

POLICE and LAW ENFORCEMENT



GENERAL EDITOR
William J. Chambliss

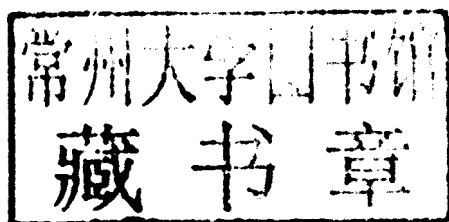
KEY ISSUES IN *Crime* AND PUNISHMENT

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George Washington University



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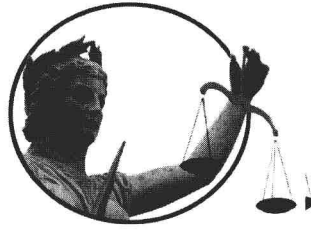
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Introduction

Police and Law Enforcement

Policing as we know it in the United States today is a relatively new phenomenon. Initially, police were established in England as what was known as a *constabulary*. Their job was to settle disputes on the spot, not to make arrests. “Keeping the peace” was of paramount importance, not enforcing the law. With urbanization and growing discrepancies between the rich and the poor, police were increasingly asked to punish people who did not comply with rules set down by those in power to make laws. The contradiction between imposing rules on people whose lives were not in sync with the rules laid down from above, and the traditional behavior of the less powerful, created dilemmas and conflicts witnessed in everyday practices of the police, as well as controversies over the proper role of the police in a free democratic society.

For many, the police represent an essential law enforcement entity that makes public safety and security the highest of its priorities. However, the stories creep into popular culture: the actions of unscrupulous officers confiscating drugs to later sell themselves, statistics showing unfair racial profiling in a municipality, or an officer using unnecessary force to subdue an offender. Stories like these create images of policing and law enforcement that are far less than ideal. In this volume, authors explore many debates concerning the ways in which police and law enforcement agencies operate.

In order to effectively assess police and law enforcement, it is crucial to examine many aspects of policing in society. The chapters in this volume largely focus on the discussions surrounding common duties that police

must practice (i.e., arrests and interrogations), the legal regulations on those duties; problematic policing techniques; and law enforcement alternatives to traditional policing.

Essential to the duties of police officers are the duties of arresting suspects of crime and interrogating the suspects to help determine if they have, in fact, committed that crime. Arrest is described as restraining a subject and stopping him or her from continuing to engage in his or her normal activities. This process is surrounded by a great deal of controversy, because detaining subjects is a sensitive issue. Broadly, this common practice of law enforcement is commended for upholding the peace and safety of the community, because it is often shared with the public through the media. Additionally, arrests provide information for crime statistics, which inform funding decisions for local police departments. Arrests also serve as deterrence for others in the community. Those who criticize arrests focus on the collateral consequences of this policing practice. On occasion, mistakes are made, and police officers arrest individuals who are later found not guilty for the crimes of which they were accused. This strains the bond between the community and the police, a topic discussed by many authors in this volume.

There are many other aspects of the arrest that have garnered discussion in this volume. As a result of the 1966 U.S. Supreme Court case of *Ernesto Miranda v. Arizona*, officers are required to inform a suspect that he or she has certain constitutional rights before the law enforcement agency proceeds to interrogate the individual. In Butler's *Miranda Warnings*, advocates for the use of Miranda warnings believe that the warnings help protect the suspect's right against self-incrimination, limit false confessions, and promote professionalism in the police force. Critics of Miranda warnings believe that these warnings discourage confessions due to a suspect's right to remain silent. Suspects will feel, according to critics, that police are working against them and will continue to remain silent. Miranda warnings have also been criticized as being more of a formality than anything, which significantly diminishes their intended effectiveness.

The ability for police to use force is also a highly controversial topic. Boggess's *Police Brutality* and Sun's *Deadly Force* show that there are rare occasions where law enforcement may act too swiftly and intensely, leading to a suspect's death or injury. Those who downplay the prevalence of the use of deadly force by police officers focus their discussion on the lack of a clear definition of police brutality. They also believe that data on police brutality is extremely hard to capture because of the code of silence that accompanies

police work, and that there is a lack of reporting of these infractions. Those who feel that law enforcement sometimes warrants the use of deadly force believe that deadly force is the ultimate symbol of the state's power over its members, and represents an import means of social control. In addition, advocates also believe that deadly force can help protect other citizens' lives and property. However, these controversial topics carry with them a great deal of criticism. These acts have a distinctly adverse effect on the public perceptions of police and law enforcement because they typically garner a great deal of negative media attention. The chapter on police brutality focuses on rotten apple theory, which posits that the few "rotten apples" in police departments should be to blame for these negative actions.

Police and law enforcement follow certain protocols that are also surrounded by a great deal of debate. In this volume, authors discuss these debates in Ingram's *Entrapment*, Oleson's *Plain View Doctrine*, Ratansi's *Warrants*, and Gizzi's *Vehicle Searches*. While the legal meaning of entrapment is still a subject of debate, it can be generally understood as a process by which law enforcement officials coax subjects into committing crimes they would not have otherwise committed. Those in favor of entrapment techniques believe that law enforcement officers should take whatever steps necessary to apprehend criminals. They also feel that victims of certain crimes, like white-collar crimes, are unaware of their victimization, and entrapment must be used to uncover these criminals. The extraordinary means the government may use, according to critics, may further strengthen the distrust of citizens toward law enforcement. Advocates for vehicle searches, the plain view doctrine, and warrants believe that these regulations protect citizens' constitutional rights, protect officers from liability issues, and increase the effectiveness of police investigations.

Some actions and police customs, like the code of silence that exists among the police, further strain the relationship between law enforcement and the citizenry. Bulen's *Police Strikes and Blue Flu*, Martinez's *Zero-Tolerance Policing*, and Rabe-Hemp's *Police Corruption and the Code Of Silence* discuss the issues behind these often-criticized practices of law enforcement agencies, despite some benefits they may provide. Police strikes help to uphold officers' First Amendment rights and serve as a powerful tool for officers, as workers, to get their labor concerns addressed. Due to its universality, advocates for zero-tolerance policing policies believe that their "popularity and relative success is the sheer simplicity of its main proposition: make arrests." While advocates for the police code of silence argue that it helps garner solidarity with the police force and helps protect police

work, the potential for corruption that it creates may be detrimental to the public opinion of law enforcement.

Alternatives to law enforcement are typical in most communities, and Perry's *Police Privatization*, Geis's *Bounty Hunters and Rewards*, and Hawley's *Vigilantes* evaluate these issues. Police privatization is seen as a means to save money and increase efficiency. Conversely, law enforcement as a private entity could increase motivations for profit maximization while decreasing their intended functions of serving and protecting the citizens of the community.

Police and law enforcement is a topic that stirs a great deal of commotion because of the unique relationship these organizations have with the public. While many see officers as protectors of peace in society, others have the aforementioned reasons to be skeptical. This volume is intended to present these debates and offer solutions to potential and perceived problems.

William J. Chambliss
General Editor

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1

Accountability

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Accountability refers to the mechanisms by which both law enforcement officers and the agencies they serve are held responsible for promoting social order, reducing crime, and treating each individual fairly and within the limits of the law. Accountability lies at the heart of citizen concerns regarding police discretion, use of force, and the internal hiring practices of those in law enforcement. It both defines and protects citizens' rights while also promoting a collective sense of faith in the larger criminal justice system. In short, accountability serves as the public's first line of defense against acts of misconduct that can, and often do, violate the rights of those whom law enforcement agents have sworn to serve and protect. Yet few among the general public are aware of the behavioral standards set for law enforcement personnel, or how accountability is promoted and maintained. Fewer still even care about these issues until the most egregious acts of police misconduct become front-page news.

Police accountability, especially as it relates to discretion and use of force, was largely a taboo subject until well into the 20th century, when a study conducted by the American Bar Foundation brought the issue to the forefront of the legal arena. Central to their findings was the distinction between the use and misuse of discretion by law enforcement. Discretion itself is not problematic, but its abuse is. This simple statement ushered in a new era of accountability, largely fueled by highly publicized, late-20th-century events.

Early History of U.S. Policing and Accountability

Both the organizational structure and public perceptions of contemporary law enforcement have their underpinnings in the cultural and historical factors that have shaped the United States. The country's history and cultural heritage have also shaped the way in which those in law enforcement are held accountable for their actions—to the public they serve and under the law.

In reality, those in law enforcement are held accountable for their actions as set forth by law in the Fourth, Fifth, and Sixth Amendments to the U.S. Constitution. These amendments—now constraining police discretion in contemporary society—were originally written to apply to the U.S. military, as it embodied the only official agency of social control in the newly founded democracy. As the nation expanded and the need for more localized social control became evident, these same amendments were intended to guide and constrain the activities of all in law enforcement. Now referred to as the *rules of due process*, the constitutional guidelines were set in place to protect the people from unfettered discretionary power, especially with regard to arrest, use of force, search and seizure, and interrogation of suspects. Unfortunately, as the shift was made from a militaristic form of social control to the establishment of both local and federal law enforcement agencies, the rules of due process were slow to follow. Seldom, if ever, were the newly sworn officers required to adhere to the mandates originally set forth in the U.S. Constitution. Simply put, accountability was virtually nonexistent in the early years of law enforcement.

The United States, established and created by British descendants, modeled its early law enforcement agencies after those in Great Britain. In 1829, following legislative approval from the British Parliament, Sir Robert Peel created the nation's first police department in London. Paramilitary in nature, the specialized units within the department were hierarchically structured, uniformed officers were clearly distinguishable, and the badge became a symbol of authority—an image that remains important to this day. Founded upon the dictates set forth in nine guiding principles, the London Police Department required professionalism from its officers; respect for authority; and perhaps most importantly, the ever-present recognition that the police are the public just as the public are the police. Hence, the groundwork was laid for crime control through police-public cooperation and mutual respect. Concomitantly, the first seeds of police accountability were sown.

In the 1800s, with its own culture in its formative stages and the ways of it citizenry still strongly entrenched in their British heritage, the first organized police departments appeared in the United States. Boston paved the way with the establishment of the nation's first police department in 1838; New York followed suit in 1845, and Philadelphia modified its town watch system to a more modernized and official police department in 1850. The London Police Department was to serve as the model for the fledgling departments—from utilizing the same organizational structure to mandating the same professionalism from officers as that demanded by Peel. Success, however, was not achieved. Few specialized units were found within the departments, officer corruption was rampant, and those in law enforcement neither deserved nor received respect from the general citizenry. Hence, the police-public cooperation and collaboration diligently sought by Peel was nonexistent in early American law enforcement. Equally nonexistent was police accountability.

Both the advent of new technology and leadership brought change to the American landscape as law enforcement began to embrace change through the 19th and 20th centuries. Much of this change is attributed to the introduction of the automobile, the telephone, and the invention of the two-way radio. However, little change could occur—even in light of this groundbreaking technology—in the absence of strong leadership. Beginning in the 1920s, August Vollmer and his protégé, O.W. Wilson, provided that leadership.

Vollmer's Framework of Leadership

As chief of police in Berkeley, California, Vollmer placed the adoption of new technology and heightened professionalism at the top of his priorities. Emphasizing the need for both officer and departmental accountability, he introduced the use of innovative hiring techniques that included psychological testing and rigorous training before one could work the streets as a member of the Berkeley Police Department. As change transpired with the introduction of a more centralized departmental structure, change also occurred among the rank-and-file officers and the manner in which they performed their duties. In a concerted effort not just to reduce corruption by holding individual officers accountable after the fact, Vollmer attempted to prevent wrongdoing by pairing new technology with an innovative policing style. Thus, the patrol car and the two-way radio were introduced to police work and the American public. Passionate about his career and determined to establish the Berkeley Police Department as a model of police profes-