so-called “blue wall of silence,” which encourages police not to report on (or not to tell the truth about) a colleague’s misconduct.

The broader idea is the way that police culture has channeled fear and existential angst, implying that eternal heroism (often manifested through warrior and guardian personas) can account for fear and serve as a central basis for the conception of the police role. In short, here is the analogy that is in play: In the same way a teenager may have an identity crisis in high school—jock, nerd, prep, and so on, the police are in the midst of their own identity crisis—hero, warrior, guardian, and so on. But given the police role and responsibility in society, it is a crisis with much higher stakes.

I want to be clear at the outset that my references to the psychoanalytical tradition are informal and intended to be illustrative through analogy. I will not suggest that police reform should include officers exploring their unconscious feelings toward their parents. Nevertheless, the psychoanalytic tradition can help illuminate the current state of policing, even if by analogy. As we will see, warrior and guardian policing promotes a sort of artificial archetype and individuation, drawing upon the human experience of life and death viewed through the lens of cultural heroism. The problem is that this sort of idealization is not an appropriate conception of the police role inasmuch as our idealizations in political philosophy, policy, and police culture should emphasize the ideal of justice (and ways to pursue that ideal) rather than the ideally virtuous police persona. If this is the case, then we need to shift to a different model for conceiving of the police—one steeped in collectivity. By *collectivity* I am thinking generally of the tension between individuality and the collective arrangements of society and how there might be an analogous individual-collective tension in the context of policing.¹¹ We thus consider the police identity as an individual warrior or guardian on the hero’s path, versus the police identity as a component of a collective pursuit of justice.

The book certainly will not try to reframe (old) strategies—such as community policing—as new solutions, but rather show how individual-collective tension has sabotaged these strategies from the outset. With this in mind, the book makes the novel claim that *public reason* (the idea that government principles should be justifiable to all those to whom the principles are meant to apply) can serve as a unifying rationale and moral foundation for a justified police role that includes established strategies such as community and procedural justice policing.

The assumptions in the book: Here are two assumptions about the police role that seem reasonable: (1) Given public entrustment, the police have a duty to seek justice by promoting security within society; and (2) given other principles and values in society, promoting security is but one facet of justice that the police have a duty to seek. One of the goals of this book is to describe how the police's identity crisis has contributed to the police running afoul of the second point. In other words, in the struggle to embrace various identities and roles, the police have moved away from more holistic conceptions of justice—conceptions that focus upon legitimacy, the rule of law, human dignity, and other legal and human rights. I assume that these values are central to any conception of justice in liberal societies: societies that stipulate one's inherent, equal status and moral worth given one's personhood, which is prioritized in collective arrangements that are based upon reciprocity. Accordingly, the book's methodology for sketching a more just conception of the police role is constrained by four related guidelines. Although these guidelines draw upon John Rawls's *transitional nonideal theory* (in other words, constraints requiring us to address actual injustices in the world by pursuing policies that seek transition to an ideal of justice), they are methodological only. We need not dwell upon the voluminous literature regarding Rawls's substantive commitments of justice.¹² For purposes of this book, my assumptions regarding any substantive commitments of justice—such as a commitment to legitimacy, the rule of law, and human dignity—are sufficiently general and (relatively) uncontroversial. I invoke transitional nonideal theory simply as a background assumption regarding a set of rough guidelines for any pursuit of a more holistic ideal of justice.

For example, in seeking to address any injustice in policing, our policies should, first, simply be *politically possible* given a commitment to reasonable pluralism that allows for an overlapping consensus of views within a diverse society.¹³ Consider the diversity within most any city—from ethnicity, religion, and politics, to mental health, gender, and sexual orientation. Given this vast diversity, how do community members and government agents maintain an appropriate and justified communal relationship with each other? One guiding light will be the idea that communities should be regulated by laws, policies, and regulations that can be justified to each member—despite the diversity of perspectives. Second, our policies must

be *effective*: they must actually help resolve our problems.¹⁴ For instance, what tactics and rules should the police follow regarding reducing crime and promoting utility in society? Well, it seems obvious that we should promote rules and tactics that are effective at reducing crime. Accordingly, these first two guidelines regarding police reform—political possibility and efficacy—tend to involve social and historical examinations of actual doctrine and practice. This is an area in which evidence-based research in criminology and other social sciences (such as that described in chapter 4) is especially helpful. On the other hand, if effectively increasing security involves, say, pursuing tactics that denigrate police legitimacy, we must consider difficult moral questions regarding the extent to which security and legitimacy should be balanced in society.

This leads to the next two guidelines in the book's methodology, namely: Our policing policies must, third, be *morally permissible* and, fourth, *prioritize grievances based upon severity*.¹⁵ To be sure, there will be disagreement around the edges regarding policing tactics that are and are not morally permissible in liberal societies. Common ground might be reached by beginning with the assumption that the aim of liberal societies is not typically to make people more virtuous or good. Rather, critical standards on which liberal laws and policies are based seek just institutions prohibiting conduct that would harm others. However, one commonality among contemporary conceptions of the police role is that they emphasize idealized personas through individuated heroes, warriors, and guardians. Rather than focusing upon this sort of individualized archetype, the approach herein reorients the police role to collective political values. This means that the target is the ideal of justice—manifested in laws, regulations, and policies—not idealizations of persons and police. The core legal and philosophical tenets of liberal societies and institutions are not based upon the pursuit of an ideally virtuous persona.

But if questions of moral permissibility are based upon political principles, how do we prioritize competing moral claims—say, competing claims between security and equality? This book takes the approach that priority is to be given to grievous (over less grievous) injustices in terms of a lexical ordering (to put it in Rawlsian terms) of political principles. Given that the foundation of liberal societies is based upon one's equal status, moral worth, and dignity, the priority rule is personhood.¹⁶ To take a simple example, suppose the police are pursuing the (morally permissible) value of security by trying to stop property crime in a community. Although a justified value, their strategies for preventing property crime would preclude any tactics that are an affront to one's personhood—given that one's equal status, moral worth, and dignity are prioritized over reducing automobile theft. This is a simplistic point to be sure, but the hope is that it will be filled in over the course of the book.

The account of racism in the book: It should go without saying that any liberal ideal of justice is aspirational—a target for which to aim. I certainly do not mean to suggest that there was some (actual) golden age of policing when the police pursued justice holistically. Consider, say, the police’s roots in such things as slave patrols and strikebreaking.¹⁷ But the horrific history of policing does not mean that we should not seek to retrieve the aspirational ideals of liberalism.¹⁸ My approach is thus an appeal to the balance between nonideal and ideal theory in political philosophy. Until we identify and clarify an ideal of just policing (how things should be), we lack an objective, or aim, by reference to which our practical debates about the world (how things are) can be answered. Admittedly, the situation can seem hopeless. Oppressed people have struggled to accomplish collective security for generations, and we need only consider the contemporary state of affairs to see how far we are from justice.

Louisville police officers used a battering ram to enter and execute a search warrant in Breonna Taylor’s—a 26-year-old emergency room technician—apartment on March 13, 2020. The police were seeking evidence in a drug investigation and believed that Jamarcus Glover (Taylor’s ex-boyfriend) used Taylor’s apartment to receive packages. Taylor’s boyfriend, Kenneth Walker, was with Taylor when the two heard loud banging at the apartment’s front door. The police claimed that they announced themselves, but Walker indicated that he did not hear any such announcement. Fearing that someone was breaking into the apartment, Walker fired his gun and struck one of the police officers in the leg. The police responded by blindly firing several shots into the apartment, shooting Taylor five times and killing her. The police called an ambulance to help the injured officer, though Taylor initially received no medical attention. Glover was subsequently arrested for possession of drugs and stated that Taylor was not involved in drug distribution. Taylor’s family said Taylor “had big dreams and planned a lifelong career in health care after serving as an E.M.T.”¹⁹

George Floyd was killed by a police officer in Minneapolis, Minnesota, two months later, on May 25, 2020. The officer knelt on Floyd’s neck for eight minutes and forty-five seconds 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. Protests were held across the U.S.—and around the globe—against police brutality of Black suspects following Floyd’s death. These protests coincided with increased calls to “defund” or “abolish” the police, topics to which I turn in the book’s epilogue. On August 23, 2020—three months after Floyd’s death—the police responded to a woman’s call regarding a domestic dispute Kenosha, Wisconsin. When they arrived at the woman’s home, the police attempted to subdue and arrest Jacob Blake with a Taser stun gun. Video shows Blake walking around to the driver’s side of his vehicle, opening the door, and leaning forward. An officer grabs Blakes’s

shirt from behind and shoots Blake seven times in the back. Three of Blake's children—aged 3, 5, and 8—were in the vehicle and witnessed their father being shot, which resulted in Blake being paralyzed from the waist down. Blake does not appear to have a weapon in the video, but a knife was found on the floorboard of the car into which he was leaning.²⁰

By any measure, these horrific incidents should be remarkable in a liberal society such as the United States. But even at this late stage, in the twenty-first century, police brutality continues with alarming frequency. Indeed, the officer who killed Floyd acted with calm resolve in broad daylight, seemingly unconcerned that his actions were being filmed by citizens who pleaded for him to let Floyd breathe. The incidents are not remarkable because the police sought to make arrests, or even that they used force. For instance, in Blake's case, police were called to the scene and Blake resisted; it was also reported that Blake had an outstanding arrest warrant for domestic abuse-related charges.²¹ What makes these incidents remarkable is that they are part of a long series of encounters in which police use what seems to be indiscriminate force against African Americans. Consider, on the other hand, the white gunman (Kyle Rittenhouse) who carried an "assault-style" rifle down the street—past police, who did not even stop him—during the protests following Blake's shooting. Rittenhouse walked past the police unabated, leaving a scene at which he killed two people and injured another.²² How do we make sense of this when, say, Philando Castile (a Black man) was shot and killed by a police officer in his car (with his girlfriend and girlfriend's 4-year-old daughter looking on) after voluntarily informing the officer that he was (lawfully) in possession of a firearm?

Although these cases seem to suggest that the police exceeded their legal authority, constitutional doctrine is quite permissive when it comes to the police's discretion to use force. Alice Ristroph's legal scholarship makes the important point that—beyond an officer's suspicion—the extent to which people comply with or resist the police plays a significant role in the police's authority to use violence.²³ While that may seem unsurprising and (ostensibly) race-neutral, Ristroph shows how a "duty of compliance" and a "privilege of resistance" are distributed along racial lines.²⁴ This is especially tragic because the privilege of resistance (for example, declining police encounters, police requests to search, and police demands to answer questions) is a right that the Constitution requires *all* people to assert (by refusing to comply, walking away, remaining silent, and so on).²⁵ As legal scholar Eric Miller puts it, "Democracy...is a reciprocal process of public participation in government decision-making, rather than a unilateral imposition of the governor's determinations upon the governed."²⁶ These fundamental concerns have led philosophically-minded scholars such as Ekow Yankah to call for a "philosophical reimaging of the Fourth Amendment" as a way to address "the tense relationship between police and communities of color."²⁷ With this backdrop in mind, then, I will

examine the conception of the police role itself and how it encourages the pursuit of (unjustified) violence in the first place (parallel to broader, societal problems of distributing rights and duties along racial lines).

The more fundamental point is that—in no uncertain terms—racism is a pressing moral, political, and legal problem in policing. Work by Christopher Lebron, Tommie Shelby, and others have provided deep philosophical insight into the backdrop of systemic racism in society. This includes the fundamental clash between democratic principles on the one hand and unwarranted beliefs and attitudes that demean African Americans and their social value on the other hand, as well as broader accounts of the effects that an unjust economic and political system has on the lives of the Black urban poor.²⁸ I am heartened that there is much good work being conducted on the entrenched, systemic problems of racism in society. But with respect to policing specifically, it should come as no surprise that racism is not the only problem—nor is it obviously the central problem. The law enforcement officers (federal, state, and local) with whom I worked were complex people navigating a difficult job. There are of course many ways racism may become manifest, but the officers I encountered would disavow any hint of explicit prejudice. Of course, some officers are explicitly racist, and, in any event, one may display racism in subtle ways such as relating to some groups with greater fear, hostility, and so on. On the other hand, I *did* work with many law enforcement officers who clearly identified as some sort of Rambo-esque, macho warrior. Indeed, this concept is expressly embraced as part of the police identity by many police trainers inside and outside police academies. Why?

Unlike the secure bubble of academia in which I now find myself, policing can be a dangerous profession in which one is faced with (in the United States, at least) enforcing the law against a public armed to the teeth. That is an external gun policy and gun culture problem, not an internal police culture problem. Moreover, in wealthy, stratified states such as the U.S., the police are asked to focus their law enforcement role on impoverished communities—communities in which we see high levels of violent and property crimes fueled by generations of systematic oppression. The police are mostly powerless to affect the deep, structural policies (economic and political) that create and sustain this stratification, including high-level white-collar crime and government fraud and corruption. Even the FBI—which dedicates many agents to white-collar and government crime—is largely focused upon other “national security” matters. I was an FBI Agent in 2008—during one of the biggest economic scandals in history—and do you know how many top bankers went to jail after the credit crisis that year? One.²⁹ So we might say that the police’s central problem is political given that the focus is typically on one set of social harms and not others. To put it differently, perhaps we have less of a policing problem and more of a class, poverty, and political problem.³⁰

I am sympathetic to the idea that focusing upon problems within policing—racism or otherwise—is a distraction from the deeper problems underlying society. However, that idea is not the whole story. While it may be unhelpful to simply exclaim that “all police are racists,” it is also unhelpful to simply place all the blame upon capitalist hegemony. True: economic, political, and criminal inequalities are deeply rooted in capitalist relations of production, but that fact does not absolve police culture.³¹ In this book I propose a third way to examine problems within policing: An examination of the deeply entrenched conceptions of the police role—police as individual heroes, warriors, and guardians—and the extent to which those conceptions are (in)consistent with the basic legal, political, and philosophical tenets of liberal societies. Given these competing conceptions of the police role, I frame my examination in terms of an identity crisis. The hope is that this approach helps provide a more complete account of what we should talk about when we talk about problems in policing.

The plan for the book: Each of the following four chapters considers a conception of the police and how that conception affects the pursuit of justice. These examinations will be considered from a variety of perspectives: historical, psychological, logical, ethical, and beyond. Chapter 1 examines the history of the police’s pursuit of a heroic identity and the extent to which that identity is problematic. One of the central problems is that a heroic ethos obscures the value of pursuing justice holistically and collectively. The chapter begins by describing what might be called the police’s existential identity crisis. It is in part the trend toward heroic individuation—and away from collective justice—that lays the groundwork for an unjustified police warrior role. The chapter examines how ideas about manliness (both historically and through a post 9/11 heroic ethos) have something to teach us about policing and governance, particularly with respect to the construction of different mythologies of policing at different times.

Chapter 2 examines the extent to which police responses to societal and crime problems are framed by two related approaches: (1) Utilitarian tactics of crime control and reduction in which the end justifies the (warrior’s) means; and (2) officer individuation through a warrior mythos, rather than an emphasis on collectivity. Building upon chapter 1’s discussion of policing’s focus on heroic battle over evil, chapter 2 introduces the warrior identity. The chapter considers how the warrior ethos embraces the position that enforcing the law and stopping crime is a result that justifies an illiberal and undemocratic means by which the result may be achieved. The upshot of this approach is that warring with a community is justified if it stifles crime and criminals. Police militarization is not a new phenomenon, but the combination of militarization and warriorization has raised new practical and philosophical problems within policing with which the chapter contends.

Chapter 3 examines how police culture has attempted to address the problem of utilitarian police warriors by shifting to a guardian mythos. One of the chapter's tasks is to detangle and clarify the foundational characteristics of the Platonic guardian. Accomplishing this task helps answer questions regarding the extent to which the guardian mythos is in fact a solid foundation on which to build a more holistic, justified conception of the police role. If we assume that a holistic conception of justice entails protecting the rights of all persons in society—including the impoverished and those who have broken the law or who are suspected of breaking the law—then the shift to a police guardian archetype is philosophically confused and exacerbates the police identity crisis. The chapter argues that the ideas stemming from the police guardian conception are neither consistent with a practical understanding nor a philosophical understanding of the guardian concept. The result is a police identity that is idiosyncratic, inapt, and continues to focus upon individual archetypes in the pursuit of justice. Both the warrior mythos and the guardian mythos, then, breed a culture in which crime reduction is privileged over other fundamental values—such as legitimacy, security of person within the community, and human dignity. The upshot is that Plato's guardians—though not a perfect fit with today's police role—make an important contribution to modern thought regarding policing and justice.

Chapter 4 begins by examining how policing's emphasis on heroic warriors and guardians has converged with technocratic strategies driven by algorithms. Sophisticated tactics—such as predictive policing and other advanced technology—might be justified (and effective) when employed within the constraints of a justified police role. However, such tactics exacerbate the problems within policing given the identity crisis examined in prior chapters. Chapter 4 links the identity crisis to technology, suggesting that the solution to the crisis is not that the police should have *no* identity; a conception of the police centered on the pursuit of justice is a good thing, mindlessness in the face of technology is not. In a way, then, chapter 4 shows how technology can dehumanize the police—not just the community—to the extent that it belittles their skills and strips them of agency in the collective pursuit for justice. It is thus a false dilemma to suggest that policing must *either* be subsumed by technocratic judgments encoded in obscure algorithms *or* be based upon a police ethic steeped in the wise discretion—as it were—of hero, warrior, and guardian policing. Accordingly, the second goal of chapter 4 is to set forth a third option: a conception of the police role that is consistent with the basic values of a constitutional democracy in the liberal tradition. The hope is that clarifying the police role will clarify the constraints upon police tactics—even if there is good evidence that various tactics are effective law enforcement strategies.

The book's epilogue begins by considering the calls to “defund” the police following George Floyd's death, along with other political and legal

issues that are external to policing. After a survey of these proposals, the epilogue summarizes practical steps that might help reorient policing away from individual heroes, warriors, and guardians, and toward a collective pursuit of justice. In an ideal world, we might reach a broad consensus that crime and the need for police may be reduced by addressing the deep structural inequalities (social and economic) within society. However, the epilogue concludes that—in the meantime—it is reasonable to take steps toward police reforms that are politically possible, effective, and morally permissible in terms of the broad commitments (such as legitimacy, the rule of law, and human dignity) of liberal societies. The basic tenets of justice in liberal societies are inclusive, egalitarian, and interconnected, meaning that police–community strife will not be resolved by simply focusing upon narrow legal standards and reasonableness inquiries regarding the conduct of individual police officers. The central point of the book is not that policing should be understood as an abstract academic problem, but that street-level law enforcement is deeply connected to the problems about which philosophers, legal theorists, psychologists, historians, and others have long thought.

Notes

- 1 The term “identity crisis” is said to have been coined by famed psychologist Erik Erikson, who is known for his theory of psychosocial development. See, e.g., ERIK H. ERIKSON, *IDENTITY AND THE LIFE CYCLE* (1980) (1959), among Erikson’s many other volumes and papers.
- 2 See, e.g., JOHN KLEINIG, *THE ETHICS OF POLICING* (1996); JOHN KLEINIG, *ENDS AND MEANS IN POLICING* (2019); and SEUMAS MILLER, *THE MORAL FOUNDATIONS OF SOCIAL INSTITUTIONS* (2010).
- 3 LUKE WILLIAM HUNT, *THE RETRIEVAL OF LIBERALISM IN POLICING* (2019).
- 4 See, e.g., BARRY FRIEDMAN, *UNWARRANTED: POLICING WITHOUT PERMISSION* (2017); ANDREW FERGUSON, *THE RISE OF BIG DATA POLICING: SURVEILLANCE, RACE, AND THE FUTURE OF LAW* (2017); Sandra G. Mayson, *Bias In, Bias Out*, 128 *YALE LAW JOURNAL* 2218 (2018); TAMARA RICE LAVE & ERIC J. MILLER (EDS.), *THE CAMBRIDGE HANDBOOK OF POLICING IN THE UNITED STATES* (2019); Eric Miller, *Encountering Resistance: Non-Compliance, Non-Cooperation, and Procedural Justice*, *UNIVERSITY OF CHICAGO LEGAL FORUM* (Article 8, 2016); Eric Miller, *Challenging Police Discretion*, 58.2 *HOWARD L. REV.* 521 (2015); Alice Ristroph, *The Constitution of Police Violence*, 64 *UCLA LAW REVIEW* 1182 (2017); DAVID SKLANSKY, *DEMOCRACY AND THE POLICE* (2007); Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40.4 *CARDOZO LAW REVIEW* 1543 (2019).
- 5 See, for example, Tom Tyler’s work on the way justice (especially regarding procedures that shape legitimacy) shapes people’s relationships within societies, including *WHY PEOPLE COOPERATE* (2011); *LEGITIMACY AND CRIMINAL JUSTICE* (2007); *WHY PEOPLE OBEY THE LAW* (2006); *TRUST IN THE LAW* (2002); and *COOPERATION IN GROUPS* (2000). See also Bernard Harcourt’s work on the way that actuarial methods are used to determine whom law enforcement officials target and punish. BERNARD HARCOURT, *AGAINST PREDICTION: PROFILING, POLICING, AND PUNISHING IN AN ACTUARIAL AGE* (2006).

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- 6 SARAH BRAYNE, PREDICT AND SURVEIL – DATA, DISCRETION, AND THE FUTURE OF POLICING (2021).
- 7 See ANGELA DAVIS, FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT (2016). See also Amnesty International, *With Whom are Many U.S. Police Departments Training? Israel* (Aug. 25, 2016).
- 8 William Finnegan, *How Police Unions Fight Reform*, THE NEW YORKER (July 27, 2020).
- 9 See Toronto Police Service, <http://www.torontopolice.on.ca/careers/history.php#:~:text=The%20word%20%E2%80%9CForce%E2%80%9D%20was%20eventually,City%20of%20Toronto%20in%201998>
- 10 See, e.g., the work of Carl Jung.
- 11 More specifically, I am thinking of the theme of tension underlying Freud’s classic text of Western culture, CIVILIZATION AND ITS DISCONTENTS (1930). That book has many (well-documented) flaws—and it is not necessary to discuss it in detail—but I submit that there is an analogous individual-collective tension in the context of policing.
- 12 See HUNT, *supra* note 3, at chapter 2, discussing this account of John Rawls’s transitional nonideal theory.
- 13 See JOHN RAWLS, THE LAW OF PEOPLES 89 (1999).
- 14 *Id.*
- 15 *Id.*; JOHN RAWLS, A THEORY OF JUSTICE 267 (1971) (1999).
- 16 See HUNT, *supra* note 3, at chapter 3 (defending the priority of liberal personhood).
- 17 For an essay discussing these two points of history, see Alex Gourevitch, *Why Are the Police Like This?* JACOBIN (June 12, 2020).
- 18 See HUNT, *supra* note 3 (examining the extent to which contemporary law enforcement practices are inconsistent with the basic tenets of the liberal tradition in legal and political philosophy).
- 19 Richard A. Oppel Jr. & Derrick Bryson Taylor, *Here’s What You Need to Know About Breonna Taylor’s Death*, N.Y. TIMES (Sept. 1, 2020). A Louisville grand jury failed to indict any of the officers involved in the no-knock search that led to Taylor’s death. This may seem surprising, but it is important to note that a judge authorized the execution of the search warrant at the apartment because of Taylor’s former boyfriend, a suspected drug dealer. When the police entered the apartment, Taylor’s current boyfriend fired on the police (not knowing they were police) and wounding one officer; the police returned fire that resulted in Taylor’s death. These facts may not favor legal culpability under existing laws, though Louisville subsequently banned no-knock searches (which clearly played a role in this tragedy). Alisha Haridasani Gupta & Christine Hauser, *New Breonna Taylor Law Will Ban No-Knock Warrants in Louisville, Ky.*, N.Y. TIMES (June 12, 2020).
- 20 Brendan McDermid & Stephen Maturen, *Wisconsin investigators say knife found at scene of police shooting of Jacob Blake*, REUTERS (Aug. 26, 2020).
- 21 *Id.*
- 22 *Id.* Although Rittenhouse put himself in the fraught situation—risking escalation by carrying a rifle and reportedly acting as part of a militia—he was being pursued by protesters and was attacked before firing his weapon. There is thus speculation that he may be acquitted under the governing self-defense law. See Eric Zorn, *Here’s why Kyle Rittenhouse, the teen shooting suspect in Kenosha killings, is likely to get off*, CHICAGO TRIBUNE (Sept. 3, 2020).
- 23 Alice Ristroph, *The Constitution of Police Violence*, 64 UCLA L. REV. 1182 (2017).
- 24 See *id.* at 1216, 1228, 1230.

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- 25 Eric Miller, *Encountering Resistance: Non-Compliance, Non-Cooperation, and Procedural Justice*, UNIVERSITY OF CHICAGO LEGAL FORUM 296 (Article 8, 2016).
- 26 *Id.* at 297.
- 27 Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40.4 CARDOZO L. REV. 1543, 1606 (2019).
- 28 See CHRIS LEBRON, *THE COLOR OF OUR SHAME: RACE AND JUSTICE IN OUR TIME* (2013); and TOMMIE SHELBY, *DARK GHETTOS: INJUSTICE, DISSENT, AND REFORM* (2016).
- 29 Jesse Eisinger, *Why Only One Top Banker Went to Jail for the Financial Crisis*, N.Y. TIMES (April 30, 2014).
- 30 Of course, others argue (wrongly, in my view) that if policing has a problem, it is just a matter of a few bad apples: the occasional bad character who engages in the occasional bad shooting or decides to arrest a six-year-old at school. See, e.g., Allyson Chiu, *Florida officer fired for 'traumatic' arrests of two 6-year-old students at school*, WASH. POST (Sept. 24, 2019).
- 31 On these points, see Adolph Reed Jr., *How Racial Disparity Does Not Help Make Sense of Patterns of Police Violence*, nonsite.org (Sept. 16, 2016), <https://nonsite.org/editorial/how-racial-disparity-does-not-help-make-sense-of-patterns-of-police-violence>