IDEAS IN AMERICAN POLICING

Policing Through Human Rights

By Jack R. Greene

America did not invent human rights. In a very real sense… human rights invented America.

—Jimmy Carter

Democratic policing is at the coalface of human rights and the legal system. That is to say, in democratic society the police are the first and central actors in mediating between social conditions and legal stricture, determining in large measure what is legal, fair, and just. At the same time, policing in democracies demands attention to human rights and constitutional protections. Local policing is on the front stage of the legal system and invested with considerable discretion in determining social facts and then applying legal remedies to the facts so interpreted. At the same time, policing is organized to protect the interests of the minority and the weaker segments of society.

Democracies have considerable responsibility to

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balance order with liberty. As Theodore Roosevelt once told us, "Order without liberty and liberty without order are equally destructive." In important ways, policing democracies imposes state control over civic behavior but at the behest and with the consent of the populace, a paradox rooted in a recognized need for government in civil life but constrained and controlled government intervention nonetheless. In short, the police are to help establish and maintain order and lawfulness but they too must be orderly and lawful in doing so.

Policing can also be seen as law in action, as opposed to black letter law as printed. It is legal realism giving life to laws that are at once substantive, procedural, and restorative, concerned with legality, but also with due process (Tyler 2001, Tyler and Huo 2002) and doing justice. In this way, policing gives life to human rights, meaning that the police make decisions that either affirm or deny the human rights of individuals. The police are mandated to protect and serve; they are the centurions at the gate, defenders of law, legality, freedom, individual liberty, and human rights. They are the miners at the coalface, intimately aware of the complexities of law and social action, while also the defenders of domestic freedom.

At its best, policing is a noble undertaking, protecting, defending, reassuring, calming, and restoring the social order as well as the dignity of individuals—victims, offenders, and the community at-large. At its worst, policing eschews democratic principles, rather favoring brute and indiscriminant force, ultimately trampling human rights. If you were to Google "police and human rights," you would come away with a tainted view of the police—violation of human rights, use of excessive force, and a disconnection from the principles of democratic governance. Of course, you would view policing through its failures, not its potential successes.

Central to any formulation of democratic policing is the acknowledgment that the police draw their legitimacy, and hence authority, from the populace, and in making their rounds help secure social structures and social values, which are rooted in human rights. So policing through human rights is an aspiration of democratic policing, one yet realized. The police are at once charged with enforcing the law, while also being constrained in how they go about such enforcement. Balancing the rights of the individual with those of the state has been a perennial question in democratic societies. In the past, this series has addressed questions of democratic policing and, more recently, the Police Foundation examined how the police approach matters of immigration. In both cases, the sensitivity of such matters is revealed in gaps between the preachment and the practice of modern-day policing. Closing those gaps can result in considerable improvements to the legitimacy the public accords the police.

Building on prior ideas presented in this series and other foundation work, this essay examines the pursuit of human rights, not as a peripheral matter to democratic policing but rather as a core value, and consequently as a means of organizing policing strategically and operationally. Such a posture will require considerable adjustment, not in what we wish for the police—our aspirations—but in how those aspirations are indeed made real.

The Rule of Law, Human Rights, and Policing

We are in bondage to the law in order that we may be free.

—Cicero

Ideas associated with the rule of law and human rights draw sustenance from the period of the Enlightenment, the cradle of democratic governance. The essence of this formulation is that no one is above the law—not citizen, not king, not government. Whether cast formally, substantively, or functionally, law must be prospective, known, equally applicable, and certain in its application. In democracies, adherence to the rule of law is the cornerstone in the protection

of individual rights (Tamanaha 2004). While recognizing discretion in its application, adherence to the rule of law also constrains discretion to the extent that it is bounded, consistent with the underlying premises of the law as well as expectations about fairness (Davis 1971).

In the U.S., when police officers are sworn in, the oath of office they take typically acknowledges that they will support and defend the Constitution of the United States and the constitution of their particular state, attesting to the rule of law. Such oaths also include ideas about being faithful to their office and to its exercise, acknowledging individual and human rights, as well as the authority the police draw from the public. The police are expected to protect both state and individual rights and ultimately to respect and defend human rights, something they attest to at the beginning of their careers.

Human rights are those rights and freedoms, applied universally, stemming from natural and man-made law. Human rights are universal and egalitarian: they speak to noble aspirations for humankind; they acknowledge humanitarian social conditions emphasizing rights and liberties and the need for governments to respect and protect those conditions. Such a communitarian approach accentuates the idea that recognizing rights correspondingly engenders responsibilities such that as people expect their rights, they will respect the rights of others. This matrix of rights and responsibilities shapes the social and moral order, providing the underpinnings of social control, including the role of policing in democratic society. In this way, democratic policing is inseparable from matters of human rights. As those who guarantee the social contract, police set the tone for democratic governance (Manning 2010). Key issues to such governance are adherence to the rule of law and support for human rights.

Beginning with the signing of the Magna Carta of 1215, the English Bill of Rights in 1689, the French Declaration of the Rights of Man in 1789, the first ten amendments of the U.S. Constitution, also known as the Bill of Rights, in 1791, and more recently in the European Union (E.U.) Charter of Fundamental Rights of 2000 (European Parliament), democratic governments have for over 800 years attempted to more clearly specify the balance between state and individual rights. These rights were initially established for the landed gentry but eventually have come to embrace women, people of color, youth, the elderly, native and immigrant.

Such efforts share some common elements, which are illustrated in the Preamble to the E.U. Charter of Fundamental Rights.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice (C 364, 2000, 8).

The U.S. Declaration of Independence (1776) and Bill of Rights (1791) can be seen as predicates underlying the sentiments and values of the E.U. Charter of Fundamental Rights that, in democratic societies, government structures and public acceptance of them provide the foundation for modern policing. While ideas and practices about political governance have shifted from liberal to conservative most recently in the Western world (Garland 2001), the institutions of government, including the law and its enforcers, draw and at times defend their institutional life from what are interpreted as democratic foundations formed on ideas about the rule of law, individuality, and human rights. Simply put, policing for human rights requires a closer look at our organizational and operational objectives, the role of the rule of law in such actions, and the standards by which we hold policing accountable to human rights and individual liberties.

Why Human Rights?

The care of human life and happiness, and not their destruction, is the first and only legitimate object of good government.

— Thomas Jefferson

In important ways, human rights is a larger concept than civil rights as we know them in U.S. constitutional law, as reflected in our Declaration of Independence, Constitution, and Bill of Rights, among other documents. Human rights are distributed across several U.S. political and administrative instruments, although they are not clearly labeled human rights. They tend, however, to be more directly organized in other parts of the world.

For example, following World War II the Council of Europe was founded in 1949, establishing "a system of international relations based on the values of human rights, democracy, and the rule of law" (Bond 2010, 6). Post–World War II Europe embraced the idea of "never again" and articulated a Convention on Human Rights first in 1950, providing for the civil, political, legal, and social rights of people. In Europe and other parts of the world, explicating human rights and then holding governments accountable to them has been a major undertaking for the Council of Europe, the European Union, and the United Nations Human Rights Council. Of course, in the U.S. formal accountability to the rule of law and human rights is the province of the courts, whereas informal accountability rests with the people.

Our civil rights come from amendments to the U.S. Constitution, known as the Bill of Rights. The Bill of Rights enumerates many rights for individuals and for states, including rights of citizenship, civil and states rights, and criminal proceeding and due process rights, but subsequent amendments to the Constitution include the abolition of slavery, women's suffrage, eighteen-year-old suffrage, and Prohibition and its repeal. Amendments also establish term limits, elections for the Senate, and income taxes, among others. All of these issues touch on matters of human rights, but it is in the Preamble to the Bill of Rights that a broader conception of rights is offered:

> The Conventions of a number of the States having at the time of their adopting the Constitution, express a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as *extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution* (emphasis added).

This preamble broadens the amendments collectively by focusing attention on the extent to which they create public confidence in government (legitimacy) and governmental action that is beneficent (purposeful in upholding human rights). By contrast, human rights are more broadly delineated in the E.U. Charter of Fundamental Rights, which has fifty-four articles divided into seven areas: dignity, freedom, equality, solidarity, citizens' rights, justice, and general provisions. They recognize that human rights ultimately stem from the inherent dignity of people. Vesting all in society with human dignity creates a social climate of equalitarianism and social equanimity, adherence to the doctrine of equality among people, and social composure.

Such a broad amplification of human rights in Europe in some ways combines the Preamble to the Declaration of Independence as well as the Bill of Rights, and in other ways broadens the responsibility of the state to protect individuals, families, children, the elderly, the disabled, ideas and associations, health and social services, and information, as well as those who stand before the law. Such a range of rights can be found in several places in the U.S. What can be said of the Bill of Rights and the E.U. Charter of Fundamental Rights is that both are living documents that adjust to the times, often in anticipation of the rights of individuals and often in response to their abuse.

What is important is the recognition that human rights are broader than the rights associated with criminal law and criminal process. They encompass the individual sense of dignity, respect, and free participation in society, as well as government's role to facilitate social exchange. Such rights need a mechanism for their protection, and in democratic societies that mechanism is the law and the judiciary, but often mediated by the actions of the police. Of equal importance, it is clear that policing in democratic societies draws its authority from the community, in all of its manifestations. Police legitimacy—individual, organizational, and institutional— is tied to concerns for procedural as well as substantive justice. How the police go about their business in interacting with the community is a major determinant of whether the community sees the police as

legitimate and just, warranting public support and respect, not fear.

Policing Human Rights Through the Intervention Continuum

A right is not what someone gives you; it's what no one can take from you.

—Ramsey Clark

Policing through human rights recognizes that the government secures the rights of its citizens, much in the same way that parents secure the futures of their children, responsible banks secure the investments of their depositors, or universities secure knowledge for future generations. The police are at the forefront of securing, upholding, and reaffirming rights to assure the dignity of individuals, for peaceful assembly free of fear and reprisal, for free speech, for civic participation, for due process, and
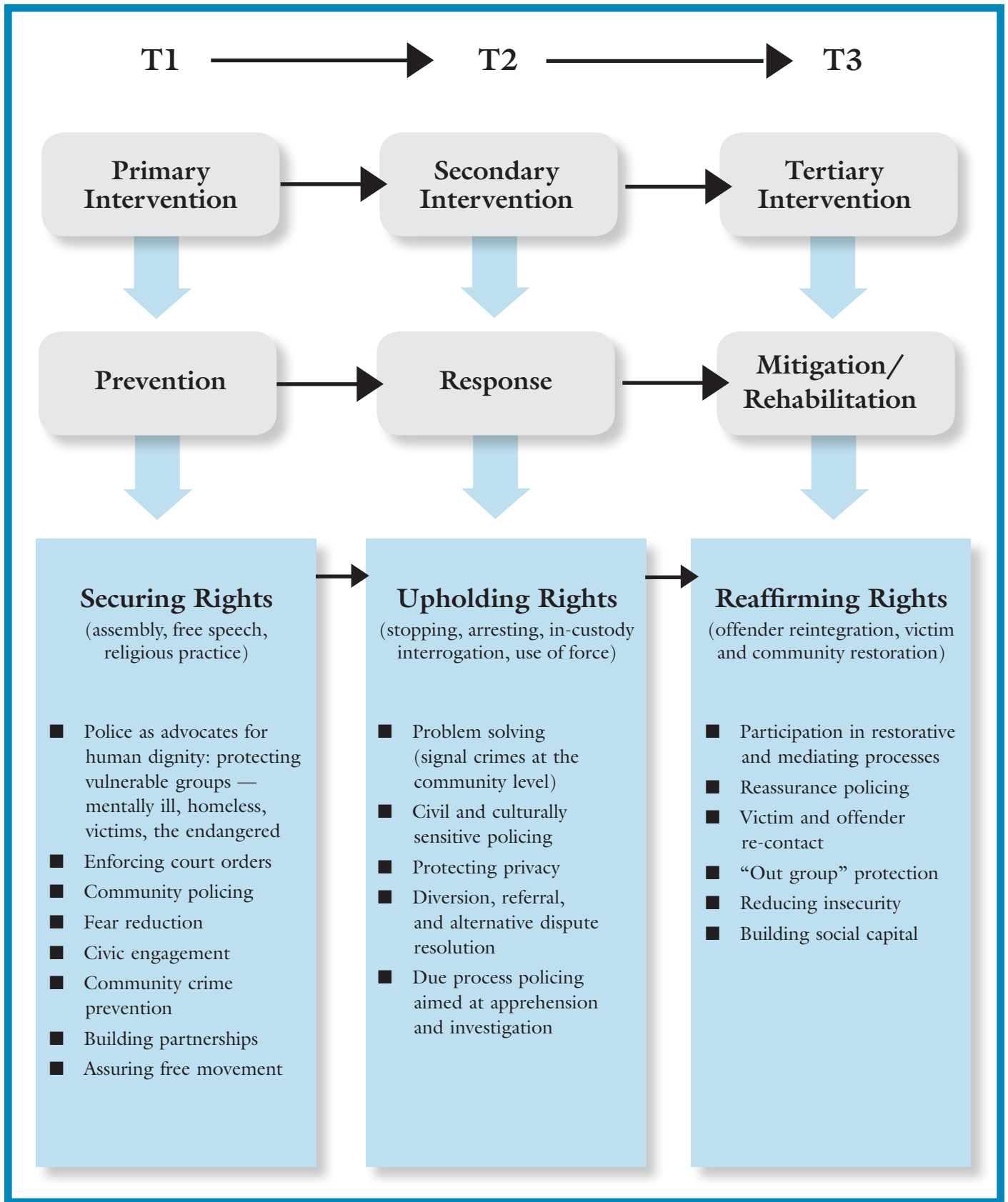
for the restoration of civil rights and processes following traumatic events. The police secure these rights at each stage of their intervention, albeit with differing focus. But make no mistake: policing is about the allocation of human rights. In a very practical way, if the police defend those rights, they are substantiated; if not, they are invalidated. Such power in substantiating or invalidating human rights places the police in a delicate balance, assuring collective interests while maintaining individual distinctions. Herein lies the paradox of democratic policing— assuring social control but not at the expense of individual liberty and human rights.

In many ways, we have tended to see issues of human and civil rights as being most associated with crime, victimization, and the taking of individuals into custody. But a broader focus on what the police do reveals a wide array of actions and decisions made by the police that significantly impact human rights. Considering the many ways in which the police intervene in social affairs provides an opportunity to better understand how policing through a human rights framework might take shape.

Figure 1 presents a continuum of police interventions emphasizing the range of human rights involvement at each stage of intervention. Of course, policing occurs on many levels; it seeks first to prevent,

> *Herein lies the paradox of democratic policing— assuring social control but not at the expense of individual liberty and human rights.*

T1 ⟶ **T2** ⟶ **T3**

| Primary Intervention | Secondary Intervention | Tertiary Intervention |

| Prevention | Response | Mitigation/ Rehabilitation |

Securing Rights
(assembly, free speech, religious practice)

- Police as advocates for human dignity: protecting vulnerable groups — mentally ill, homeless, victims, the endangered
- Enforcing court orders
- Community policing
- Fear reduction
- Civic engagement
- Community crime prevention
- Building partnerships
- Assuring free movement

Upholding Rights
(stopping, arresting, in-custody interrogation, use of force)

- Problem solving (signal crimes at the community level)
- Civil and culturally sensitive policing
- Protecting privacy
- Diversion, referral, and alternative dispute resolution
- Due process policing aimed at apprehension and investigation

Reaffirming Rights
(offender reintegration, victim and community restoration)

- Participation in restorative and mediating processes
- Reassurance policing
- Victim and offender re-contact
- "Out group" protection
- Reducing insecurity
- Building social capital

Figure 1. Policing for human rights through the intervention continuum

then to respond, and then to mitigate social and physical harm, while maintaining order, security, and human rights. Such an intervention scheme casts policing across time as a series of primary, secondary, and tertiary interventions, with differing goals, activities, and outcomes, which collectively either support or detract from human rights and civil liberties. Figure 1 diagrams police interventions with particular concern for their attachment to the rule of law and human rights.

Historically and currently, policing in the U.S., while espousing a general prevention mode of operation, is largely cast as a response capability, mobilized by those in need of police intervention (Black 1980) or through the observations of the police while on patrol. In response circumstances, issues of the rule of law and human rights are largely cast around police interventions such as stopping people for questioning, arresting them, searching them or their property, or interrogating them while they are in custody. Additionally, how the police take control of such circumstances, particularly through the level of force they use, is also a matter concerning the rule of law and human rights. In the U.S., guarantees afforded in the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the Constitution address most of these police interventions, providing a human and civil

rights context for policing. Having said this, if human rights are centered on the dignity of individuals, then the application of the law alone will be insufficient in assuring such dignity. Such dignity is ultimately accorded in the ways in which the police acknowledge such rights through myriad interactions with the public.

In some ways, the response mode of policing has received the most attention and review; it is the deep end of the pool concerning human rights and the rule of law. Unfortunately, this discussion is often cast as how police violate such considerations through excesses of police behavior, such as undue use of force, brutality, and violations of search, seizure, interrogation, or in-custody detention of persons under police supervision. Rarely is there assessment of how the human and civil rights of accused persons are actually protected by the police. Shifting police and public attention to how such rights might be supported, defended, and assured through police responses is a major undertaking having several streams of action.

One stream focuses on assuring that policing is procedurally legal, contributing to a sense of community acceptance of law and the police. Most recognize that at times the police need to take control of situations, people, and places. But, in taking control, we expect that the police will act lawfully, not just to the

letter of the law but to its spirit as well. As Supreme Court Chief Justice Earl Warren reflected, "It is the spirit and not the form of the law that keeps justice alive."

Upholding rights (see Figure 1) in accordance with the Bill of Rights and other Constitutional amendments occurs at the police response stage of intervention,[1] as do other important human rights associated activities that sometimes go unexamined. Policing that is culturally sensitive, that diverts people from the justice system through referral or alternative dispute resolution systems, or that assists victims upholds human rights as well, primarily in maintaining the dignity of those calling for police attention, and partly as a matter of solving persistent community crime, order, and fear problems. It is generally recognized that the law exerts a limited influence on the police for many reasons; police objectives are often socially rooted, selective enforcement is a practical necessity, and police discretion, particularly in choosing not to invoke the law, may actually accomplish police objectives more directly than legal intervention (Mastrofski and Greene 1993). The range of police responses, then, goes well beyond violations of the law. Such actions can

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[1] Crawshaw, Cullen, and Williamson (2007, 26–28) structure police interventions as protecting, respecting, investigating, and ensuring entitlement to human rights.

greatly enhance the human rights accorded individuals.

A related stream is associated with police use of discretion in support of human rights. This is visible in many police response practices, including how the police dispose of order maintenance situations (e.g., loud parties, traffic enforcement, homelessness, and minor disturbances), which constitute a significant proportion of police activity and decision making. Today, the police routinely use referrals to mediate disputes (e.g., housing disputes, drug referrals, youth-based programs, and the like). Police provide advice to victims about how to pursue their rights and claims or how to acquire victim compensation. They protect victims, such as battered women and children, often directing them to shelters and medical help, and through the enforcement of civil and criminal court orders to protect potential victims or to stop dangerous practices. Each of these interventions supports human rights, but often they take a back seat to arresting offenders, which, while it is what the police like to do, occupies a modest fraction of police effort.

While maintaining fidelity to due process rights of those under police supervision is mandatory, we can see that the police also deal with victims and others in the public venue warranting police support. So even at the stage of the most significant of police interventions (response),

upholding human and civil rights is a core mission of the police, and can be made more visible in police actions and in the way police agencies acknowledge such actions. There is an old adage, "You get what you measure," and measuring how the police uphold human rights and attaching recognition to such efforts is an important part of a strategy of elevating human rights in police response situations.

Of course, police policies, procedures, and supervision in stopping, arresting, and searching people and conducting in-custody interrogations have been well elaborated, as have those regarding use of force. But even in their development, the task has largely been cast as a matter of reducing negative police behavior, disconnected from considerations of policing under the rule of law and for human rights. Here the discussion needs to broaden to what constitutes good policing and how concerns about human rights and the rule of law are imbedded in good policing (Broduer 1998;

Bayley and Bittner 1984; Fyfe 1993). For example, the U.S. Department of Justice Community Relations Service cast this discussion as establishing principles of good policing (2003), appropriately suggesting that the actions of the police largely determine human rights outcomes. That is to say, when the police encounter citizens, it is the police, not the citizens, who have the upper hand in such encounters. What the police do determines the outcomes of these interactions, positively or negatively, substantiating or detracting from human rights. Just as the principle of doing no harm is foundational to medical practice, protecting human rights through good policing can become a foundational principle for policing.

In the response stage, other police practices—including problem solving (addressing signal crimes or social incivility at the community level), policing which is civilly and culturally sensitive, and police involvement in diversion, referral, and

alternative dispute resolution—contribute to upholding or degrading human rights. So at the response stage, the authority and power of the police to uphold civil and human rights are easily visible in their support or detraction from human rights. Organizing these responses around concerns for human rights is a major undertaking, but the range of actions taken by the police can clearly be linked to the idea of upholding human rights.

Shifting to primary forms of police intervention, those focused on prevention (see Figure 1), we see that the police play an important role in securing human rights as well. Here the police have a major responsibility to uphold the provisions of the Bill of Rights, such as those associated with assembly, free speech, and the penumbra of rights associated with free movement in society. In more recent times, the police, through the imagery and programs associated with community policing and community crime prevention efforts, also protect and defend the rights of individuals and communities, rights associated with reducing fear of crime and the psychological and social restrictions such fear imposes.

Moreover, the police, in seeking community engagement and partnership building, have the potential to make their actions and decisions more transparent and acceptable, thereby increasing public

acceptance. In the prevention of victimization among endangered populations, such as children, homeless persons, and the mentally ill, the police support individual dignity, an important and often overlooked set of human rights. Assuring the free movement of persons and commerce is also an important role the police exercise daily, giving breadth and dimension to the idea of a free society.

Collectively, the activities the police undertake in their prevention roles can greatly shape public assessments of policing and the institutional legitimacy it receives. Interestingly, these prevention roles are still largely underutilized and often eschewed by mainstream policing. The social work aspects of many of these interventions do not square well with police cultures and institutional premises about fighting crime, drugs, and terrorism. Nonetheless, absent a preventive mode of operation, the police are indeed the social fire brigade, responding to fires but never preventing them. When this occurs, of course, the police lose face in the community and their legitimacy declines accordingly.

For the past twenty-five years or so, under the guise of community- and problem-oriented policing (COP and POP), the preventive role of the police has been emphasized but not clearly been made manifest. While we have a wide array of efforts underway in both COP and POP, assessment of

these interventions (National Research Council 2004) is mixed, with community interventions being less positively reviewed. Moreover, national assessments of COP efforts in the decade of the 1990s suggest that while the rhetoric of prevention was more pronounced in policing, the reality was less visible. Clearly, this is where the pool is less deep, and its shallows pose risks for the police.

These are clearly missed opportunities to the extent that securing human rights through primary police interventions are highly legitimated by the public. That is to say, police transparency, building partnerships, advocating for the vulnerable and dispossessed, and protecting potential victims are activities that engender public support for the protective role of government, not its control. Balancing the control roles of the police with those of social facilitation can contribute to human rights being seen as a core mission of the police, while also increasing the legitimacy of the police in public assessments.

At the tertiary level of intervention, human rights are potentially reaffirmed by police actions. Here the focus is on mitigating harm and the restoration or rehabilitation of communities. As shown in Figure 1, policing has much to contribute to reaffirming human rights, although human rights are not well emphasized in policing today.

Reaffirming rights through police actions includes participation in programs aimed at community and individual restoration. Offender reintegration (called re-entry), victim and offender mediation, and processes associated with restorative justice all call out for a greater police presence. Some police programs are visible, nonetheless. Victim re-contact, the protection and reassurance of communities following hate crime, and programs aimed at reducing community insecurity all have a human rights reaffirmation component. Still, these programs have not captured much of the imagination of the police.

In restorative processes, a major issue is police sharing leadership and often control of such discussions. Whereas the police are likely leading efforts to respond to public order, fear, traffic, and crime problems, they have to build partnerships and share responsibility and, yes, control for issues associated with prevention, mitigation, and rehabilitation. Here the police will likely be in a followership role, participating in social restoration but in a role that may be coordinated by others. The police are likely cast in such roles following large-scale emergency situations.

It might be said that policing is too big and complex to leave to the police alone. Preventing social harm, disorder, and crime, as well as restoring communities and individuals victimized by

such circumstances, are beyond the capacity of the police working alone. Dealing with ambiguous partnerships, shared problem solving, sometimes leading and sometimes following, are all programmatic, organizational, and institutional arrangements that address complex and often intractable social problems. Securing and reaffirming human rights is no doubt a collective exercise. That is to say, the police can assure legal rights to some extent, but other social agencies are also part of the mix in securing and reaffirming the wide array of human and civil rights we all anticipate in a democracy.

Additionally, at the restorative end of the continuum the police are often seen as part of the problem, not part of the solution. In disaffected communities— minority, immigrant, and others often characterized by high levels of disorder, crime, and fear—the police are often viewed with skepticism. Such skepticism comes from past contact with the police, fear of procedural failure, and general mistrust. While the police can indeed occupy a community, they cannot effectively address community issues without community participation; the consent of the people is the cornerstone of democratic governance. Reaffirming human rights will require policing to reflect on its identity in various communities, past practices, and the level of wariness that communities may display toward the police.

Repositioning Human Rights as the Core of Policing

Those who expect to reap the blessings of freedom… must undergo the fatigues of supporting it.

—Thomas Paine

While generally not the focus of U.S. inquiry, how the police use their discretion to support or detract from human rights is a larger discussion in Europe. Nonetheless, in the U.S. there is considerable discussion about police decision making and discretion, particularly in critical situations, such as use of force, high-speed pursuit, in-custody interrogation, and now responses to terrorism and immigration, all of which have human rights implications. Moreover, efforts associated with community- and problem-oriented policing imply the lawful exercise of police discretion and adherence to the rule of law in addressing persistent community order and crime problems. Research and program development in matters of police ethics and values also have roots in human rights and the rule of law. Linking these discussions in a broader consideration of how policing can contribute to human rights does not seem like a great leap, since many of the elements of such a discussion are clearly visible. Unfortunately, this has not been the case.

Ideas associated with police

discretion and decision making focused on improving human and civil rights have yet to receive much attention; rather, considerable critique is focused on policing when it breaches human rights. Much of the focus seems to be associated with issues of corruption, police malfeasance, or abuse of authority, not the projection of human rights through good police work. So a general conclusion might be that we study in some detail and across a number of topics police failures to support human and civil rights, while we could also be examining the conditions under which policing actually contributes to human and civil rights. This is a significant omission in police research and police managerial thinking. If we want the police to embrace human rights as a core mission, demonstrating how policing affects human rights and managing toward those ends seems a critical point of departure.

An alternative approach advocated here seeks to help explain the process and consequences of policing through a human rights lens that is cast as how policing might better preserve human rights or civil liberties. Using a human rights perspective can help shape what we think about not only what the police do but also what they ought to do, and the types of people, values, missions, and structures that can condition a stronger and more focused human rights response in policing.

There are a number of avenues to pursue here. They include assessing police entrance and assessment standards and their link to selecting individuals with greater tolerance of social ambiguity, ability to communicate effectively, and identity with the peacekeeping missions of the police; creating training and other socialization processes that emphasize the human rights responsibilities of the police in practical and demonstrative ways; and using monitoring and reward systems that carefully assess and then publically celebrate human rights efforts by the police, particularly as they are construed in Figure 1 across all the stages of police intervention.

Of course, this requires consideration of who comes to policing, what values they learn and have reinforced in their occupational socialization, and how the craft and management of policing can embrace human rights as central to good policing. Each of these topics in its own right is the subject of much needed research, assessment, and application. Assessment of each of these areas with recommendations for systemic improvement is beyond the scope of this essay, but there is possibly some important news on the horizon.

An important opportunity for policing to better engage issues of human rights emerges in an assessment of patterns of police employment that appear to suggest that between 2015 and 2025 there will be considerable turnover in U.S. policing, largely owing to the twenty to twenty-five year employment cycle in this occupation. The 1990s witnessed an increase in police employment supported significantly through federal funds. Since about 2006, municipal budgets have suffered substantially, especially during the

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2007–2010 period, impacting policing as well as other municipal services. Nonetheless, the Bureau of Labor Statistics (2010) projects a 10 percent increase in police employment (an increase of 87,000) between 2008 and 2018, resulting in 968,400 police officers. These estimates are largely driven by population increases.

If the cohort turnover typically associated with policing and growth in the occupation are fully realized, U.S. policing has an opportunity to cast police selection and training more directly toward serving human rights and rule of law ends. Such a shift could influence a substantial number of police officers within a decade of effort. Emphasizing human rights as core to the police mission could very well receive a boost in such employment patterns, much to the institutional benefit of the police. For this to occur, however, we need to have a clearer understanding of how policing contributes to the preservation of human rights and democratic governance.

Our current understanding of how policing contributes to democratic processes is woefully inadequate, more focused on keeping the police lawful and compliant with administrative regulation, ordinance, and statute than with imbuing them with the values and practices of human rights. While it is indeed important to consistently emphasize lawful policing,

that alone will not refocus police efforts on human rights. Remember, our intervention continuum posed much of what the police currently do as response driven. How the police will create primary and tertiary human rights-focused interventions is less well explored.

While our aspirations for policing through human rights are possible, there remain several obstacles in realizing the promise of adopting such a modus operandi. These obstacles have been identified by many and over several years, so they represent persistent aspects of policing that detract from greater human rights visibility in modern policing. Five of these obstacles are briefly considered here, as they are perhaps the most pressing if policing is to move toward a more central human rights approach. They include (1) the persistence of crime as the raison d'être of policing; (2) occupational and institutional insularity from many publics, coupled with a hypersensitivity to criticism; (3) police selection, socialization, and values acquisition practices; (4) the power of the police working environment; and (5) measuring what matters, counting and rewarding human rights activities. Of course, these five areas overlap and inform each other. They are treated as distinct areas for the purpose of creating some clarity as to how they direct police identities and ultimately police behavior. The order in which

they are introduced, however, is important. Philosophical and administrative choices inform the customs and practices of the police and have increasingly done so since the mid-twentieth century.

The persistence of crime as the raison d'être of policing. While crime has always occupied an important place in policing, much of what the police do is not crime related. This is the case for policing historically and in modern times. Rather, police work is a mixture of service, problem solving, counseling, providing advice or information, order maintenance, and many activities, including those that are crime related. Workload studies of the police over many years attest to the multiplicity of activities, decisions, and interactions the police have with the public absent a crime context. Calls for police service have considerable range and represent a different view of police work as it is played out in American streets (Greene and Klockars 1991) and compared to crime information we collect through the Uniform Crime Reports or victimization studies. In the main, the police regulate social arrangements first and deal with crime secondly, at least from a workload perspective.

Despite considerable range in requests for police services, policing has embraced crime as its central, if not only, target. To be sure, preventing or responding to crime will and should always

occupy considerable police attention, but to cast policing as singularly in the business of crime control misses an important opportunity to see the police in their larger social contexts and with broader social engagement.

The adoption of the crime-fighter model of policing can trace its roots to the era of Prohibition and the efforts of the F.B.I. and others to address such behavior. Prior to then, policing was especially cast locally, and while the police did indeed deal with criminal behavior, they regulated order and provided social services as well. Since the late 1930s or so, policing in the U.S. assumed the crime-fighting image of the present day. More recently, for nearly two decades we have perfected a technology and operational focus of the police on crime through such routines as crime mapping, crime analysis, and hot spots, all focused on abating crime and rarely on other social order problems. Such analyses call attention to times and places where concentrated police action might impact crime. And, indeed, these technologies and ways of thinking have impacted policing, sometimes for good and sometimes less so.

Despite the contributions such techniques have made, what is being analyzed is about 25 percent of police work, important police work granted (response interventions), but not all or even the major amount of police work. Accounting for other police activities as they may help sustain or reaffirm human rights does not detract from counting crime. Public health officials have identified some fifty potential outcome measures (National Research Council 1997), and those in education have multiple measures of what constitutes a good school, ranging from student achievement to school climate. Broadening our conceptions of police work and measuring different events and outcomes can actually strengthen policing by grounding such ideas and measures in what the police actually do.

Mapping non-crime police activities can tell us much about the range of people and places that warrant primary and tertiary police attention, creating opportunities for policing through human rights. Where are high-risk populations? What communities need restorative actions? How the police participate in securing and reaffirming human rights in these instances does not displace crime as an important police frame of reference. Rather, it explores what occupies much of police time and how these efforts are related to human and civil rights. Moreover, the intersection of social problems with crime suggests that, to be effective, policing must embrace a wider array of social, order, and fear problems if prevention is to actually take place.

Such findings may also better inform police training. Currently, we train the police for crime responses and they are critical, but they offer less guidance as to how to handle neighborhood disputes, errant children, noise, and other order complaints, absent an arrest. Yet, this is the bulk of police activity, and the outcomes of these interactions condition public attitudes toward the police and the legitimacy so accorded. Striking a balance between the focus of the police (crime) and the focus of the community (order) is perhaps the biggest obstacle to improving the human rights stance of American policing.

Broadening the range of measures of policing is not new. For a time, issues like community quality of life, fear of crime and/or victimization, community attitudes toward the police, and the like occupied some attention. Certainly, complaints and lawsuits against the police are measures firmly in place throughout policing. Having said this, and perhaps with the exception of complaints, such measures are not persistent in policing nor are they consistent across time and place. They are generally add-on measures, perhaps nice to know but not particularly necessary. Ironically, such information coupled with a detailed assessment of police calls for service provide considerable insight into democratic policing— what the public wants from the police and whether what they get matters.

> *In some ways, the police of today have been trapped by their institutional presentational strategy— fighting crime . . .*

Insularity and sensitivity to criticism. Historically, police agencies in the U.S. and in many parts of the world have practiced a form of institutional insularity that draws clear boundaries between the police and those policed, shuns and redirects criticism, and focuses more on internal police processes than external results achieved. In some ways, the police of today have been trapped by their institutional presentational strategy—fighting crime—a strategy to which the public now holds the police closely accountable (Crank and Langworthy 1992). In some ironic ways, the public now holds the police to a standard of their own making. Yet, criticisms or civic input or oversight of police strategies and actions, such as over- or under-policing, are largely shunned by the institution of policing, which instead emphasizes strong internal management and command and control as the primary means of directing police action.

This is not a question of police cultures but rather of organizational and institutional designs and the imputed prerogatives attached to such designs. Past eras of policing emphasizing political control of the police yielded to mid-twentieth century managerial oversight of the police, shifting control from politicians to police managers. Since that time, policing has largely been the captive of a control mode, focused on efforts not effects, as Manning (1977) suggests, "maintaining the appearance of control." Police command and control systems, coupled with external review and oversight processes, have largely focused on early prediction and intervention and control of police discretion (Walker 2005). While some argue that policing has become less insular (Sklansky 2007), there is considerable research on police insularity (Skolnick 1994; Skolnick and Fyfe 1993) suggesting that police working

identities substantially shape how they view the public and others external to the policing occupation. In turn, those views continue to distance, or at least clearly separate, the police from the public.

The insularity of the police from the public is in some ways only the tip of the iceberg. There is considerable research on police difficulties in communicating internally, with other police agencies, or with other public or civic social service agencies also engaged in addressing social and community problems. While the idea of partnership is firmly rooted in the rhetoric of community policing and its progeny, the reality of such interactions is that they are asymmetric, with the police operating from a public relations, rather than a public engagement, perspective (Maguire and Wells 2002).

Such insularity is fueled in part by a hypersensitivity to criticism in policing. William Westley (1970) uncovered this in the 1950s and it has been part of the police landscape ever since. Essentially, police concerns with maintaining their authority, a key element for the police to control situations and people, create sharp demarcations between the police and the public and also account for police rejection of "community" or other perceived soft approaches to crime control (Herbert 2006).

Given such hypersensitivity to criticism, the policing

institution spends considerable time maintaining and defending its boundaries, time that could be devoted to improving communications and interactions with external others, all with positive results for human rights. Despite the rhetoric of policing moving to a more community-based approach, the police remain highly insulated from their publics. Skolnick (1994) recognized this many years ago, suggesting that the police isolate themselves from the public in the face of concerns with danger, authority, and efficiency. Since then, policing has continued to shield itself from public view and criticism, often displaying a hypersensitivity to public criticism that calls their institutional legitimacy into question. Illustrative of this sensitivity were the reactions, presidential and police rank-and-file, to the arrest for disorderly conduct of Harvard University Professor Henry Louis Gates, Jr.

Police and values acquisition practices. Police selection, socialization, and values acquisition processes do not emphasize the need for a human rights orientation. Police training is predominantly crime and arrest oriented, dealing with the law enforcement activities of the police, especially those associated with coercion and force, not their order maintenance and public service functions. This imbalance has been historic and persistent. Yes, police training has improved

substantially over the years but it still retains a bias toward crime, law, administrative procedure, and police techniques.

To realize a human rights orientation in policing requires broadening the range of tools afforded the police. Such tools include an occupational framework that incorporates human rights, such as that offered in Figure 1; better communication and listening; the capacity to deal effectively and nonviolently with resistance while building effective coalitions; understanding the role and functioning of the wider social service systems; facility in building partnerships across a range of public, private, and civic agencies; leading and following; and occasionally taking control of people and situations while maintaining fidelity to the law and human dignity.

Today, police training curricula in the U.S. are driven by many considerations. What constitutes basic police training is a mixture of law (primarily criminal, due process, and traffic); police practical skills and techniques (weapons use, first responder, arrest, and officer safety); investigation and crime scene processing; patrol procedures and reporting; followed by human relations issues, including cultural awareness, dealing with juveniles, interpersonal relations, and stress management. What can generally be said of basic training is that "how to" is provided but "why"

is not well constructed. As a consequence, how the police attend to matters of human rights and the rule of law are largely inferred through the techniques and processes they learn, and such inferences are largely left to trainees to determine for themselves. Interestingly, and in contrast, reports from Northern Ireland suggest a holistic approach emphasizing human rights is underway, focused on integrating human rights issues into all aspects of police training (Engle and Burruss 2004). So a key area for infusing policing with a sense of its human rights mission is in police training and socialization.

Achieving facility in such matters is not a training issue alone, however. Rather, it requires selecting people who can handle ambiguity, who have a capacity for communication, and who respect authority in its many forms. These, of course, are selection issues. It is not enough to assure that police officers are physically and generally mentally fit, that they have had modest, if any, brushes with the law, or that they can conform to the internal cultures and policies of police agencies. These are necessary but not sufficient in today's world where social complexity abounds and legal solutions are tailored rather than mass produced.

Once police officers are selected, policing needs to inspire learning, not rote memorization. Today's police curricula are ill-suited to the work the police

must do, most particularly if human rights are to become the core philosophy and business of the police. The facilities necessary in selecting police officers accordingly need to be reinforced in police training. Current training modules for entry-level policing are overly legalistic, technocratic, and focused on the small portion of police encounters involving law enforcement. While it is important to train police in what not to do (do not use excessive force, do not become involved in high-speed chases, do not deny legal rights), we do not tell police *what to do* (improve public and community safety, secure, uphold, and reaffirm human rights). Such omissions are clear and need substantial attention.

The power of police working environments. Police working environments exert considerable influence on what the police do as well as how the police perceive their role. Perhaps for as long as it has been examined, policing has been concerned with crime and the enforcement of the law, a small but critical and highly symbolic portion of police daily activity. While communities recognize the need for law enforcement, they are more likely focused on questions of order. Such a relationship has persisted for well over three-quarters of a century.

Police working environments shape police identities with police work. Early studies of the police characterized issues such as danger, authority, and efficiency as shaping police officers' world views, isolating them from the public and portraying an us-versus-them idea of public encounters. To be sure, much of policing has changed from the time these initial studies were cast, but the police still cling to the notion of crime control as the raison d'être of policing. Workplace influences create common ways of viewing the world. Broadening, not narrowing, such workplace environments can help the police better understand their role in a democratic society.

Police work is conditioned by assignment (e.g., patrol, detective, shift schedule, special units) and also by where in the community police are assigned (e.g., high crime, business, low crime residential areas). How these working environments shape police views of human and civil rights is not well examined. What we do know is that policing high-crime areas almost always produces negative and pejorative police attitudes toward residents in these areas and often public wariness of the police. While predictors of police disrespect toward citizens in these neighborhoods are most affected by the behavior of those encountered and the nature of the encounter, the level of social disorganization, including the level of crime, in these communities also influences police attitudes and behavior (Mastrofski, Reisig, and McCluskey 2002). Simply put, the police often hold

residents in high-crime areas in less regard than those in low-crime areas. How such attitudes influence what the police do in these neighborhoods and the level of public acceptance of those behaviors in turn affect how and whether human rights considerations are part of the police mission in these areas. Remember, assuring the rights of the minority is a major responsibility in democratic process.

Measuring what matters, counting and rewarding human rights activities. For many years now, measuring what matters in policing has occupied considerable attention. But despite admonitions to measure a wide range of police actions and interventions, we still have a rather narrow range of police measures. They include response time, arrests, crime and clearance rates, complaints against the police, and, most recently, community satisfaction with police services. Much of this measurement effort remains tied to the crime responses of policing. Under a human rights regime, we might expand such measures to include levels of civic trust in the police, cooperation with the police in matters of neighborhood crime, the sense of dignity people feel they are accorded by the police, and, in turn, how people pursue their civic responsibilities.

Embracing a broader, community-focused approach

to the measurement of policing and its effects suggests that the preservation of individual liberty depends on the active maintenance of the institutions of civil society, calling for a broad social control framework. In this view, we acquire a sense of our personal and civic responsibilities, along with an appreciation of our own rights and the rights of others through social learning and in interaction with other social institutions like the police. While this posture does not dictate particular policy choices, it does focus on the social side of human nature and the responsibilities that must be borne by citizens, individually and collectively. As Figure 1 suggests, by securing, protecting, and reaffirming human rights through a wide array of police actions and interventions, we actually broaden the measurement of policing to include how such actions support adherence to communal values, including respect for law and its enforcers.

Improvements to Policing that Support Policing Through Human Rights

Two roads diverged in a wood, and…I took the one less traveled by, and that has made all the difference.

—Robert Frost

While the obstacles to more fully incorporating a human rights approach as a core value

> *But despite admonitions to measure a wide range of police actions and interventions, we still have a rather narrow range of police measures.*

in policing are outlined briefly above, all is not negative. There is a road less traveled but visible. Policing has changed considerably over the past one hundred years or so, and some of those changes do support the human rights approach suggested here. A few illustrations demonstrate the capacity of the police to pursue human rights as a core mission.

Generally, policing has become more focused on the legal rights of people who come under the law. Policies, practices, and review systems clearly focus on systematically identifying police misuse of authority and the law. Obviously, this conditions police response situations as it must. Tying this more closely to the role of the police in securing, upholding, and reaffirming human rights can add to the value base of policing and underscore good police practice. Remember, "do no harm."

From the perspective of more community focused police strategies, it is the case that such approaches (1) include the recognition that communities are both the source and solution to many but not all local problems; (2) underscore a connection with the rule of law and other forms of social control; (3) link policing horizontally and vertically with other social institutions that also influence human rights; and (4) understand that police legitimacy is a necessary condition to police effectiveness that must be supported and maintained. Granted, many of these elements are only partially accepted or implemented, but they do represent an alternative organizing framework for a more inclusive human rights approach to policing—the road less traveled.

Improvement in the openness and transparency of police policy and decision making is ongoing, as is civic engagement. Both are important to better understand and elaborate. In each case— transparency and engagement— the police are tasked with communication and relationship building, capacities that can be seen as a clear hedge against violations of human rights. In

engaging and communicating with others, it is perhaps more difficult to violate the human rights of those you know. Such communication and engagement also validate several forms of police accountability—civic, organizational, and strategic.

Lastly and as previously stated, police use of discretion has several implications for strengthening their human rights orientation. Broadening the array of alternatives in resolving disputes, linking police with other social service providers, and measuring service transactions, as well as crime, can underscore the human rights complexity of police action and the many ways such rights are supported through a thoughtful police presence.

Some Final Impressions

Is it possible to view and then implement policing systems to sustain and facilitate human rights? Is it possible that awareness, notice, transparency, and celebration are the keys to such an approach? The proposition here is that addressing such questions will help human rights to become a more visible core value in modern-day policing.

Broadening police awareness of and commitment to human rights is a major philosophic change for modern-day policing, mired as it is in technology, managerialism, and control. But linking human rights referents to police responses is possible and most appropriate. Rather than lamenting the failure of policing to address human rights when such violations become apparent, perhaps it would be more productive to re-contextualize many of the things policing does well—good policing—under the human rights rubric. To do so shifts the discussion to the many ways the police can secure, uphold, and reaffirm human rights, much to the benefit of democratic processes and civic confidence in the police.

References

Bayley, David H. and Egon Bittner. 1984. Learning the skills of policing. *Law and Contemporary Problems* 47: 35–59.

Black, Donald. 1980. *The Manners and Customs of the Police*. New York: Academic Press.

Bond, Martyn. 2010. *The Council of Europe and Human Rights: An Introduction to the European Convention on Human Rights*. Strasbourg, DE: The Council of Europe.

Brodeur, Jean-Paul (Ed). 1998. *How to Recognize Good Policing*. Thousand Oaks, CA: Sage.

Bureau of Labor Statistics. *Occupational Outlook Handbook 2010–2011 Edition*. (accessed December 1, 2010) http://www.bls.gov/oco/ocos160.htm

Crawshaw, Ralph, Stuart Cullen, and Tom Williamson. 2007. *Human Rights and Policing*. 2nd ed. Leiden, NL: Martinus Nijhoff Publishers.

Crank, John P., and Robert Langworthy. 1992. An institutional perspective on policing. *Journal of Criminal Law and Criminology* 83: 338–363.

Davis, Kenneth Culp. 1971. *Discretionary Justice: A Preliminary Inquiry*. Urbana, IL: University of Illinois Press.

Engle, Steven T., and George W. Burruss. 2004. Human rights and the new training curriculum of the police service of Northern Ireland. *Policing: An International Journal of Police Strategies & Management* 27: 498–511.

European Parliament. 2000. *Charter of Fundamental Rights of the European Union.* Brussels: European Parliament. (accessed December 2, 2010) http://www.europarl.europa.eu/charter/default_en.htm

Fyfe, James J. 1993. Good policing. In *The Socio-Economics of Crime and Justice*, ed. Brian Forst. Armonk, NY: M.E. Sharpe.

Garland, David. 2001. *The Culture of Control: Crime and Social Order in Contemporary Society.* Oxford, UK: Oxford University Press

Greene, Jack R., and Carl B. Klockars. 1991. What police do. In *Thinking About Police*, 2nd ed., eds. Carl B. Klockars and Stephen D. Mastrofski. New York: McGraw-Hill.

Herbert, Steve. 2006. *Citizens, Cops, and Power: Recognizing the Limits of Community.* Chicago, IL: University of Chicago Press.

Maguire, Edward R., and William Wells. 2002. Community policing as communications reform. In *Law Enforcement, Communication, and Community,* ed. Howard Giles. New York: John Benjamins Publishers.

Manning, Peter K. 1977. *Police Work: The Social Organization of Policing.* Cambridge, MA: MIT Press.

Manning, Peter K. 2010. *Democratic Policing in a Changing World.* New York: Paradigm Publishers.

Mastrofski, Stephen D. and Jack R. Greene. 1993. Community policing and the rule of law. In *Police Innovation and Control of the Police*, eds. David Weisburd and Craig Uchida. New York: Springer Verlag.

Mastrokski, Stephen D., Michael D. Reisig, and John D. McCluskey. 2002. Police disrespect toward the public: An encounter-based analysis. *Criminology* 40: 519–552.

National Research Council. 2004. *Fairness and Effectiveness in Policing: The Evidence*, eds. Wesley Skogan and Kathleen Frydl. Washington, DC: The National Academies Press.

National Research Council. 1997. *Assessment of Performance Measures for Public Health, Substance Abuse, and Mental Health*, eds. Edward B. Perrin and Jeffrey J. Koshel. Washington DC: The National Academies Press.

Sklansky, David A. 2007. Seeing blue: Police reform, occupational culture, and cognitive burn-in. In *Police Occupational Culture: New Debates and Directions*, eds. Megan O'Neill and Monique Marks. New York: Elsevier.

Skolnick, Jerome H. 1994. *Justice Without Trial: Law Enforcement in a Democratic Society.* 3rd ed. New York: Macmillan.

Skolnick, Jerome H., and James J. Fyfe. 1993. *Above the Law: Police and the Excessive Use of Force.* New York: Free Press.

Tamanaha, Brian Z. 2004. *On the Rule of Law: History, Politics, Theory.* Cambridge, UK: Cambridge University Press.

Tyler, Tom R. 2001. Public trust and confidence in legal authorities: What do majority and minority group members want from the law and legal institutions? *Behavioral Sciences and the Law* 19: 215–235.

Tyler, Tom R., and Yuen J. Huo. 2002. *Trust in the Law: Encouraging Public Cooperation with the Police and Courts.* New York: Russell Sage Foundation.

U.S. Department of Justice, Community Relations Service. 2003. *Principles of Good Policing: Avoiding Violence Between Police and Citizens.* Washington, DC: U.S. Department of Justice.

Walker, Samuel. 2005. *The New World of Police Accountability.* Thousand Oaks, CA: Sage.

Westley, William. 1970. *Violence and the Police: A Sociological Study of Law, Custom, and Morality.* Cambridge, MA: MIT Press.

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