

PRINCIPLED POLICING: WARRIOR COPS AND GUARDIAN OFFICERS

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INTRODUCTION

What does good policing look like? At first blush, that question may conjure up images of uniformed officers chatting with local residents, playing with laughing children while on patrol, or attending community meetings. But now consider the question in different contexts. What does good policing look like when an officer has to respond to a minor fender bender? Or notify a parent of a child's lethal drug overdose? Or interview a suspected serial rapist? Or approach a person who is acting erratically? Or enforce an outstanding arrest warrant against someone who angrily insists that the officer is harassing him? As these scenarios suggest, there is no single answer: good policing depends on the situation.

How, then, can we best ensure that officers engage in good policing, given the wide variety of tasks they must perform? Activists, politicians, and officers themselves have called for more education—training in de-escalation techniques, cultural awareness, and implicit biases¹—and better equipment, including body-worn cameras² and less-lethal weaponry, such as Tasers,³ as well as change in agency policies and procedures⁴ and reform for a host of

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1. See, e.g., Julia Edwards, *Justice Dept. Mandates 'Implicit Bias' Training for Agents, Lawyers*, HUFFINGTON POST (June 28, 2016, 9:27 AM), http://www.huffingtonpost.com/entry/implicit-bias-training-for-agents_us_57727284e4b0dbb1bbb15f.

2. Ariel Edwards-Levy, *Police Body Cameras Receive Near-Universal Support in Poll*, HUFFINGTON POST (Apr. 16, 2015, 1:20 PM), http://www.huffingtonpost.com/2015/04/16/body-cameras-poll_n_7079184.html.

3. Paul Elias, *San Francisco Police Chief Urges Stun Gun Use After Shooting*, AP: BIG STORY (Dec. 10, 2015, 9:41 PM), <http://bigstory.ap.org/article/fac2d29bd0e84502a6717824b76df32c/san-francisco-police-chief-urges-stun-gun-use-after>.

4. One of the ten policy solutions advocated by Campaign Zero, for example, calls for substantial changes to agency use-of-force policies. *Limit Use of Force*, CAMPAIGN ZERO, <http://www.joincampaignzero.org/force> (last visited Aug. 29, 2016); see also Rachel Moran, *Ending the Internal Affairs Farce*, 64

legal structures that regulate the police.⁵ But while those changes can marginally improve policing practices and public perceptions of the profession and may be necessary components of meaningful, long-term reform, they will not be sufficient to accomplish lasting change on their own.

In this Article, I contend that a more fundamental reform is necessary: the core principles of policing need to be adjusted to change how officers view their job and their relationship with the community. Law enforcement has long taken great pride in its adherence to a Warrior ethos, which emphasizes honor, duty, resolve, and a willingness to engage in righteous violence. Warrior rhetoric has infused modern policing, shaping how officers perceive their role and informing the way they approach and interact with the public. It has promoted a self-image of officers as soldiers on the front lines in the never-ending battle to preserve order and civilization against the forces of chaos and criminality, and it is believed to both ensure effective law enforcement and increase safety. In too many communities, however, the principles that have grown out of Warrior policing have proven counterproductive, contributing to a distrustful, adversarial, and sometimes aggressive approach to policing that has undermined good police-community relations and exposed officers and civilians alike to unnecessary risk. Today, law enforcement is reaping what the Warrior culture has sown. Policing in the United States is in crisis. Public confidence in policing is at its lowest point since 1993, when four Los Angeles Police Department (“LAPD”) officers were prosecuted in federal court, after a state court acquittal, for the beating of Rodney King.⁶ Twenty-three years later, a bare majority of Americans report confidence in the police,⁷ and an unprecedented number of people report no or very little confidence in policing.⁸

Long-term reform requires rethinking the professional self-image of policing and changing some of the core values that inform officers’ actions and decisions. I recognize the enormity of that simple statement. This is no small task, but it is a critical component, perhaps *the* critical component, of lasting reform.

BUFF. L. REV. (forthcoming 2016) (suggesting changes to Internal Affairs and Civilian Oversight).

5. See, e.g., Roger L. Goldman, *A Model Decertification Law*, 32 ST. LOUIS PUB. L. REV. 147 (2012); Christopher Slobogin, *Policing as Administration*, 165 U. PA. L. REV. (forthcoming 2016) (arguing that police agencies should be required to apply administrative law principles such as notice-and-comment procedure).

6. Jeffrey M. Jones, *In U.S., Confidence in Police Lowest in 22 Years*, GALLUP (June 19, 2015), <http://www.gallup.com/poll/183704/confidence-police-lowest-years.aspx>.

7. As of the June 2015 poll, fifty-two percent of Americans report “quite a lot” or a “great deal” of confidence in the police. *Id.*

8. *Id.*

Acknowledging the need for cultural change is nothing new. Every major commission that has studied policing has discussed, to some degree, the need for the profession to create an environment that minimizes misconduct.⁹ Sociologists have described the role of agency culture in shaping officer actions and attitudes since the 1960s.¹⁰ More than a decade ago, Barbara Armacost observed that “the police organization bears significant responsibility for police misbehavior,” particularly excessive force.¹¹ Subsequent legal scholarship has both offered solutions and questioned the effectiveness of legal interventions as a mechanism for lasting police reform,¹² but a robust discussion of the principles that inform

9. NAT’L COMM’N ON LAW OBSERVANCE & ENF’T, NO. 11 REPORT ON LAWLESSNESS IN LAW ENFORCEMENT 3–6 (1931); PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 33 (2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf; *Corruption in Uniform; Excerpts of What the Commission Found: Loyalty Over Integrity*, N.Y. TIMES (July 7, 1994), <http://www.nytimes.com/1994/07/07/nyregion/corruption-uniform-excerpts-what-commission-found-loyalty-over-integrity.html?pagewanted=all> (discussing the Knapp and Mollen Commissions); James G. Kolts, *The Los Angeles County Sheriff’s Department*, C.R. LITIG. CLEARINGHOUSE (July 1992), <http://www.clearinghouse.net/chDocs/public/PN-CA-0001-0023.pdf>; *Report of the National Advisory Commission on Civil Disorders*, EISENHOWER FOUND., <http://www.eisenhowerfoundation.org/docs/kenner.pdf> (last visited June 27, 2016) (discussing the Kerner Commission); *The Christopher Commission Report*, HUM. RTS. WATCH, <https://www.hrw.org/legacy/reports98/police/usp073.htm> (last visited June 27, 2016). Other reports have come to the same conclusion. See generally HUMAN RIGHTS WATCH, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES (1998) (detailing reports of incidents in various cities to demonstrate barriers to police accountability).

10. See WILLIAM K. MUIR, POLICE: STREETCORNER POLITICIANS 190 (1977); ELIZABETH REUSS-IANNI, TWO CULTURES OF POLICING: STREET COPS & MANAGEMENT COPS 86 (1983); WILLIAM WESTLEY, VIOLENCE AND THE POLICE: A SOCIOLOGICAL STUDY OF LAW, CUSTOM, AND MORALITY 16, 49 (1970); JAMES Q. WILSON, VARIETIES OF POLICE BEHAVIOR 233 (1968).

11. Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 456, 522–45 (2004).

12. See generally Rachel Harmon, *Limited Leverage: Federal Remedies and Policing Reform*, 32 ST. LOUIS U. PUB. L. REV. 33 (2012) (advocating new federal policies that reward good police conduct, rather than further attempts to punish bad conduct); Rachel Harmon, *Promoting Civil Rights Through Proactive Police Reform*, 62 STAN. L. REV. 1 (2009) (exploring alternative ways 42 U.S.C. § 14141 could be used to induce police reform); Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551 (1997) (arguing for enhanced community-police reciprocity and political controls on the police to manage police discretion); Debra Livingston, *Police Reform and the Department of Justice: An Essay on Accountability*, 2 BUFF. CRIM. L. REV. 817 (1999) (examining consent decrees in Pittsburgh, Pennsylvania and Steubenville, Ohio and issues arising from those decrees); Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189 (2014) (contending that the Department of Justice “must adopt a more transparent” process for enforcing § 14141).

policing has largely fallen by the wayside. This Article revives that discussion by arguing that police reform requires changing officers' attitudes about policing itself.

For real change to occur the principles and values that underlie policing must not only instruct officers to act lawfully but also encourage them to build public trust and increase police legitimacy—to engage in what Tracey Meares and Peter Neyroud call “rightful policing.”¹³ To encourage rightful policing, the value system that guides officer decision making must encourage individual officers to continually reconcile the short-term goals of policing, such as order maintenance and crime response, with the long-term goals, particularly improving police-community relations. To that end, law enforcement culture should seek to instill in officers the priorities of the Guardian: protecting civilians from unnecessary indignity and harm.¹⁴

Before continuing, a clarification and a caveat are in order. An officer's attitudes and actions are the result of both environmental and individual factors, and a thorough examination of that relationship is outside the scope of this Article. My focus is limited to the principles that inform officers' attitudes and actions without examining exactly how those principles are instilled by agency culture or climate,¹⁵ enshrined or obfuscated in policy,¹⁶ or

13. Tracey L. Meares & Peter Neyroud, *Rightful Policing*, 2015 NEW PERSP. POLICING 6–7, <https://www.hks.harvard.edu/content/download/74084/1679313/version/4/file/RightfulPolicing.pdf>.

14. See, e.g., PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 9, at 33; Sue Rahr & Stephen K. Rice, *From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals*, 2015 NEW PERSP. POLICING 4, <https://www.ncjrs.gov/pdffiles1/nij/248654.pdf>. As this Article will explain, the distinction between Guardian and Warrior policing is not merely semantic. However, it is worth noting at the outset that I do not believe the exact terminology is particularly important. I would be delighted to see the practical results of principled policing, which is my focus here, if the phrase “Guardian policing” were discarded in favor of “Wombat policing” or left alone entirely so that “Warrior policing” remained the prevailing description. I will admit a strong preference for the phrase “Guardian policing” because it best captures the concepts I seek to communicate and lends itself less to misappropriation than does the term “Warrior.”

15. Sociologists studying the effect of organizational dynamics on human behavior distinguish between climate and culture. Both are grounded in an agency's value system, but climate is “a product of the formal organisational systems.” Geoffrey R. Alpert et al., *Measuring the Impact of Organisational Culture and Climate on Police Officers' Decisions and Behaviour* 2–3 (July 2012) (working paper), <https://www.publicsafety.gc.ca/lbrr/archives/cnmcs-plcng/cn31763-eng.pdf>. Culture, in contrast, results from “less formal processes of socialisation between organisational members.” *Id.* There are conceptual and, at least arguably, methodological differences in how an observer can understand and study the climate and culture of a particular agency. *Id.*

16. Written policies and procedures are not necessarily a reliable benchmark of agency priorities. Cf. Seth W. Stoughton, *The Incidental*

reinforced or undermined by training. The caveat, then, is this: Although I attempt to distill a coherent set of principles from modern policing, policing is not one dimensional. I make no claim that the whole of modern policing reflects a universal approach to law enforcement or that the principles I identify, both those that I contend are problematic and those I believe are curative, are either overwhelmingly present or entirely lacking at any given agency or within any given officer.¹⁷ Despite these very real variations between agencies and officers, however, there is a coherent and identifiable set of principles that pervade modern policing; it is those principles that concern me here.

Part I describes the evolution of policing, tracing the profession's guiding principles and distinguishing characteristics from the world's first modern public police agency—the Metropolitan Police Force in London. It reviews the Political Era's early adoption of policing as a tool of local political machines, the Professional Era's attempts to stamp out political cronyism and corruption, and the Community Policing Era's effort to correct the problems of a police force disconnected from the communities it served. Understanding the dramatic, if often slow, changes to the culture of domestic law enforcement sets up the argument that police culture not only can change, it *will* change—the real inquiry is what impact previous changes have wrought in the modern era and how policing can change for the better in the future.

Part II introduces the Warrior principles that have permeated modern policing and discusses the effect those principles have had on the profession. It first describes the positive attributes of the Warrior that policing so highly values: honor, duty, resolve, and a willingness to engage in righteous violence. It then explores the psychological and practical appeal of the Warrior concept, and documents how the Warrior imagery and rhetoric have become ubiquitous in law enforcement. It also demonstrates how, despite the best of intentions, the Warrior concept is susceptible to misappropriation, describing how it has been used to justify attitudes and acts that fall far short of the principles for which it is supposed to stand. Part II concludes by illustrating how Warrior policing has become a problem for modern law enforcement, putting

Regulation of Policing, 98 MINN. L. REV. 2179, 2213 (2014) (discussing the problems associated with overly detailed and bureaucratic department policies).

17. Further, while individual officers are assimilated into the profession, their agencies, and their particular assignments, they retain a range of personal values, beliefs, and assumptions that affect their behavior. Eugene A. Paoline et al., *Police Culture, Individualism, and Community Policing: Evidence from Two Police Departments*, 17 JUST. Q. 575, 576 (2000); Eugene A. Paoline, *Shedding Light on Police Culture: An Examination of Officers' Occupational Attitudes*, 7 POLICE Q. 205, 205 (2004); Eugene A. Paoline, *Taking Stock: Toward a Richer Understanding of Police Culture*, 31 J. CRIM. JUST. 199, 206 (2003).

officers and civilians alike at greater risk, undermining positive police-community relations, obstructing efforts to prevent and investigate crime, and frustrating reform.

Part III offers an alternative set of guiding principles in the form of Guardian policing. Guardian policing has enjoyed a surge in popularity among some police leaders, and Guardian rhetoric has appeared in the report issued by President Obama's Task Force on 21st Century Policing,¹⁸ popular media stories,¹⁹ and articles intended for a law enforcement audience.²⁰ But prior work, including my own, has tended to treat Guardian policing as an abstract concept incapable of precise definition. This Part offers a more robust definition of the principles that underlie Guardian policing and outlines how future work can address the necessary components of changing police culture.

In advancing the argument for a Guardian culture in law enforcement, I am not suggesting that officers should abandon the skills of a Warrior. Although the policing profession has become increasingly safe over the last thirty years, very real threats remain.²¹ While I wish it were not the case, I do not foresee a future

18. PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 9, at 11.

19. Kimberly Kindy, *Creating Guardians, Calming Warriors*, WASH. POST (Dec. 10, 2015), <http://www.washingtonpost.com/sf/investigative/2015/12/10/new-style-of-police-training-aims-to-produce-guardians-not-warriors/>; Kate Mather, *LAPD Urges Officers to Be Community Guardians, Not Warriors on Crime*, L.A. TIMES (Aug. 21, 2015, 4:00 AM), <http://www.latimes.com/local/crime/la-me-warrior-guardians-20150821-story.html>; Nick Morgan, *Sheriff Corey Falls Wants Officers to Shift from Warrior to Guardian*, MAIL TRIB. (Mar. 4, 2016, 5:33 AM), <http://www.mailtribune.com/article/20160304/NEWS/160309853>; Timothy Roufa, *Guardians or Warriors? The Changing Role of Law Enforcement*, ABOUT CAREERS, http://criminologycareers.about.com/od/Career_Trends/fl/Guardians-or-Warriors-The-Changing-Role-of-Law-Enforcement.htm (last visited June 27, 2016); Craig Schwartz, *Close to Home: Warrior or Guardian? A Good Officer Is Both*, PRESS DEMOCRAT (Aug. 29, 2015), <http://www.pressdemocrat.com/opinion/4402654-181/close-to-home-why-officers?artslide=0>.

20. Not all articles view the change positively, of course. Jim Glennon, *Guardian Heart and Warrior Spirit*, CALIBRE PRESS (July 8, 2015), <http://calibrepress.com/2015/07/guardian-heart-and-warrior-spirit/>; H.K. Slade, *Are We Warriors? Is There a Place for Warriors in Law Enforcement Today?*, CALIBRE PRESS (June 12, 2015), <http://calibrepress.com/2015/06/are-we-warriors/>; Dave Smith, *Warriors or Guardians*, POLICEMAG.COM (Jan. 13, 2016), <http://www.policemag.com/channel/patrol/articles/2016/01/warriors-or-guardians.aspx>; Val Van Brocklin, *Warriors vs. Guardians: A Seismic Shift in Policing or Just Semantics?*, POLICEONE.COM (July 1, 2015), <http://www.policeone.com/leadership/articles/8633970-Warriors-vs-Guardians-A-seismic-shift-in-policing-or-just-semantics/>.

21. According to data collected by the FBI, an average of almost 115 officers were feloniously killed every year from 1971 to 1980. *Law Enforcement Officers Killed*, SOURCEBOOK CRIM. JUST. STAT. ONLINE tbl.3.154.2012, <http://www.albany.edu/sourcebook/pdf/t31542012.pdf>. That ten-year average

where officers will not face active threats. The nature of policing requires officers to run toward peril, to interact with dangerous individuals, and to use force both to advance the state's interest in criminal justice and to protect themselves and others from physical violence. Some commentators have observed that officers must have the capacity to act as both Guardians and Warriors.²² I strongly agree. My focus in this Article is not on whether an officer should be more Warrior-like or more Guardian-like in any particular encounter—that determination requires reviewing the nature and circumstances of each unique situation. Instead of focusing on an individual officer's specific decisions, this Article examines the professional principles that affect officers' decision-making, advancing the idea that the right guiding principles can instill in officers a value system that enables them to make decisions that encourage public engagement, foster trust, and build lasting community partnerships.

I. THE CULTURAL EVOLUTION OF POLICING

The uniformed police officer. The marked police cruiser. The hierarchical organization of paramilitary police agencies. Police executives who are either directly elected, as is common with county sheriffs,²³ or appointed by a mayor, city council, or city manager.²⁴ Each of these facets of policing is largely taken for granted today, as

has decreased ever since, with an average of 49.6 officers feloniously killed every year from 2006 to 2015. *Id.* Additionally, assaults have also decreased, from a high of 65,907 officers assaulted on average every year from 1984 to 1994 (with an average of 35.8% of those officers being physically injured by the assault) to an average of 56,208 officers assaulted every year (a 14.72% decrease) from 2005 to 2014 (with an average of 27% of officers being physically injured by the assault). *Assaults on Law Enforcement Officers and Percent Sustaining Personal Injury*, SOURCEBOOK CRIM. JUST. STAT. ONLINE tbl.3.165.2011, <http://www.albany.edu/sourcebook/pdf/t31652011.pdf>. Assaults with weapons have also decreased, from a high of 3317 assaults with firearms on average every year from 1985 to 1994 and 1610 assaults with edged weapons on average every year from 1983 to 1992, to an annual average of 2162 assaults with firearms (a 34.82% decrease) and 964 assaults with edged weapons (a 40.12% decrease) every year from 2005 to 2014. *Id.* The decrease in the total average number of armed assaults, unarmed assaults, and felonious killings exists despite the increase in the U.S. population, the increase in the number of officers in the country, and the increase in the number of officer-civilian interactions every year.

22. Glennon, *supra* note 20; Dan Marcou, *Why Obama's Advice to Police to "Abandon Warrior Mindset" Won't Work*, POLICEONE.COM (May 22, 2015), <https://www.policeone.com/1033-program/articles/8554059-Why-Obamas-advice-to-police-to-abandon-warrior-mindset-wont-work/>.

23. Roger Scott, "Roots": *A Historical Perspective of the Office of Sheriff*, SHERIFFS.ORG, <http://www.sheriffs.org/publications-resources/resources/office-of-sheriff> (last visited June 27, 2016).

24. See *Meet the Chief*, TULSA POLICE, <https://www.tulsapolice.org/content/meet-the-chief.aspx> (last visited Aug. 8, 2016).

is the whole that they combine to create, but “[t]he concept of a publicly funded entity designed to serve and protect society is a relatively recent historical development.”²⁵ Historically, law enforcement looked very different.²⁶ Despite its relative modernity, however, the guiding principles for law enforcement in the United States have undergone seismic shifts. In this Part, I describe those shifts at a relatively broad level of generality so as to set the stage for the discussion of the Warrior principles that dominate modern policing and the impact that these principles have had on officer behaviors, police-community relations, and public safety.

A. *Peelian Policing*

Policing appeared in an early version of its modern form in 1829, when British Home Secretary Sir Robert Peel successfully lobbied for the legislative act that created London’s Metropolitan Police Force.²⁷ Constables with the Metropolitan Police Force were given a book of “General Instructions,” including nine directives for officers. These directives are known today as the Peelian Principles,²⁸ and they are set forth below in their entirety:

1. To prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment.
2. To recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of

25. JAMES F. PASTOR, *THE PRIVATIZATION OF POLICE IN AMERICA* 33 (2003).

26. KRISTIAN WILLIAMS, *OUR ENEMIES IN BLUE: POLICE AND POWER IN AMERICA* 27 (2007) (“[M]ost of the institutions historically responsible for law enforcement would not be recognizable to us as police.”). Policing in the United States was born of a combination of English institutions such as shire-reeves, constables, night watches, and thief-takers, as well as domestic institutions like rural slave patrols and city guards organized to prevent slave rebellions. See WILLIAM J. BOPP & DONALD O. SCHULTZ, *A SHORT HISTORY OF AMERICAN LAW ENFORCEMENT* 18 (1972); DAVID JOHNSON, *AMERICAN LAW ENFORCEMENT: A HISTORY* 3 (1981); PASTOR, *supra* note 25, at 33–35; JAMES F. RICHARDSON, *URBAN POLICE IN THE UNITED STATES* 5 (1974); ARNOLD S. TREBACH, *THE GREAT DRUG WAR* 163 (2005); ROBERT C. WADMAN & WILLIAM THOMAS ALLISON, *TO PROTECT AND TO SERVE: A HISTORY OF POLICE IN AMERICA* 11 (2003); WILLIAMS, *supra*, at 31–42.

27. Norman Gash, *Sir Robert Peel, 2nd Baronet*, *ENCYCLOPEDIA BRITANNICA*, <http://www.britannica.com/biography/Sir-Robert-Peel-2nd-Baronet> (last visited Aug. 8, 2016).

28. Despite the name, there is a lack of evidence to support that Sir Robert Peel developed the principles that bear his name. Historians believe that the principles were actually set out by Charles Rowan and Richard Mayne, the first (and joint) Commissioners of the Metropolitan Police Force. Home Office, *Definition of Policing by Consent*, GOV.UK (Dec. 10, 2012), <https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent/>.

their existence, actions and behaviour and on their ability to secure and maintain public respect.

3. To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws.

4. To recognise always that the extent to which the co-operation of the public can be secured diminishes proportionately the necessity of the use of physical force and compulsion for achieving police objectives.

5. To seek and preserve public favour, not by pandering to public opinion; but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing, by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life.

6. To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order, and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.

7. To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.

8. To recognise always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty.

9. To recognise always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.²⁹

This strategy of preventing crime, rather than dealing with its effects *ex post*, and the tactical emphasis on building positive

29. *Id.*

relationships with the community, which we take for granted with regard to modern law enforcement, were groundbreaking changes at the time.³⁰ Policing by consent was, in the words of one police historian, “unique in history and throughout the world because it derived not from fear but almost exclusively from public cooperation with the police, induced by them designedly by behaviour which secure[d] and maintain[ed] for them the approval, respect and affection of the public.”³¹

B. *The Political Era*

The United States followed England’s lead in the 1830s³² with municipal police agencies springing up as a response to rioting and civil unrest.³³ The immediate precursors of these early police agencies—night watchmen and constabulary systems—had proven deeply unpopular,³⁴ and it did not take long for municipal police agencies to supplant them. By the 1850s, police agencies were a common fixture of large cities.³⁵ Police officers, however, were not readily identifiable; officers did not wear uniforms because of mutual distrust between the public and officers themselves.³⁶ Critics condemned uniforms as undemocratic imitations of royal livery.³⁷ Officers themselves argued “the job was dangerous enough without advertising that one was an officer.”³⁸ As a result, it took

30. CHARLES REITH, *A NEW STUDY OF POLICE HISTORY* 140 (1956).

31. *Id.*

32. Exactly which city first created a municipal police department remains contested. Many police agencies date their origins on the development of a daytime watch service. For example, Philadelphia is often cited as the first police agency in the United States because it created a paid, daytime watch in 1833, despite abandoning the effort three years later. CHARLES R. SWANSON ET AL., *CRIMINAL INVESTIGATION* 3 (7th ed. 2000). Similarly, the Boston Police Department is typically dated to 1838, when the city organized its day watch, even though it had first paid night watchmen more than a century before. *A Brief History of the Boston, MA Police Department*, BOSTONPOLICEMUSEUM.COM, <http://bostonpolicemuseum.com/history.html> (last visited July 14, 2016). New York City, for its part, began paying watchmen in 1658, shortly before the British took it, under the name of Nieuw Amsterdam, from the Dutch. BOPP & SCHULTZ, *supra* note 26, at 18–19.

33. RICHARDSON, *supra* note 26, at 21–22.

34. The Philadelphia Police Department was originally funded not by the city or state government, but by a wealthy philanthropist who wanted “Philadelphia to provide more effectually than they do now for the security and property of the persons . . . by a competent police.” BOPP & SCHULTZ, *supra* note 26, at 35.

35. GEORGE F. COLE ET AL., *CRIMINAL JUSTICE IN AMERICA* 112 (2013).

36. WILBUR R. MILLER, *THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA* 1509 (2012).

37. *Id.*

38. BOPP & SCHULTZ, *supra* note 26, at 39–40; *see also* JOHNSON, *supra* note 26, at 25 (describing the public sentiment that “[u]niforms were un-American in principle”). This was, in all likelihood, a long-standing fear with historical precedent. Watchmen in Charleston, South Carolina, for example, were so

municipal police agencies decades to adopt uniforms. Boston did so in 1858, New York in 1860, and Chicago in 1861.³⁹ Officers also began carrying firearms at about this time, despite the prohibitions against guns most police agencies had in place.⁴⁰ While police executives and the public were skeptical about the need for officers to have firearms, they eventually allowed the practice because doing so “only recognized what was becoming standard” behavior among officers.⁴¹

Over the next half century, the sharp differences in American and English policing became apparent. In England, the Crown was a “powerful, central authority . . . [that] establish[ed] a legitimate, unifying mandate” for the police.⁴² But in the United States policing was, and has since remained, a hyperlocalized endeavor, with each city having its own police agency.⁴³ Unlike today, however, policing was intensely political. Both rank-and-file officers and police executives were deeply beholden to local politics, often owing their position to political patronage (which they often purchased) and, in return, using their position to support their patron.⁴⁴ “[P]olitical machines recruited and maintained police in office and on the beat, while police helped ward leaders maintain their political offices by encouraging citizens to vote for certain candidates, discouraging them from voting for others, and, at times, by assisting in rigging elections.”⁴⁵ Further, “[p]olice commanders consulted often with local political representatives about police priorities and progress.”⁴⁶

This tight relationship with the political system—so tight that several scholars have called early police agencies “adjuncts to local political machines”⁴⁷—was not an unqualified evil. Good policing meant supporting the local political establishment, and that meant maintaining high levels of community satisfaction. Police officers and executives alike took a broad view of their mandate, engaging not just in preventative policing, primarily through foot patrols and

loathed in the 1700s that sailors “began to purposefully target the watchmen on their rounds, sometimes beating them severely.” WADMAN & ALLISON, *supra* note 26, at 11–12.

39. JOHNSON, *supra* note 26, at 29.

40. *Id.* at 30.

41. *Id.*

42. George L. Kelling & Mark H. Moore, *The Evolving Strategy of Policing*, 4 PERSP. ON POLICING 3 (1988), <http://www.innovations.harvard.edu/sites/default/files/114213.pdf>.

43. See 1 21ST CENTURY CRIMINOLOGY: A REFERENCE HANDBOOK 823 (J. Mitchell Miller ed., 2009).

44. Kelling & Moore, *supra* note 42, at 3.

45. *Id.*

46. *Id.*

47. *Id.* (citing ROBERT M. FOGELSON, *BIG-CITY POLICE* 13–14 (1977) and Kevin Ernest Jordan, *Ideology and the Coming of Professionalism: American Urban Police in the 1920's and 1930's* (1972) (unpublished Ph.D. dissertation, Rutgers University)).

the eventual introduction of automobiles, but also in social support services.⁴⁸ Early police agencies established and operated soup kitchens and shelters for the homeless and for recent immigrants, helped immigrants find work, and provided shoes and medicines to the community.⁴⁹

Officers were part of the communities they served, typically living in the neighborhoods they patrolled. The close connections between officers and the communities they lived in and served paved the way for the underpolicing of certain people, particularly community insiders, and certain crimes, such as behaviors that were illegal but consistent with local norms.⁵⁰ Police officers did not see their job as limited to defending the law-abiding members of the community from the criminal element; they also punished violations of the dominant social norms, leading to conflicts with community outsiders, especially minority ethnic and racial groups.⁵¹ This punishment could be as brutal as it was informal.⁵² “Often ruling their beats with the ‘ends of their nightsticks,’ police regularly targeted outsiders and strangers for rousting and ‘curbstone justice.’”⁵³

Outside of political pressures, there was little, if anything, in the way of police regulation.⁵⁴ The criminal justice process was, in many cases, equally vicious. Police investigations at the time often involved giving suspects what became known as the “third degree”—the use of pain to compel incriminating confessions.⁵⁵ The Wickersham Commission, which investigated the failures of law enforcement during Prohibition, reported that while “the use of physical brutality, or other forms of cruelty, to obtain involuntary confessions or admissions” was “widespread,” it formally remained

48. *Id.*

49. DONNA M. WELLS, BOSTON POLICE DEPARTMENT 8 (2003); Kelling & Moore, *supra* note 42, at 3.

50. Kelling & Moore, *supra* note 42, at 4.

51. *Id.*

52. *Id.*

53. *Id.*

54. GEOFFREY P. ALPERT & ROGER G. DUNHAM, UNDERSTANDING POLICE USE OF FORCE: OFFICERS, SUSPECTS, AND RECIPROCITY 4–6 (2004) (discussing “the era of nonregulation”).

55. The origins of the phrase “the third degree” are unclear. It has been suggested that the phrase refers to the arduous tests that Freemasons must undergo to obtain the “Third Degree” of Freemasonry, or that interrogation is literally the third phase of the criminal justice process, following the arrest (the first phase) and transportation to the police agency (the second phase). JEROME A. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 43 (1993). The phrase may have originated with Thomas F. Byrnes, a notoriously brutal New York Police Department officer and detective in the 1870s and ‘80s, who may have coined the phrase “the third degree” as a pun on his last name. KEN ALDER, THE LIE DETECTORS: THE HISTORY OF AN AMERICAN OBSESSION 19–20 (2007); JACOB A. RIIS, THE MAKING OF AN AMERICAN 141–42 (1901).

“a secret and illegal practice.”⁵⁶ Corruption was similarly pervasive, both in the form of bribes being solicited by or offered to officers and in the form of political cronyism and the manipulation of elections.⁵⁷ Both pecuniary and political corruption was all but inevitable in a system that revolved around patronage and “heavily decentralized” police organizational structures, which effectively prevented police commanders from meaningfully supervising officers.⁵⁸

C. *The Professional Era*

The Political Era of policing lasted for almost a century, from the establishment of the first police agencies until it began to give way to the Professional Era in the 1930s. The evolution of policing in this new era was marked by a concerted effort to distance police from the political machines of the day. Civil service systems were put into place to govern the selection and promotion of officers, and the power of politicians to hire and fire police commanders was eliminated⁵⁹ or sharply curtailed.⁶⁰ Policing’s first principles shifted: political and public approval were no longer the measure of successful policing.⁶¹ Good policing was instead defined by officers’ rigor and expertise in enforcing criminal law.⁶² Formal rules and informal norms were developed to prevent officers from pandering to community sensibilities, including a prohibition, in some cities, on officers living in the neighborhoods that they patrolled.⁶³ Peace officers became law enforcers. Perhaps more importantly, policing became a self-regulated profession.⁶⁴

As policing’s principles shifted, so too did officers’ actions and attitudes. Officers became less involved in order maintenance and focused their efforts on crime control.⁶⁵ Agencies no longer operated homeless shelters or soup kitchens.⁶⁶ Using crime-fighting specialists to deal with generic social ills was considered a foolish waste of resources.⁶⁷ Actions that did not directly prevent or respond to criminal incidents—derisively referred to as “social work”—were considered far outside the purview of the police.⁶⁸

56. NAT’L COMM’N ON LAW OBSERVANCE & ENF’T, *supra* note 9, at 3–4.

57. Kelling & Moore, *supra* note 42, at 4.

58. *Id.*

59. *Id.* at 5. In Los Angeles and Cincinnati, for example, police chiefs were selected through the civil service system. *Id.*

60. *Id.* In Milwaukee, the police chief was appointed for a lifetime term and could only be removed for cause. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. ALPERT & DUNHAM, *supra* note 54, at 6–9.

65. Kelling & Moore, *supra* note 42, at 8.

66. *Id.* at 5–6.

67. *See id.* at 6.

68. *Id.* at 5–6.

Professional policing was exemplified by detached, highly skilled experts who could dedicate themselves to crime fighting without being distracted by the social or emotional aspects of a specific victim or community. One of the era's most popular television shows, *Dragnet*, featured Detective Sergeant Joe Friday, a stone-faced LAPD detective whose tireless search for the "facts" typified the Professional Era image of the cool, effective, and no-nonsense crime fighter.⁶⁹

With a new police culture came new metrics for success. Qualitative factors like political approval and community satisfaction gave way to more quantitative evaluations.

[I]ndividual officers' effectiveness in dealing with crime was judged by the number of arrests they made; other measures of police [agency] effectiveness included response time (the time it takes for a police car to arrive at the location of a call for service) and "number of passings" (the number of times a police car passes a given point on a city street). Regardless of all other indicators, however, the primary measure of police effectiveness was the crime rate as measured by the Uniform Crime Reports.⁷⁰

In response to these new measures, police agencies became centrally organized. The foot patrols, substations, and local precincts that had been so accessible to the community were reduced or eliminated, replaced with vehicle-based, "preventative patrol" tactics and a central dispatch system that channeled calls for service to the appropriate "units" for rapid response to an incident.⁷¹

69. *Id.* at 6. Contrary to popular belief, Joe Friday never actually used the phrase commonly attributed to him: "Just the facts." The origin of that misattributed phrase appears to be audio satire that parodied *Dragnet* by presenting the story of St. George's fight with a dragon in the style of *Dragnet*, in which Joe Friday *qua* St. George states, "We just want to get the facts, sir." See VinylOldiesJukebox, *Stan Freberg - St. George & The Dragonet, 1953 Capitol Record*, YOUTUBE (Feb. 19, 2012), <https://www.youtube.com/watch?v=oUdFLyNCeI4>.

70. Kelling & Moore, *supra* note 42, at 7.

71. *Id.* at 5-6. Preventative patrol refers to officers driving through their assigned neighborhoods on a random schedule to promote the image of a pervasive police presence, which was—and is—believed to deter crime. ALEX R. PIQUERO, *THE HANDBOOK OF CRIMINOLOGICAL THEORY* 60 (2015). Rapid response refers to reducing the time between when an emergency call comes in and the time an officer arrives on scene, which was similarly believed to reduce crime. *Id.* Empirical support has not always been easy to come by, but existing studies do not provide consistent support for either proposition. See GEORGE L. KELLING ET AL., *THE KANSAS CITY PREVENTATIVE PATROL EXPERIMENT: A SUMMARY REPORT* 16 (1974); LAWRENCE W. SHERMAN ET AL., *PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING* ch. 8, at 40 (1997), www.rolim.com.br/2002/_pdfs/ing.pdf; WILLIAM SPELMAN & DALE K. BROWN, *CALLING THE POLICE: CITIZEN REPORTING OF SERIOUS CRIME* 22-24 (1984). Nevertheless, modern resources instruct police commanders to treat both

Indeed, “[t]he patrol car became *the* symbol of policing during the [1930s] and [1940s] It represented mobility, power, conspicuous presence, control of officers, and professional distance from citizens.”⁷²

The shift from politically responsive policing to professional policing reduced corruption, particularly political corruption, but it also detached policing from both politics and the community. Law enforcement agencies were no longer part of the local political structure; those ties were intentionally severed and policing recast as part of the criminal justice system.⁷³ Agency priorities and officers’ decisions were based not on political approval or community support, but on the knowledge, skills, and training believed to be exclusively available to members of the policing profession.⁷⁴ Police were specialists, professionals who should be left alone to do what they and they alone knew how to do. Inevitably, this mindset affected the way that police officers interacted with and related to the public. Citizens could help by reporting crime and then stepping out of the way. “The proper role of citizens in crime control was to be relatively passive recipients of professional crime control services Citizens met their responsibilities when a crime occurred by calling police, deferring to police actions, and being good witnesses if called upon to give evidence.”⁷⁵ It was the job of the police officer to do the rest.⁷⁶

The Professional Era of policing remained strong until the 1960s. During this time, crime increased despite the best efforts of the police to combat it, undermining the perception of police as uniquely knowledgeable specialists who were most effective when left alone.⁷⁷ The image of police as neutral professionals was further called into question as officers came into conflict—often violent conflict—with minorities migrating to urban areas and anti-war protesters on the streets.⁷⁸ Had these conflicts happened out of sight, they may not have undermined police legitimacy among the general public. But the growth of television meant graphic images of police violence were now brought into the public’s living rooms.⁷⁹

response time and visibility as important considerations when allocating patrol officers. ERIC J. FRITSCH ET AL., *POLICE PATROL ALLOCATION AND DEPLOYMENT* 49–50 (2009).

72. Kelling & Moore, *supra* note 42, at 8 (emphasis added).

73. *Id.* at 5.

74. *Id.*

75. *Id.* at 6.

76. *Id.*

77. *Id.* at 9.

78. LEONARD A. STEVERSON, *POLICING IN AMERICA: A REFERENCE HANDBOOK* 114 (2008).

79. Kelling & Moore, *supra* note 42, at 8 (“The legitimacy of police was questioned: students resisted police, minorities rioted against them, and the

Viewers were not reassured by what they saw. The image of police as crime-fighting specialists who were best left alone to practice their craft was indelibly marred. The professional police culture, which had worked so well to fix the problems created during the Political Era, proved “unable to adjust to the changing social circumstances of the [1960s] and [1970s].”⁸⁰

D. *The Community Policing Era*

The public’s mounting distrust, along with experience and substantive research that called into question many of the assumptions about the relationship between police and crime, gave rise to the next evolution in law enforcement: the Community Policing Era. The policing profession found that it could not successfully control crime without addressing the underlying problems that caused crime.⁸¹ Those problems, however, did not always lend themselves to crime-fighting interventions. The relationships between officers and members of the public were vital; the information relayed through those relationships allowed police to prevent and investigate crime and apprehend criminals.⁸² But as the social unrest and political upheaval of the 1960s demonstrated, police agencies did not always have good relationships with their constituents.⁸³ Changes to the police role and police regulation were necessary.⁸⁴ External regulation was increasingly viewed as essential,⁸⁵ and the police were called upon to become more than crime fighters. In 1955, the LAPD turned to its officers for suggestions about a new motto for the police academy, writing in a solicitation in an internal magazine that “[t]he motto should be one that in a few words would express some or all the ideals to which the Los Angeles police service is dedicated.”⁸⁶ The winning entry, submitted by Officer Joseph S. Dorobek, was, “To Protect and to Serve.”⁸⁷ That phrase became the new mantra for law

public, observing police via live television for the first time, questioned their tactics.”).

80. *Id.* at 9.

81. See George L. Kelling, *Police and Communities: The Quiet Revolution*, 1 PERSP. ON POLICING 2 (1988).

82. BUREAU OF JUSTICE ASSISTANCE, UNDERSTANDING COMMUNITY POLICING: A FRAMEWORK FOR ACTION 5 (1994).

83. See STEVERSON, *supra* note 78, at 114.

84. See generally Jack R. Greene & Geoffrey P. Alpert, *Police Overview*, in 2 VIOLENCE IN AMERICA: AN ENCYCLOPEDIA 531, at 534 (Ronald Gottesman & Richard Maxwell Brown eds., 1999) (contending that the history of policing has been marked by the struggle to resolve both the role that police play and how society should regulate the profession).

85. ALPERT & DUNHAM, *supra* note 54, at 9–12.

86. *The Origin of the LAPD Motto*, L.A. POLICE DEP’T, http://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128 (last visited July 15, 2016).

87. *Id.*

enforcement.⁸⁸ The police mission was recast yet again, with the exclusive focus on crime fighting supplanted by a more holistic and service-oriented approach.⁸⁹

Under this expanded police mission, officers were charged not only with reducing crime, but also with improving community members' quality of life by alleviating fear and despair. Social disorder, which had been ignored during the Professional Era, was now to be addressed as a cause of both crime and fear.⁹⁰ But officers could not tackle this issue by relying solely on the authority provided by criminal law; disorder is, and was, often entirely legal. Officers needed a new source of legitimacy. "[P]olice learned that they had to seek authorization from local citizens to intervene in disorderly situations."⁹¹ Officers had to work cooperatively with civilians to identify problems, to craft solutions, and to evaluate those solutions.⁹² Community problems were to be addressed and evaluated in a comprehensive way, with criminal law being only one of several available tools in any given situation.⁹³

In theory, community policing was a return to the Peelian Principles. In practice, however, it rarely worked out that way. Community policing has failed to live up to its promise because of definitional failures, implementation and evaluation failures, and, most importantly, cultural resistance within law enforcement. Efforts to implement community policing principles have suffered, first and foremost, from a widespread failure to understand exactly what community policing entails. The phrase is more accurately used to refer to a loosely defined policing philosophy or set of philosophies that should permeate decision making by informing police commanders and officers about the practice of policing.⁹⁴ Unfortunately, it is often used to describe a particular program, strategy, or tactic; certain police actions are designated as "community policing" while others are not. Officers and agencies alike have struggled to define community policing at a useful level of specificity, leaving the "community policing" designation arbitrary and inconsistent. Officers are left unsure of whom exactly they should be serving, which problems to focus on, and how to solve them. The lack of guidance about how to prioritize different community groups' various problems has proved particularly vexing

88. KAREN M. HESS & CHRISTINE HESS ORTHMANN, INTRODUCTION TO LAW ENFORCEMENT AND CRIMINAL JUSTICE 129 (2012).

89. HERMAN GOLDSTEIN, PROBLEM-ORIENTED POLICING 11 (1990).

90. Kelling & Moore, *supra* note 42, at 8.

91. *Id.* at 10.

92. WILLIAM SPELMAN & JOHN ECK, PROBLEM-ORIENTED POLICING 2 (1987) (describing the Scanning, Analysis, Response, and Assessment ("SARA") Model of problem solving).

93. Kelling & Moore, *supra* note 42, at 11.

94. *See, e.g.*, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEPT' OF JUSTICE, COMMUNITY POLICING DEFINED 1-5 (2012).

given the disparity in different groups' political capital; solving the problems of the downtown business community, for example, may mean exacerbating the problems of the homeless population, and vice versa.⁹⁵ The absence of a functional definition of community policing has left officers without direction about whether or how to balance those interests.

Given the definitional problems, failures of implementation are inevitable. It is often unclear who should be responsible for community policing or whether community policing should be limited to trained specialists or implemented by officers more generally.⁹⁶ While the extensive training community-policing officers receive is laudable, the creation of special squads fosters the perception of community policing as something separate and apart from other aspects of policing, "making it unlikely that community policing will ever grow beyond the bounds of the special unit."⁹⁷ Further, the goals and methods of a specialized community-policing unit do not always align with the rest of the police agency. But adopting a more generalist approach is often no more successful. Properly instilling in every officer the principles of community policing takes time and resources that many agencies prefer to allocate to training in the "high-liability" areas: vehicle operations, the use of lethal and less-lethal force, and first aid.⁹⁸ Without exposure to the underlying principles of community policing, officers are more likely to view community policing as extra work above and beyond their current duties, rather than a philosophy that should be incorporated into the way they perform every aspect of their jobs.⁹⁹

In the absence of clear direction about what community policing is and who should be doing it, officers tend to direct their efforts where they are most welcome—for example, middle- or higher-income communities with well-organized watch groups or neighborhood associations and relatively low crime—instead of where they expect to be met by suspicion or outright resistance—typically low-income, high-crime neighborhoods with a large

95. See, e.g., Stoughton, *supra* note 16, at 2199–200.

96. San Francisco, an early adopter of community policing, took the specialist approach in 1962, creating a unit to "help to reduce crime by reducing despair—by acting as a social service agency to ameliorate some of the difficulties encountered by minority group persons." Jerome H. Skolnick, *The Police and the Urban Ghetto*, in *THE AMBIVALENT FORCE: PERSPECTIVES ON THE POLICE* 217, 222 (Arthur Niederhoffer & Abraham S. Blumberg eds., 2d ed. 1976). The unit struggled "to maintain its identity as a police organization and at the same time to win the confidence of the minority . . . population [that was] ordinarily considered a police problem." *Id.* at 222–23.

97. Matthew Scheider, *Community Policing Nugget Community Policing Specialists vs. Generalists*, COMMUNITY POLICING DISPATCH (Apr. 2008), http://cops.usdoj.gov/html/dispatch/april_2008/nugget.htm.

98. See Kelling & Moore, *supra* note 42, at 6.

99. OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, *supra* note 94, at 8.

minority population.¹⁰⁰ To the extent that police agencies do engage with disenfranchised and hostile neighborhoods, there is a tendency to do so either superficially or intrusively.¹⁰¹ Agencies tend to dedicate their scarce resources to highly visible community relations programs, such as police substations and youth sports programs.¹⁰² To the extent that police agencies engage more deeply with disenfranchised and hostile neighborhoods, there is a tendency to do so by imposing order rather than by cooperatively facilitating the organic growth of stable communities. It has proven easier for many agencies to focus on quality-of-life issues by aggressively responding to disorder that police officers or commanders perceive as detrimental to the community.¹⁰³ Meaningful, long-term community engagement is time intensive and requires rethinking the traditional approach to policing that many officers have been trained in, have seen from peers and mentors, and now take for granted.

100. Wesley G. Skogan, *Community Participation and Community Policing*, in HOW TO RECOGNIZE GOOD POLICING 88, 90 (Jean-Paul Brodeur ed., 1998).

101. See, e.g., Christopher Cooper, *Mediation in Black and White: Unequal Distribution of Empowerment by Police*, in NOT GUILTY: TWELVE BLACK MEN SPEAK OUT ON LAW, JUSTICE, AND LIFE 125, 125–26 (Jabari Asim ed., 2001).

102. See, e.g., *Justice Based After-School Program*, COMMUNITY ORIENTED POLICING SERVICES, <http://www.cops.usdoj.gov/default.asp?Item=485> (last visited Aug. 24, 2016) (reporting “[t]he Minneapolis Police Department used” the funds it received from the DOJ’s Community Oriented Policing Services Office “to expand an existing Police Athletic League”). There is a tremendous amount to be said for frequent, positive contacts between the police and the public—particularly between officers and teens, and especially between officers and youth of color—but while such contacts themselves are a necessary component of improving police-community relations, superficial interactions are hardly sufficient to build long-term partnerships or result in collaborative problem solving.

103. Originally articulated in a 1982 article in *The Atlantic*, “broken windows” suggests that serious crime is a result of disorder and incivility in the community. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1, 1982), <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>. The appropriate response was to maintain order by vigorously enforcing minor rules against the source of disorder: “panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed.” *Id.* With less disorder leading to petty crime, there would be less petty crime leading to more serious crime. *Id.* Police could, in essence, break the “developmental sequence.” *Id.* Although studies have supported the idea that increased police focus—“hot-spot policing”—can be an effective crime reduction strategy, the causal connection between police-enforced order maintenance and serious crime has been challenged on both empirical and theoretical grounds. See BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 123 (2005); Anthony A. Braga & Brenda J. Bond, *Policing Crime & Disorder Hot Spots: A Randomized Controlled Trial*, 46 CRIMINOLOGY 577, 597–600 (2008); Anthony A. Braga et al., *Problem-Oriented Policing in Violent Crime Places: A Randomized Controlled Experiment*, 37 CRIMINOLOGY 541, 571 (1999).

Officers must also work with the tools that they are given; the law grants them broad authority to search and seize but no authority to unilaterally respond in ways unrelated to criminal justice. Working solely in a law enforcement capacity, officers cannot require—and are unqualified to provide—psychological services, drug or alcohol counseling, food aid, and a range of other services that would help prevent individual and communal problems. Implementing an idealized version of community policing, in which officers are the first point of contact for a host of social problems and serve to coordinate non-law enforcement services, is relatively difficult. Officers are simply not trained, just as police agencies are not structured, to serve as liaisons for the range of public and private social services that a truly holistic solution may require. And so officers and agencies default to taking unilateral action using the authority that they have. All too often, that has involved aggressively policing minor offenses.¹⁰⁴ That approach has proven counterproductive. Although widely adopted as a community policing tactic, order-maintenance policing reduces the potential of police-community partnerships and, ironically enough, may increase the very crime the police and community desire to suppress.¹⁰⁵

Further, the metrics by which community policing efforts are measured are often developed by stakeholders other than the disenfranchised community members themselves.¹⁰⁶ These metrics often do not track the purported goals of the philosophy: to build and maintain positive partnerships between law enforcement and the community that can be leveraged to engage in problem-solving techniques that increase trust while decreasing crime, disorder, and fear.¹⁰⁷ Lacking a reliable and timely way to measure police-community partnerships, perceived legitimacy and public trust, and perceptions of disorder and crime, police agencies tend to focus on quantifiable performance metrics, such as the number of arrests, stops, and frisks that an officer made or the number of calls that an

104. See Kelling & Moore, *supra* note 42, at 14.

105. See Robert J. Kane, *Compromised Police Legitimacy as a Predictor of Violent Crime in Structurally Disadvantaged Communities*, 43 *CRIMINOLOGY* 469, 492 (2005); see also VICTOR M. RIOS, *PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS*, at xv (2011) (concluding that the negative relationship that young black and Latino men have with police leads “many of them to fulfill the destiny expected of them” by engaging in “crime and violence”).

106. MAJOR CITIES CHIEFS ASS’N ET AL., *ENGAGEMENT-BASED POLICING: THE WHAT, HOW, AND WHY OF COMMUNITY ENGAGEMENT* 12–13 (2015), https://majorcitieschiefs.com/pdf/news/community_engagement_5_27_15.pdf.

107. OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP’T OF JUSTICE, *supra* note 94, at 1–2, 4–5; Scheider, *supra* note 97.

officer responded to.¹⁰⁸ Measuring these metrics changes officer behavior.¹⁰⁹ Unfortunately, those performance measures and the changes they create are often irrelevant and sometimes contrary to the community policing philosophy.

Community policing remains a noble ideal, but definitional problems, implementation failures, and a lack of suitable evaluation metrics have greatly curtailed that ideal's practical importance.¹¹⁰ Worse, agencies and officers that have no sincere interest in altering the traditional crime-fighting focus of modern law enforcement have used the rhetoric of community policing as political cover to bolster legitimacy with a superficial public-relations facelift.¹¹¹ Worse yet, they have done so even as a very different paradigm has risen to prominence: the Police Warrior.

II. THE POLICE WARRIOR

Over the last few years, the law enforcement industry has been criticized by policing insiders and scholars alike, for its adherence to a Warrior worldview.¹¹² In this Part, I first explore the many positive attributes associated with the Warrior concept, explaining why it has proven to be such a powerfully appealing metaphor for policing. I then describe how the Warrior ideal has been misappropriated, the concept twisted to justify attitudes and acts that fall far short of the principles for which it is supposed to stand. I conclude that the principles borne of the Warrior concept have become a problem for modern law enforcement, putting officers and civilians alike at greater risk, undermining positive police-community relations, obstructing efforts to prevent and investigate crime, and frustrating reform.

A. *The Warrior Ideal*

Military ethicists have long struggled to reconcile the inevitability and necessity of warfare and violence with the

108. Malcom K. Sparrow, *Measuring Performance in a Modern Police Organization*, 2015 NEW PERSP. POLICING 2, <https://www.ncjrs.gov/pdffiles1/nij/248476.pdf>.

109. The New York Police Department's Stop, Question, Frisk fiasco established rather definitively that in policing, as elsewhere, "what gets measured gets managed." Larry Prusak, *What Can't Be Measured*, HARV. BUS. REV. (Oct. 7, 2010), <https://hbr.org/2010/10/what-cant-be-measured> (attributing the saying to Peter Drucker).

110. See BUREAU OF JUSTICE ASSISTANCE, *supra* note 82, at 45.

111. Carl B. Klockars, *The Rhetoric of Community Policing*, in COMMUNITY POLICING: RHETORIC OR REALITY 239, 239 (Jack R. Greene & Stephen D. Mastrofski eds., 1988).

112. See Rahr & Rice, *supra* note 14, at 3–4; Seth W. Stoughton, *Law Enforcement's "Warrior" Problem*, 128 HARV. L. REV. F. 225, 226 (2015).

universal human desire for peace, justice, and stability.¹¹³ In the context of modern policing, the highly venerated Warrior concept is a simplified attempt to provide an ethical framework for an inherently violent job. The Warrior appeals to officers' self-image because it is a heroic and noble figure, imbued with the qualities that officers most respect and admire. Although there are tremendous variations in exactly how those qualities are described,¹¹⁴ I believe they can be fairly condensed into four attributes: honor, duty, resolve, and the willingness to engage in righteous violence.¹¹⁵ Together, these attributes are central to the Warrior ideal, although—as I will discuss shortly—there can be significant tension between that ideal and the actual practice of policing.

1. Honor

Warriors serve others, not themselves,¹¹⁶ and do so only for honorable ends.¹¹⁷ Warriors pursue justice—the triumph of right over wrong—and they seek to defend the weak from those who would take advantage of them. But they are not free to do so in any way that they choose; like the Warrior's goals, the Warrior's methods must be honorable. Warriors must therefore adhere to a code of honor that governs their behavior. That standard is created

113. In the military context, the dominant model is the “Just War Theory,” *jus bellum iustum*, which sets out a series of criteria that must be met before war can be considered morally justifiable. Ethicists have divided the criteria into two groups concerned with the right to initiate war (*jus ad bellum*) on the one hand and the actions taken during warfare (*jus in bello*) on the other. See CHARLES GUTHRIE & MICHAEL QUINLAN, *JUST WAR: THE JUST WAR TRADITION: ETHICS IN MODERN WARFARE* 11 (2007). See generally J. DARYL CHARLES & DAVID D. COREY, *THE JUST WAR TRADITION: AN INTRODUCTION* (2012) (examining the Western tradition of rationalizing just violence as necessary to preserve peace); RICHARD J. REGAN, *JUST WAR: PRINCIPLES AND CASES* (2d ed. 2013) (discussing the “Just War Theory” in multiple contexts, including humanitarian intervention, international law, and nuclear use of force).

114. LARRY F. JETMORE, *THE PATH OF THE WARRIOR: AN ETHICAL GUIDE TO PERSONAL & PROFESSIONAL DEVELOPMENT IN THE FIELD OF CRIMINAL JUSTICE* 106 (2005) (“A warrior uses specific qualities or traits in the service of others. Hope, trustworthiness, duty, benevolence, mercy, compassion, kindness, innocence, and a thirst for justice are the traits of a warrior.”).

115. Characteristics like honor, duty, and resolve are interrelated and difficult to define with any level of specificity. I make no attempt to do so in this Article. Instead, I seek to reflect a general sense of those attributes, acknowledging that my reflections are both imperfect and incomplete.

116. RICHARD J. MACHOWICZ, *UNLEASHING THE WARRIOR WITHIN* 183 (2011) (“The Warrior fights because he believes that he is fighting for something good, something positive, something that will improve the quality of the world around him.”).

117. See, e.g., FORREST E. MORGAN, *LIVING THE MARTIAL WAY: A MANUAL FOR THE WAY A MODERN WARRIOR SHOULD THINK* 142 (1992) (identifying honor as central to the Warrior concept).

not by law—which is often seen as frustrating, rather than furthering, justice—but by the norms of the Warrior brotherhood itself.¹¹⁸ Those norms are restrictive, “set[ting] definite limits on what warriors can and cannot do if they want to continue to be regarded as warriors, not murderers or cowards.”¹¹⁹

2. *Duty*

Warriors commit themselves to their honorable mission. Because that mission has no end, no conclusive moment of triumph, Warriors must dedicate themselves to a cause, a calling, that they will never see completed. This commitment to duty demands self-sacrifice. For the Warrior, it is better to strive against overwhelming odds and suffer defeat than it is to forsake one’s duty. This is what early eighteenth-century samurai and author Yamamoto Tsunetomo meant when he wrote, “[T]he way of the warrior is in death.”¹²⁰ The Warrior does not always win the war but must have the willingness to face defeat by fighting the war. One text quotes Theodore Roosevelt, finding in his words “a good definition of those walking the path of a warrior”¹²¹:

The credit belongs to the persons who are actually in the arena; those whose face is marred by dust and sweat and blood; who strives valiantly; who errs and comes short again and again; who knows the great enthusiasms, the great devotions, and spend themselves in a worthy cause; who, at the best, knows in the end the triumph of high achievement; and who, at the worst, fails while daring greatly, so that their place will never be with those cold and timid souls who know neither victory nor defeat.¹²²

3. *Resolve*

Warriors must be committed to their duty, but that commitment does not come easily. Warriors must have the resolve, the determination, the grit not only to “take arms against a sea of troubles,”¹²³ but to survive the struggle itself. Warriors must

118. KENNETH PAYNE, *THE PSYCHOLOGY OF MODERN CONFLICT: EVOLUTIONARY THEORY, HUMAN NATURE, AND A LIBERAL APPROACH TO WAR* 14 (2015) (“Adhering to the dictates of [their] small group is the essence of honour for . . . warrior[s].”).

119. SHANNON E. FRENCH, *THE CODE OF THE WARRIOR: EXPLORING WARRIOR VALUES PAST AND PRESENT* 231 (2003).

120. YAMAMOTO TSUNETOMO, *HAGAKURE: THE SECRET WISDOM OF THE SAMURAI* 42 n.2 (Alexander Bennett trans., 2014).

121. JETMORE, *supra* note 114, at 110.

122. *Id.* (quoting Theodore Roosevelt, 26th U.S. President, *Citizenship in a Republic* (Apr. 23, 1910) (transcript available at http://design.caltech.edu/erik/Misc/Citizenship_in_a_Republic.pdf)).

123. WILLIAM SHAKESPEARE, *THE TRAGEDY OF HAMLET, PRINCE OF DENMARK*, act 3, sc. 1, l. 59 (John Dover Wilson ed., Cambridge Univ. Press 1954).

possess the mental tenacity to survive life-threatening situations and overwhelming odds, but that by itself is not enough; the need for resolve is not limited to surviving physical threats. Threats to Warriors' psychological and emotional well-being are just as prevalent as, if not more prevalent than, threats to their physical safety. Warriors must have the mental strength to survive these trials. They must also have the resolve to do their jobs to the best of their abilities even in the face of public criticism and when they believe that the legal and political systems have failed them. Further, they must have the resolve to complete tasks that they do not like or even strongly disagree with, such as enforcing laws they personally oppose and protecting individuals whom they personally despise.

4. *Willingness to Engage in Righteous Violence*

A Warrior must be capable of using violence in pursuit of his goals. In the book *On Combat*, which has proven tremendously popular among law enforcement and military personnel, the authors discuss what they identify as "the gift of aggression."¹²⁴ While most people want to close their eyes to the violence and evil of the world around them, the Warrior recognizes that evil exists and that violence is sometimes necessary to defend against it. Violence is not thrust upon the unwilling Warrior. Instead, it is a tool that the Warrior consciously chooses to use to protect himself and others from victimization. That choice is not to be made lightly. Rather, the choice to view violence as a tool, to not be repulsed by that necessity, must be made deliberately and repeatedly.¹²⁵ "[I]f you want to . . . walk the warrior's path, then you must make a conscious and moral decision every day to dedicate, equip and prepare yourself to thrive in that toxic, corrosive moment when the wolf comes knocking at the door."¹²⁶ Note the phrasing: not *if* the wolf comes knocking, but *when*. Evil is believed to be inevitable. When the confrontation comes, as it surely will, the Warrior must be able to respond. Moreover, the Warrior must *want* to use violence when called upon to do so. As *On Combat* puts it:

After the attacks on September 11, 2001, most of the sheep, that is, most citizens in America said, "Thank God I wasn't on one of those planes." The sheepdogs, the warriors, said, "Dear God, I wish I could have been on one of those planes. Maybe I could have made a difference." When you are truly transformed into a warrior and have truly invested yourself

124. DAVE GROSSMAN & LOREN W. CHRISTENSEN, *ON COMBAT: THE PSYCHOLOGY AND PHYSIOLOGY OF DEADLY CONFLICT IN WAR AND IN PEACE* 181 (2007).

125. *Id.*

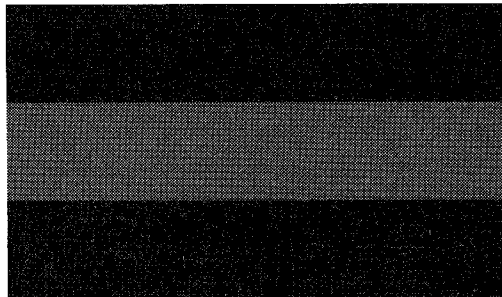
126. *Id.*

into warriorhood, you want to be there. You want to be able to make a difference.¹²⁷

B. *The Appeal of the Warrior*

Although there are innumerable ways to describe the Warrior concept, the discussed characteristics—honor, duty, resolve, and the willingness to engage in righteous violence—represent the attributes that best define the nobility of policing. It is beyond the scope of this Article to undergo a complete examination of why those inside and outside of law enforcement equate good policing with expressing the traits of the Warrior, but I will offer five reasons beyond the generic observation that police officers, like anyone else, are drawn to the idea of casting themselves in the mold of their heroes.

First and foremost, the Warrior is an attractive concept because policing is viewed as being critically important; it is thought of as the last bastion of a free society. In the absence of Warriors who stand to defend it, civilization itself would crumble. That dramatic view is depicted in the context of policing by the “Thin Blue Line,” the well-known symbol of a blue line lying horizontally between two black lines.



The black line at the top represents the public and order, and the black line at the bottom represents criminals and chaos.¹²⁸ The Thin Blue Line itself represents policing.¹²⁹ The image is intentionally evocative, and the Thin Blue Line motif has received widespread acceptance and approval from officers themselves.¹³⁰

127. *Id.*

128. Timothy Roufa, *What Is the Thin Blue Line?*, BALANCE, <https://www.thebalance.com/what-is-the-thin-blue-line-974603> (last updated Aug. 4, 2016).

129. *Id.*

130. Frank Borelli, *Editor's Blog: Can We PLEASE Take It Off?*, OFFICER.COM (Mar. 3, 2016), <http://www.officer.com/blog/12177221/can-we-please-take-off-these-mourning-bands> (“The Thin Blue Line and the badge are a family crest. Once we raise our hand and take that oath, we are bonded.”).

There are multiple variations—including the now famous metaphor of the sheep, the sheepdog, and the wolf¹³¹—all of which depict law enforcement as standing alone, the only barrier that protects an otherwise helpless society. There is a powerful appeal to being *needed* and being part of a cause that is far greater than any of the individuals involved.

Second, the Warrior concept is attractive to law enforcement because it is exclusive.¹³² Not everyone is capable of meeting the high standards that the Warrior role demands. Most people, according to the common rhetoric, could not survive what the Warrior must endure. As *On Combat* puts it, “While there is nothing morally superior about the . . . warrior, he does have one real advantage. Only one. He is able to survive and thrive in an environment that destroys 98 percent of the population.”¹³³ Other people are reluctant to make the sacrifices the Warrior’s duty demands or cannot handle the danger or frustrations of the job.¹³⁴ Others have the capacity for violence but use it selfishly rather than in the service of others; these are the predators that the Warrior stands against, the wolves to the Warrior’s sheepdog.¹³⁵ For these reasons and more, it is believed most people simply cannot be Warriors. That exclusivity is appealing, as is the resulting sense of fraternity among those who are included in the brotherhood. Like everyone else, officers are attracted to the idea of being part of a highly selective, elite brotherhood dedicated to a greater good. Being a member of the Warrior brotherhood brings with it not only a sense of camaraderie and connection, but also access to specialized knowledge, training, and equipment that reinforces the special nature of the Warrior.¹³⁶ The solidarity of this brotherhood also allows the profession as a whole to associate itself with the heroic

131. In that variation, officers are sheepdogs who use their capacity for violence to stand between the sheep (the public) and the wolves, i.e., “aggressive sociopath[ic]” criminals who have “no empathy for [their] fellow citizens.” GROSSMAN & CHRISTENSEN, *supra* note 124, at 176–77. Grossman also uses the metaphor of the blue robin’s egg, in which officers are the shell protecting society as it incubates. *Id.* (“Inside it is soft and gooey, but someday it will grow into something wonderful. But the egg cannot survive without its hard blue shell. Police officers, soldiers, and other warriors are like that shell, and someday the civilization they protect will grow into something wonderful. For now, though, they need warriors to protect them from the predators.”).

132. JETMORE, *supra* note 114, at 106.

133. GROSSMAN & CHRISTENSEN, *supra* note 124, at 179.

134. *Id.*

135. *Id.* at 177–78.

136. For more on the perceptions among law enforcement officers regarding specialized knowledge, training, and the effects of those perceptions, see DAVID A. HARRIS, *FAILED EVIDENCE: WHY LAW ENFORCEMENT RESISTS SCIENCE* 95 (2012); Seth W. Stoughton, *Evidentiary Rulings as Police Reform*, 69 *MIAMI L. REV.* 429, 445–60 (2015).

deeds of individual officers,¹³⁷ further enhancing the appeal of membership—when officers are initiated into the Warrior brotherhood, they stand shoulder to shoulder with people who have done great things.

Third, the Warrior ideal relieves cognitive dissonance among officers, providing a form of psychological protection from the actions they take and the things they see. Cognitive dissonance theory holds that people experience psychological discomfort, even pain, when they hold two mutually inconsistent cognitions—“ideas, attitudes, beliefs, [or] opinions.”¹³⁸ When individuals experience dissonance, they unconsciously find a way to reduce the conflict, either by changing their behaviors or beliefs or by employing “defense mechanisms and mental tricks such as self-justification, denial, and distortion.”¹³⁹ In the policing context, dissonance can result from both police actions and observations. Police officers see themselves as the “good guys,” but their job requires that they take actions that the laws and moral standards of a free society typically forbid. “The job,” as one officer put it, “runs against every good impulse you ever had.”¹⁴⁰ Officers deny people liberty by detaining and restraining them. Officers lock people in cages. Officers invade privacy by rummaging through pockets and kicking down doors. Officers beat people into submission.¹⁴¹ Officers kill.¹⁴² Each of these actions, in other contexts, would be anathematic to members of civil society. The Warrior metaphor offers some relief for the dissonance created by being a “good guy” while doing bad things; it separates officers from the rest of society—and thus, places them outside the rules that govern the rest of society—by establishing “a distinct subculture governed by norms and values designed to

137. Armacost, *supra* note 11, at 453–54.

138. Raymond W. Gibbs, Jr. & Christin D. Izett, *Irony as Persuasive Communication*, in FIGURATIVE LANGUAGE COMPREHENSION: SOCIAL AND CULTURAL INFLUENCES 131, 142 (Herbert L. Colston & Albert N. Katz eds., 2005); Elliot Aronson, *Back to the Future: Retrospective Review of Leon Festinger's A Theory of Cognitive Dissonance*, 110 AM. J. PSYCHOL. 127, 128 (1997); see LEON FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* 3 (1957).

139. Andrew J. McClurg, *Good Cop, Bad Cop: Using Cognitive Dissonance Theory to Reduce Police Lying*, 32 U.C. DAVIS L. REV. 389, 394 (1999).

140. MARK BAKER, *COPS: THEIR LIVES IN THEIR OWN WORDS* 244 (1985).

141. See CHARLES REMSBERG, *THE TACTICAL EDGE: SURVIVING HIGH-RISK PATROL* 487 (1986) (“If [a suspect] is still fighting and is not stabilized, you should not be attempting to handcuff him... It's control first, then handcuffing.” (emphasis omitted)); Seth W. Stoughton, *Modern Police Practices: Arizona v. Gant's Illusory Restriction of Vehicle Searches Incident to Arrest*, 97 VA. L. REV. 1727, 1766–67 (2011).

142. See, e.g., *Fatal Force*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings-2016/> (last visited Aug. 29, 2016) (tracking the number of “people [who] have been shot and killed by police in 2016”).

manage the strain created by an outsider role in the community.”¹⁴³ The Warrior is honorable, which means that the actions an officer takes in the pursuit of the Warrior ideal are not just acceptable or justified, but also honorable in and of themselves so long as they comply with the Warrior’s code.¹⁴⁴ As criminologist John Crank has written, the Warrior ideal “allows cops to take righteous pride in seeking, arresting, and thumping bad guys.”¹⁴⁵

Officers may also experience dissonance as the result of events they observe. Officers take an oath to protect society¹⁴⁶ and view themselves as part of the Thin Blue Line, but they are exposed to situations that leave very little room for faith in human decency or the value of society itself. They see families turn on each other. They see the most vulnerable members of society brutally victimized. They also see their efforts to fight crime and disorder undermined by what they perceive as legal technicalities—the rules that a corrupt society has adopted to protect the very criminals who prey on it. Here, too, the Warrior ideal offers psychological solace. The tragedy and suffering to which officers are exposed can reaffirm the need for the Warrior as someone who protects the “good” in society from the “bad.” By adopting the Warrior concept, officers separate themselves and the darkness of their working reality from *real* society—they are on the fringes, in the trenches, fighting the disorder that threatens to spill over to the “good” neighborhoods and the families that are worth protecting.¹⁴⁷

Fourth, the Warrior worldview offers officers more than psychological comfort; it also offers their best chance for survival. Officers are told—repeatedly and by a variety of sources—that they need to adopt a Warrior mindset because failing to do so can be

143. John Van Maanen, *Observations on the Making of Policemen*, 32 HUM. ORG. 407, 408 (1973).

144. Shannon E. French, *The Warrior’s Code*, AIR U. (2001), <http://www.au.af.mil/au/awc/awcgate/jscope/french.htm> (“The combination of the warriors’ own natural disgust at what they must see in battle and the fact that what they must do on the battlefield seems so uncivilized, so against what they have been taught by their society, could make warriors feel tremendous self-loathing. Warriors need a way to distinguish what they must do out of a sense of duty from what a serial killer does for the sheer sadistic pleasure of it.”).

145. JOHN P. CRANK, *UNDERSTANDING POLICE CULTURE* 118 (2d ed. 2015).

146. *What is the Law Enforcement Oath of Honor?*, INT’L ASS’N CHIEFS POLICE, <http://www.iacp.org/What-is-the-Law-Enforcement-Oath-of-Honor> (last visited Aug. 10, 2016).

147. I make no claim that the Warrior concept alleviates all cognitive dissonance. To the contrary, research suggests that the cognitive dissonance created by the demands of policing is responsible for negatively affecting officer performance by causing “job burnout.” Arnold B. Bakker & Ellen Heuven, *Emotional Dissonance, Burnout, and In-Role Performance Among Nurses and Police Officers*, 13 INT’L J. STRESS MGMT. 423, 423 (2006).

fatal.¹⁴⁸ The work that officers do is viewed not just as dangerous but as *increasingly* dangerous.¹⁴⁹ Would-be officers learn in the academy, and current officers are frequently reminded, that their single most important goal every day is simply to make it home at the end of their shift.¹⁵⁰ Officers are taught that every aspect of policing is intensely dangerous.¹⁵¹ They hear about these dangers in their academy,¹⁵² from supervisors, and from older peers.¹⁵³ These

148. See Seth W. Stoughton, *Police Warriors or Community Guardians*, WASH. MONTHLY (Apr. 17, 2015, 9:03 AM), <http://washingtonmonthly.com/2015/04/17/police-warriors-or-community-guardians/>.

149. A recent letter to the editor of *American Police Beat*, for example, asserts that “police work is now just as, if not more dangerous than ever.” Justin Delaney, Letter to the Editor, *Police Work More Dangerous than Ever*, AM. POLICE BEAT, Feb. 2016, at 24. Statements like these are fairly common in policing. See, e.g., Craig Floyd, *Police Dangers Increasing*, POLICEONE.COM (Oct. 3, 2007), <https://www.policeone.com/traffic-patrol/articles/1360037-Police-dangers-increasing/>; Justin George, *Baltimore Union Blasts National Leaders Over Lack of Police Support*, POLICEONE.COM (Dec. 21, 2014), <https://www.policeone.com/patrol-issues/articles/8005729-Baltimore-union-blasts-national-leaders-over-lack-of-police-support/> (quoting a police union official as saying, “Not since the political unrest of the [1960s] have police officers been so targeted”); Betsy Brantner Smith, *3 Keys to Preparing for the Unexpected*, POLICEONE.COM (Sept. 1, 2010), <https://www.policeone.com/standoff/tips/2601266-3-keys-to-preparing-for-the-unexpected/> (“We’re living in increasingly dangerous, volatile times . . .”).

150. Seth W. Stoughton, *Policing Facts*, 88 TUL. L. REV. 847, 865 (2014); see SCOTT FIELDEN, *THE MIND OF A COP: WHAT THEY DO, AND WHY THEY DO IT* 21 (2009); DAVID J. THOMAS, *UNDERSTANDING VIOLENT CRIMINALS: INSIGHTS FROM THE FRONT LINES OF LAW ENFORCEMENT* 191 (2014). For a critique of this “first rule of law enforcement,” see Charles Huth et al., *No “Officer Safety” Exception to the Constitution*, LAW & ORD., Jan. 2015, at 10.

151. A.J. George, *Winning a Knife Fight*, POLICE MAG. (Feb. 11, 2015), <http://www.policemag.com/channel/weapons/articles/2015/02/winning-a-knife-fight.aspx> (“The dangers we expose ourselves to every time we go [on duty] are almost immeasurable. We know this the day we sign up and the academy certainly does a good job of hammering the point home.”); *Training Day*, AM. POLICE BEAT (Sept. 25, 2015) <https://apbweb.com/baltimore-police-academy-shooting/> (“There isn’t really a part of a cop’s job that isn’t potentially dangerous.”).

152. Uriel J. Garcia, *Experts Say Strongly Worded Police Curriculum Is Risky with Cadets*, SANTA FE NEW MEXICAN (Mar. 22, 2014), http://www.santafenewmexican.com/news/local_news/experts-say-strongly-worded-police-curriculum-is-risky-with-cadets/article_6fcb7d45-436c-5e48-aa06-2fc6fdcc35a1.html (describing academy materials that inform would-be officers that criminal suspects “are mentally prepared to react violently” and that officers “could die today, tomorrow, or next Friday”).

153. For a discussion of the relative value that officers place on informal instruction by older officers, as opposed to formal instruction or empirical research, see Stoughton, *supra* note 136, at 455–60.

messages are reinforced in articles,¹⁵⁴ books,¹⁵⁵ and training seminars.¹⁵⁶ To deal with these dangers, officers are taught to adopt a Warrior mindset. That mindset keeps officers safe by reminding them to stay hypervigilant¹⁵⁷ and to avoid complacency¹⁵⁸ while giving them the psychological conditioning they need to survive a life-and-death struggle.¹⁵⁹

The final reason the Warrior concept is so attractive to law enforcement is, unlike the others, external: the Warrior is a reliable source of political capital. The Warrior culture not only allows officers to “take righteous pride in seeking, arresting, and thumping bad guys, [it] provides them with broad social and political supports for doing so.”¹⁶⁰ When policing is framed as a struggle between Warriors and predators, between right and wrong, it makes it easy to support the police and difficult to do anything else, such as criticize individual officers or the profession as a whole. The police profession and its associations and unions wield tremendous power on both sides of the political aisle partially because Warrior rhetoric makes it difficult for elected officials to take positions that could be viewed as opposing law enforcement.

154. *Id.*; e.g., Amaury Murgado, *Developing a Warrior Mindset*, POLICE MAG. (May 24, 2012), <http://www.policemag.com/channel/patrol/articles/2012/05/warrior-mindset.aspx>; Charles Remsberg, *Warrior Mindset: 8 Elements of Tactical Performance*, POLICEONE.COM (June 5, 2013), <http://www.policeone.com/Officer-Safety/articles/6261735-Warrior-mindset-8-elements-of-tactical-performance/>.

155. *See, e.g.*, ALEXIS ARTWOHL & LOREN W. CHRISTENSEN, DEADLY FORCE ENCOUNTERS: WHAT COPS NEED TO KNOW TO MENTALLY AND PHYSICALLY PREPARE FOR AND SURVIVE A GUNFIGHT 32 (1997) (mentioning “the ever-increasing dangers on the street”).

156. Seminars dedicated to officer survival, edged-weapon defense, and deadly-force encounters make up a substantial portion of the training opportunities offered by private vendors. *See, e.g.*, *Officer Survival*, POLICETRAINING.NET, <http://policetraining.net/browse/topic?val=28> (last visited July 14, 2016).

157. Thomas C. Knowles, *Cops Aren't Your Enemy*, POLITICO MAG. (Dec. 23, 2014), <http://www.politico.com/magazine/story/2014/12/cops-arent-your-enemy-113794.html> (“From the start of any police academy, we are taught as cops to be ever vigilant—to apply laser-like attention to our surroundings at all times.”).

158. “Complacency kills” is a well-known phrase among officers. Seth Stoughton, *How Police Training Contributes to Avoidable Deaths*, ATLANTIC (Dec. 12, 2014), <http://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681/>. There are a truly staggering number of articles warning officers of the dangers of complacency. Popular police author and trainer Dave Smith described complaints about complacency as a “constant lament” and attribution of police deaths to complacency as a “common refrain” in law enforcement circles. Dave Smith, *Symptom = Complacency; Disease = ??*, OFFICER.COM (Sept. 9, 2013), <http://www.officer.com/article/11147375/if-complacency-is-the-symptom-what-is-the-disease>.

159. Stoughton, *supra* note 112, at 226.

160. CRANK, *supra* note 145, at 118.

These five characteristics—importance, exclusivity, psychological protection, survival, and public support—have combined to make the Warrior the most highly venerated metaphor for modern policing. As I have written elsewhere:

Officers are trained to cultivate a “warrior mindset,” the virtues of which are extolled in books, articles, interviews, and seminars intended for a law enforcement audience. An article in *Police Magazine* opens with a sentence that demonstrates with notable nonchalance just how ubiquitous the concept is: “[Officers] probably hear about needing to have a warrior mindset almost daily.” Modern policing has so thoroughly assimilated the warrior mythos that, at some law enforcement agencies, it has become a point of professional pride to refer to the “police warrior.”¹⁶¹

C. *The Evolution of Police Warriors*

Given the understandable appeal of the Warrior concept to modern officers, it should be no surprise many of the most celebrated aspects of policing are seen as embodying the Warrior ideal. In this Subpart, I discuss how the Warrior metaphor has been reinforced by training, equipment, and rhetoric.

The implementation of the Police Warrior began in the mid-1960s within the LAPD. In the summer of 1965, a routine traffic stop and drunk-driving arrest in Los Angeles’s Watts neighborhood—a deeply disadvantaged black neighborhood in highly segregated South Central LA—exploded into a six-day riot that killed thirty-four people, injured over a thousand others, and caused an estimated \$200 million in property damage (over \$1.5 billion in 2015 dollars).¹⁶² Police officers faced violent resistance, including sniper fire and fire bombs.¹⁶³ The overwhelmed LAPD called in California National Guard troops to help restore order within the fifty-six-square-mile perimeter.¹⁶⁴ In the wake of the riots, Officer John Nelson and Inspector Darryl Gates, who would later become the Police Chief, urged the LAPD to form a special squad of officers who would receive military training and equipment: a “Special Weapons Attack Team.”¹⁶⁵ The idea spread rapidly across the

161. Stoughton, *supra* note 112, at 225 (footnotes omitted).

162. RADLEY BALKO, *RISE OF THE WARRIOR COP*, 51–52 (2013); David O. Sears & John B. McConahay, *Participation in the Los Angeles Riot*, 17 *SOC. PROBS.* 3, 10–11 (1969); *Consumer Price Index Inflation Calculator*, BUREAU OF LAB. STAT., <http://data.bls.gov/cgi-bin/cpicalc.pl?cost1=10000000&year1=1965&year2=2015> (last visited July 18, 2016).

163. John Dart, *Defiant Snipers, Police Duel in L.A. Negro Area*, *LEOMINSTER ENTER.*, Aug. 17, 1965, at 1, <http://www.rarenewspapers.com/view/588783>.

164. BALKO, *supra* note 162, at 52.

165. *Id.* at 60–62.

country following the highly publicized University of Texas clock tower shootings in 1966 and widespread civic unrest.¹⁶⁶ The term for these squads was soon softened to "Special Weapons and Tactics," ("SWAT") and the teams themselves were used to deal with rare and volatile situations that patrol officers were not equipped to handle, such as hostage situations and raids that carried a high risk of violent confrontation.¹⁶⁷ Officers who made it through a demanding application process and rigorous training earned the prestige of being a member of an elite unit; tactical officers were the Warrior's Warrior, tasked with dangerous and difficult assignments.¹⁶⁸

The development of SWAT teams accelerated the adoption of Warrior ideals in law enforcement in part because the scope of SWAT assignments expanded over time. The era in which SWAT teams were born was an exceptionally dangerous time for police officers. For the duration of the 1970s, an average of 115 officers were feloniously killed in the line of duty every year, with a high of 134 officers killed in 1973.¹⁶⁹ Even in that environment, however, SWAT teams were used sparingly, reserved for "volatile, high-risk situations such as bank robberies and hostage situations."¹⁷⁰ Over time, more police agencies adopted SWAT teams,¹⁷¹ and SWAT teams were deployed more often for circumstances other than the volatile, high-risk situations that originally justified their existence. By the early 1980s, there were about three thousand SWAT deployments every year.¹⁷² By 1996, the average had increased tenfold, to thirty thousand.¹⁷³ The next five years saw a 25% increase, with the average rising to forty thousand deployments every year.¹⁷⁴ The increased use did not mirror an increase in crime: between "1980 and 1995, the number of times that SWAT units were

166. *Id.* at 58.

167. RADLEY BALKO, *OVERKILL: THE RISE OF PARAMILITARY POLICE RAIDS IN AMERICA* 6 (2006), http://object.cato.org/sites/cato.org/files/pubs/pdf/balko_whitepaper_2006.pdf.

168. This status has led to the celebration of SWAT teams in popular culture, further evidencing the tendency to idolize Warrior ideals and imagery. *See, e.g.*, *S.W.A.T.* (Columbia Pictures 2003) (bearing the tagline, "Even cops dial 911"). In addition, dozens of video games portray and glorify SWAT teams. *See, e.g.*, Michael McWhertor, *Meet Rainbow Six Siege's FBI SWAT Operators*, *POLYGON* (June 4, 2015, 8:00 PM), <http://www.polygon.com/2015/6/4/8731885/rainbow-six-siege-fbi-swat-video> (showcasing an FBI SWAT team players may take control of in a videogame based around SWAT and counterterrorism tactics and equipment).

169. *Law Enforcement Officers Killed*, *supra* note 21.

170. BALKO, *supra* note 167, at 4.

171. Peter B. Kraska & Victor E. Kappeler, *Militarizing American Police: The Rise and Normalization of Paramilitary Units*, 44 *SOC. PROBS.* 1, 3 (1997).

172. BALKO, *supra* note 167, at 11.

173. *Id.*

174. *Id.*

dispatched increased by 538[%] while the crime rate was flat.”¹⁷⁵ SWAT teams began to be used more frequently for serving search or arrest warrants, particularly drug-related warrants.¹⁷⁶ Utah, the only state that currently tracks the deployment of police tactical teams, reported in 2014 that more than 78% of deployments related to drugs, while less than 2.5% related to active shooters, barricaded suspects, and hostage situations combined.¹⁷⁷

The creation and expansion of SWAT teams may be the most explicit example of the shift to a more militarized, Warrior-like police force, but it is hardly the only one.¹⁷⁸ Over the last several decades, equipment and tactics once reserved for SWAT operatives have been gradually made available to ordinary officers.

In February 1997, two heavily armed gunman robbed a bank in North Hollywood, California, and engaged in a prolonged shoot-out with the police.¹⁷⁹ The robbers, armed with automatic rifles and wearing heavy body armor, held a crowd of officers at bay for almost twenty minutes.¹⁸⁰ Only after the LAPD SWAT team arrived were the robbers brought down.¹⁸¹ The North Hollywood bank robbery led to a nationwide reevaluation of how patrol officers were equipped, and police agencies across the country began to give at least some patrol officers heavier weapons than the standard-issue pistol and shotgun that had proven ineffective in North Hollywood.¹⁸² The AR-15 rifle, a semiautomatic, civilian version of the military’s M-16 rifle, became the weapon of choice for patrol officers.¹⁸³ Police agencies began issuing rifles to officers or permitting officers who had gone through the appropriate training to carry a personally owned rifle.¹⁸⁴

175. Edward Ericson, *Commando Cops*, ORLANDO WKLY. (May 7, 1998), <http://www.orlandoweekly.com/orlando/commando-cops/Content?oid=2264312>.

176. BALKO, *supra* note 167, at 4.

177. UTAH COMM’N ON CRIMINAL & JUVENILE JUSTICE, 2014 LAW ENFORCEMENT TRANSPARENCY REPORT 5 (2015), http://libertasutah.org/drop/sb185_2014.pdf.

178. See generally BALKO, *supra* note 162 (exploring politics and policies that have lead the police to become “soldiers” in the wars on crime, drugs, and terror); Peter Kraska, *The Military-Criminal Justice Blur: An Introduction*, in MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM 3 (Peter Kraska ed., 2001) (examining the increasing lack of “traditional distinctions between military, police, and criminal justice”).

179. BALKO, *supra* note 162, at 228–29.

180. *Id.* at 229.

181. *Id.*

182. *Id.* at 229–30.

183. Bob Parker, *How the North Hollywood Shootout Changed Patrol Arsenals*, POLICE: L. ENFORCEMENT MAG. (Feb. 28, 2012), <http://www.policemag.com/channel/weapons/articles/2012/02/how-the-north-hollywood-shootout-changed-patrol-rifles/page/2.aspx>.

184. After going through forty hours of training to be certified as a Patrol Rifle Operator, I kept a personally owned AR-15 in a special locking mechanism in my police vehicle while on patrol.

Just over two years after the North Hollywood bank robbery, another horrific event led to a further adjustment of police tactics. At the time, the conventional police response to a hostage situation called for patrol officers to set up a perimeter around the scene and wait for a SWAT team.¹⁸⁵ The prevailing belief was that the safe recovery of hostages was best left to trained negotiators or well-equipped entry teams.¹⁸⁶ But in April 1999, two seniors at Columbine High School went on an hour-long rampage, killing thirteen people and injuring thirty-five more before taking their own lives.¹⁸⁷ Officers set up a perimeter during the shooting and waited for the SWAT team to respond, but SWAT did not make entry until almost two hours after the shooting started.¹⁸⁸ After Columbine, police agencies and trainers were faced with the unpleasant reality that, in some cases, waiting for specialized units gave a hostage taker more time to kill victims. Establishing a perimeter and waiting for specialized units would remain the appropriate tactic in some cases, such as static hostage situations or barricaded subjects without hostages, but active shooter situations required a different approach. Officers are now taught that the first officer or officers on scene should aggressively search for active shooters with an eye to eliminating the threat in the shortest possible time.¹⁸⁹ This shift in policy and tactics has required a change in equipment and training. As Professor J. Pete Blair told the Police Executive Research Foundation in 2014, “We have seen attackers barricade themselves in, so we need police to have the skills and techniques and equipment to get in and stop the killing.”¹⁹⁰ Today, it is common for rank-and-file officers to be given at least some of the dynamic entry and rapid room-clearing training that had previously been reserved for SWAT units.¹⁹¹

The need for specialized training and equipment has spawned private industry and advertising that further reinforces Warrior ideals. Advertisements that appear in popular, police-oriented publications, such as *Police Magazine* and *American Police Beat*, often capitalize on Warrior imagery.¹⁹² Advertisements for rifles

185. POLICE EXEC. RESEARCH FORUM, CRITICAL ISSUES IN POLICING SERIES: THE POLICE RESPONSES TO ACTIVE SHOOTER INCIDENTS 1 (2014), http://www.policeforum.org/assets/docs/Critical_Issues_Series/the%20police%20response%20to%20active%20shooter%20incidents%202014.pdf.

186. *Id.* at 1–2.

187. *Id.* at 1.

188. BALKO, *supra* note 162, at 231–32.

189. Some agencies train officers to enter an active shooting scene individually and without backup, while other agencies train officers to work in pairs or small groups. See POLICE EXEC. RESEARCH FORUM, *supra* note 185, at 8–10.

190. *Id.* at 6.

191. *Id.* at 13.

192. See POLICE MAG., Jan. 2016, at 19, 31.

and tactical gear, such as “through-wall” radar systems, are ubiquitous, of course, but even products and services marketed for use by regular patrol officers are presented in a heavily militarized way. A recent issue of *Police Magazine*, for example, contains advertisements by clothing manufacturers 5.11 and Dickies picturing officers wearing tactical vests and carrying rifles as they step out of police helicopters.¹⁹³ An ad for a Chevrolet Tahoe is captioned, “A new way to dominate the pursuit.”¹⁹⁴ Some advertisements hew even closer to Warrior rhetoric. Gun manufacturer Sig Sauer urges readers to “[u]nleash the warrior spirit” by purchasing a Legion series handgun.¹⁹⁵ It offers the following inducement: “Welcome to Legion. Bound together by the greatest demands and the highest expectations. Our most popular platforms with the most requested enhancements. Purpose built. Performance tested. Only for the elite few.”¹⁹⁶

The police community itself has reinforced the message that courage under fire is the single most important characteristic of a successful officer. Every year, the International Association of Chiefs of Police (“IACP”) identifies a “Police Officer of the Year.”¹⁹⁷ The award recognizes “exemplary performance in police work”¹⁹⁸ and “outstanding and heroic achievement.”¹⁹⁹ In the hyperlocalized world of policing, which is dominated by small agencies,²⁰⁰ receiving recognition from one of the oldest, largest, and best-regarded international policing bodies is a big deal. The award “symbolizes the highest level of achievement among police officers,”²⁰¹ and officers who are selected to receive the award are presented as role models for the profession. In the thirty-year period from 1986 to 2015, twenty-five recipients were honored for actions they took in combat conditions while under attack.²⁰² Make no mistake, those officers, and countless others, deserve to be honored for their heroic,

193. *Id.* Another advertisement in the same issue, this one by clothing manufacturer Vertx, shows two patrol officers moving through a dilapidated hallway with their guns drawn. *Id.* at 43.

194. *Id.* at 7.

195. *Id.* at 75.

196. *Id.*

197. *Police Officer of the Year*, INT’L ASS’N CHIEFS POLICE, <http://www.iacp.org/poy> (last visited July 19, 2016).

198. *2005 IACP Awards*, POLICE CHIEF MAG., http://www.policechiefmagazine.org/magazine/issues/12006/PDFS/IACP_Annual_Awards.pdf (last visited Aug. 24, 2016).

199. *Police Officer of the Year*, *supra* note 197.

200. About half of local police agencies have fewer than ten sworn officers, and fewer than 650 of the more than twelve thousand local police agencies have more than one hundred officers. REAVES, *supra* note 21, at 3.

201. *2005 IACP Awards*, *supra* note 198.

202. *Police Officer of the Year Honorees*, INT’L ASS’N CHIEFS POLICE, <http://www.iacp.org/POYStories>. Thirty-one awards were issued over that thirty-year period; two officers were honored in 2011. *Id.*

life-saving actions in the face of an imminent lethal threat.²⁰³ It does not diminish their heroism in any way to point out that consistently identifying courage under fire as the “highest level of achievement among police officers” reinforces the Warrior worldview.²⁰⁴

Police industry groups such as the IACP are not the only entities to have contributed to the Warrior metaphor. The federal government has done so as well, characterizing officers as soldiers in the War on Crime announced by President Johnson in 1965,²⁰⁵ the War on Drugs announced by President Nixon in 1971,²⁰⁶ and the War on Terrorism announced by President Bush in 2001.²⁰⁷ Warrior terminology has found its way into policy statements from both high-level elected officials trying to bolster public support and officials charged with implementing the resulting programs. Political affiliation is all but irrelevant; officials in both parties and different administrations have embraced Warrior rhetoric or the ideas behind it. In the 1980s, President Reagan and Attorney General William French Smith “utterly dehumanize[d] drug users, cast the drug fight as a biblical struggle between good and evil, and

203. When I served as an officer at the Tallahassee Police Department, I worked with and knew Officer Scott Angulo, who won the IACP’s Police Officer of the Year Award in 2015 for his response—while at home and off duty—to an active shooter who had set a house on fire so he could ambush first responders, killing a sheriff’s deputy and injuring another. *Id.* I could not be more impressed with Officer Angulo’s heroism and bravery.

204. Interestingly, the focus of the IACP’s Police Officer of the Year award has shifted over time. In the twenty-year period from 1966 to 1985, the award was given only three times for actions taken under combat conditions. *Id.* The majority of the awards in that time were given for life-saving efforts or for career or life-time achievements rather than specific incidents. *Id.* It is also worth noting that a few agencies have recently begun rewarding officers for successfully de-escalating dangerous interactions, formally treating those awards as the equivalent of more traditional awards for valor. Errin Haines Whack, *Police Departments Begin to Reward Restraint Tactics*, AP (May 31, 2016, 12:47 PM), <http://www.bigstory.ap.org/article/898f72aa8c2b4cd7bf099f9200759c2e/police-departments-begin-reward-restraint-tactics>. It remains to be seen whether those awards are informally equated with awards for valor.

205. See ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 1, 79 (2016); Elizabeth Hinton, *Why We Should Reconsider the War on Crime*, TIME (Mar. 20, 2015), <http://time.com/3746059/war-on-crime-history/>.

206. ELAINE B. SHARP, THE DILEMMA OF DRUG POLICY IN THE UNITED STATES 1–2 (1994) (quoting President Nixon as saying, “America’s public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.”).

207. George W. Bush, 43rd U.S. President, Address to a Joint Session of Congress (Sept. 20, 2001) (transcript available at http://www.washingtonpost.com/wp-srv/nation/specials/attacked/transcripts/bushaddress_092001.html).

in the process turn[ed] the country's drug cops into holy soldiers."²⁰⁸ In 1994, President Clinton's Attorney General, Janet Reno, opened a discussion with federal defense and intelligence experts about how they could support local law enforcement by saying, "[L]et me welcome you to the kind of war our police fight every day. And let me challenge you to turn your skills . . . to helping us with the war we're now fighting daily in the streets and our towns and cities across the nation."²⁰⁹ President Clinton advanced this metaphor in 1996 when he appointed General Barry McCaffrey, a decorated combat veteran and Army Ranger, as the director of the Office of National Drug Control Policy.²¹⁰

The federal government's wars on crime, drugs, and terror have also been major conduits for equipping police forces with military-grade equipment and training. "Over the last 20 years, Congress has encouraged the U.S. military to supply intelligence, equipment, and training to civilian police."²¹¹ The Defense Logistics Agency's Law Enforcement Support Office administered the 1033 Program that transferred military equipment to local law enforcement agencies and adopted the tagline, "From warfighter to crimefighter."²¹² The metaphor was clear: police officers were soldiers, and their day-to-day job involved fighting on the front lines.²¹³

The judicial branch has also reinforced policing's Warrior culture. The courts have privileged law enforcement interests, affirmed the image of officers as uniquely skilled crime fighters working in a hostile environment, and resisted the notion that policing practices are problematic or, if they are problematic, that the problems are the result of systemic issues.

208. BALKO, *supra* note 162, at 139.

209. Diane Cecilia Weber, *Police Develop 'Military Mind Set'*, BALTIMORE SUN (Sept. 12, 1999), http://articles.baltimoresun.com/1999-09-12/topic/9909150450_1_civilian-affairs-military-assistance-mount-carmel.

210. Diane Cecilia Weber, *Warrior Cops: The Ominous Growth of Paramilitarism in American Police Departments*, 50 CATO INST. BRIEFING PAPER 2 (1999), <http://object.cato.org/sites/cato.org/files/pubs/pdf/bp50.pdf>.

211. *Id.*

212. *The Department of Defense Excess Property Program in Support of U.S. Law Enforcement Agencies: An Overview of DOD Authorities, Roles, Responsibilities, and Implementation of Section 1033 of the 1997 National Defense Authorization Act: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Armed Servs.*, 113th Cong. 77 (2014) (statement of the American Civil Liberties Union).

213. The federal government has not always provided a consistent message to local law enforcement agencies. In the same year that Attorney General Reno was describing the "war" that local officers were fighting, the Community Oriented Policing Services Office was established in the Department of Justice to distribute and monitor funds pursuant to the Violent Crime Control and Law Enforcement Act of 1994. *The COPS Office: 20 Years of Community Oriented Policing*, COMMUNITY ORIENTED POLICING SERVICES. (Nov. 12, 2014), <http://www.cops.usdoj.gov/default.asp?Item=2754>.

The Supreme Court has consistently privileged policing through its tendency to determine whether constitutional regulation is appropriate—and, if so, what type of regulation is appropriate—in part by assessing whether the proposed rule would burden law enforcement.²¹⁴ The Court regularly refuses to adopt rules that it believes would hinder law enforcement's interests. The Court's approach in *Wyoming v. Houghton*²¹⁵—which held that probable cause to search a vehicle included the legal authority to search passengers' belongings in the vehicle that could conceal the object of the search—was typical; without such authority, the Court reasoned, “[e]ffective law enforcement would be appreciably impaired.”²¹⁶ Similarly, in *California v. Acevedo*,²¹⁷ the Court held that earlier automobile exception cases, which had distinguished between cars and containers in cars, “impeded effective law enforcement.”²¹⁸ On some occasions, the Court has adopted a particular rule only with the understanding that it will *not* impede effective law enforcement. In *Tennessee v. Garner*,²¹⁹ for example, the Court concluded that there was no evidence that officers needed to be able to use deadly force to prevent the escape of a nonviolent felony suspect.²²⁰ The Court came to a similar conclusion recently when it overturned a Los Angeles city ordinance requiring hotels to allow officers access to hotel registries on demand; in most cases officers did not need that authority because, the Court reasoned, officers could rely on consent or administrative subpoenas.²²¹ And in *Miranda v. Arizona*,²²² the Court imposed the now-familiar

214. See *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2453 (2015); *Missouri v. McNeely*, 133 S. Ct. 1552, 1567–68 (2013); *Montejo v. Louisiana*, 556 U.S. 778, 796 n.5 (2009); *Wyoming v. Houghton*, 526 U.S. 295, 304 (1999); *California v. Acevedo*, 500 U.S. 565, 586–87 (1991); *Florida v. Wells*, 495 U.S. 1, 12 (1990) (Stevens, J., concurring) (“Apparently the mere possibility of a minor burden on law enforcement interests is enough to generate corrective action by this Court.”); *Tennessee v. Garner*, 471 U.S. 1, 19 (1985); *Berkemer v. McCarty*, 468 U.S. 420, 441 (1984); *Welsh v. Wisconsin*, 466 U.S. 740, 760 (1984) (White, J., dissenting); *Steagald v. United States*, 451 U.S. 204, 221 (1981); *Payton v. New York*, 445 U.S. 573, 602 (1980); *United States v. Lovasco*, 431 U.S. 783, 792–93 (1977); *United States v. Watson*, 423 U.S. 411, 431 (1976) (Powell, J., concurring); *Michigan v. Tucker*, 417 U.S. 433, 457 (1974) (Brennan, J., concurring); *Terry v. Ohio*, 392 U.S. 1, 27 (1968); *Miranda v. Arizona*, 384 U.S. 436, 481 (1966); *Bartkus v. Illinois*, 359 U.S. 121, 156 (1959) (Black, J., dissenting); *Henry v. United States*, 361 U.S. 98, 106 (1959) (Clark, J., dissenting); *Brinegar v. United States*, 338 U.S. 160, 176 (1949); *Carter v. Illinois*, 329 U.S. 173, 186 (1946) (Murphy, J., dissenting).

215. 526 U.S. 295.

216. *Id.* at 304, 307.

217. 500 U.S. 565.

218. *Id.* at 574.

219. 471 U.S. 1.

220. *Id.* at 19.

221. *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2453 (2015).

222. 384 U.S. 436 (1966).

warning requirement only after describing how “the Federal Bureau of Investigation ha[d] compiled an exemplary record of effective law enforcement while advising any suspect or arrested person” of the right to remain silent.²²³

The courts, including the Supreme Court, have also affirmed the image of officers as highly skilled crime-fighting professionals. For example, officers are credited as having an “almost instinctive” ability to separate questions related to officer safety from questions intended to obtain testimonial evidence.²²⁴ Further, by virtue of their “experience and specialized training,” officers can “make inferences from and deductions about the cumulative information available to them that ‘might well elude an untrained person.’”²²⁵ It is this knowledge that permits officers to identify even entirely lawful conduct as potentially dangerous²²⁶ or criminal.²²⁷ Courts have broadly deferred to police assertions of expertise or specialized knowledge.²²⁸ At times, this deference can be quite explicit.²²⁹ In other cases, it is implicit in the courts’ rote mentions or descriptions of an officer’s training and experience.²³⁰

The way that courts describe the policing environment provides an additional endorsement of the Warrior image. The Supreme Court has indicated that policing is generally dangerous²³¹ and has also identified particular aspects of policing that are especially so: traffic stops,²³² approaching stopped vehicles,²³³ investigative

223. *Id.* at 483.

224. *Davis v. Washington*, 547 U.S. 813, 829 (2006) (citing *New York v. Quarles*, 467 U.S. 649, 658–59 (1984)).

225. *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

226. *See Ryburn v. Huff*, 132 S. Ct. 987, 991 (2012).

227. *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000).

228. *See Stoughton*, *supra* note 136, at 446–55.

229. *E.g.*, *United States v. Martin*, 679 F. Supp. 2d 723, 734 (W.D. La. 2010) (quoting *United States v. Jenson*, 462 F.3d 399, 405 (5th Cir. 2006)) (stating that judges are “generally obliged to accord deference and even ‘great respect’ to an officer’s training and experience”).

230. *See United States v. Floyd*, 740 F.3d 22, 35 (1st Cir. 2014) (observing that courts have “with a regularity bordering on the echolalic, endorsed the concept that a law enforcement officer’s training and experience may yield insights that support a probable cause determination”); *see also Stoughton*, *supra* note 136, at 455 (discussing the tendency of courts to accept officers as experts).

231. *E.g.*, *Jaffee v. Redmond*, 518 U.S. 1, 11 n.10 (1996) (“Police officers engaged in the dangerous and difficult tasks associated with protecting the safety of our communities not only confront the risk of physical harm but also face stressful circumstances that may give rise to anxiety, depression, fear, or anger.”); *Roberts v. Louisiana*, 431 U.S. 633, 636 n.3 (1977) (per curiam) (“We recognize that the life of a police officer is a dangerous one.”).

232. *Arizona v. Johnson*, 555 U.S. 323, 330 (2009); *Michigan v. Long*, 463 U.S. 1032, 1047–48 (1983).

233. *Pennsylvania v. Mimms*, 434 U.S. 106, 110 (1977) (per curiam).

detentions,²³⁴ and entering homes unannounced.²³⁵ The Court's widely quoted description of situations in which police must make use-of-force decisions reflects its view "that police officers are often forced to make split-second judgments . . . in circumstances which are tense, uncertain, and rapidly evolving."²³⁶ The limited time and inherent uncertainty in use-of-force situations—combined, perhaps, with officer's specialized training and experience, although the Court has never explicitly connected the two—have led the Court to conclude that courts should generally defer to officers' use-of-force decisions.²³⁷

The image of the highly trained Warrior also finds support in the Court's view of police professionalism. "The Court has only rarely credited fears that police officers will attempt to circumvent the constitutional limits to their authority."²³⁸ To the contrary, it is far more common for the Court to rely on the "increasing professionalism of police forces."²³⁹ Officers "across the United States," the Court has said, "take the constitutional rights of citizens seriously."²⁴⁰ To that end, officers "take care to learn what is required of them under Fourth Amendment precedent and . . . conform their conduct to th[o]se rules."²⁴¹ In accordance with that belief, the Court has generally been skeptical of the notion that officers will engage in gamesmanship. In *Heien v. North Carolina*,²⁴² when the Court held that an investigatory stop could be predicated on an officer's reasonable mistake of law, it resisted the suggestion that such a rule would give officers an incentive to *not* learn the law.²⁴³ And when it prohibited police from using roadblock-style checkpoints for drug interdiction or other "ordinary criminal wrong-doing," the Court paid little attention to the possibility that police agencies could engage in substantially the same behavior so long as they identified a permissible purpose for the checkpoint.²⁴⁴ Most recently, several justices were deeply

234. *Long*, 463 U.S. at 1047.

235. *Hudson v. Michigan*, 547 U.S. 586, 594 (2006).

236. *Graham v. Connor*, 490 U.S. 386, 396–97 (1989). This phrasing has proven widely accepted, appearing in thousands of lower court opinions, briefs, and model jury instructions. Stoughton, *supra* note 150, at 865. For a criticism of the Court's focus on the split-second moment in which officers use force, see Brandon L. Garrett & Seth W. Stoughton, *A Tactical Fourth Amendment*, 102 VA. L. REV. (forthcoming 2017), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2754759.

237. See Stoughton, *supra* note 150, at 861–65.

238. *Id.* at 861.

239. *Hudson*, 547 U.S. at 598–99.

240. *Id.*

241. *Davis v. United States*, 564 U.S. 229, 241 (2011) (quoting *Hudson*, 547 U.S. at 599).

242. 135 S. Ct. 530 (2014).

243. *Id.* at 539–40.

244. *City of Indianapolis v. Edmond*, 531 U.S. 32, 41, 46–47 (2000).

skeptical that officers would unlawfully stop civilians to check for outstanding warrants even if the fruits of a search incident to arrest on that warrant were admissible.²⁴⁵ Even when an individual officer does not live up to professional standards, the Court has been reluctant to fault law enforcement generally.²⁴⁶ In concluding that officers could constitutionally make arrests for any violation classified as criminal by state law, regardless of whether state law authorized arrest or jail time, the Court indicated that concerns about police abuse were speculative at best: “[S]urely the country is not confronting anything like an epidemic of unnecessary minor-offense arrests.”²⁴⁷

The Warrior concept “provides a moral-emotional identity for police as warriors in the war against crime.”²⁴⁸ Bolstered by the training and equipment that officers receive, particularly after the Columbine and September 11th attacks; by the marketing that saturates police-oriented publications; by law enforcement industry groups; by the rhetoric used at various times by the federal government; and by judicial decisions that often reflect and reinforce officers’ self-perceptions, it should be no surprise that the Warrior culture has put down strong roots in modern policing.

D. *The Corruption of the Warrior Ideal*

The Warrior concept has undeniable appeal to law enforcement audiences. Perhaps that appeal made the corruption of the Warrior principles all but inevitable. The Warrior principles are admirable, but in practice, policing all too often fails to live up to those ideals. Troublingly, Warrior rhetoric is often invoked to explain or justify behaviors inconsistent with or outright contrary to policing’s mission of public service and the Warrior’s core values of honor, duty, and resolve. Despite the best of intentions, the Warrior concept promotes an adversarial style of policing that estranges the public and contributes to unnecessary conflict and violence. Further, it offers a way for officers to rationalize bad acts and resist criticism.

245. *Utah v. Strieff*, 136 S. Ct. 2056, 2064 (2016). Justices Ginsburg and Sotomayor, on the other hand, appeared much more sympathetic to concerns about potential abuse. *Id.* at 2069 (Sotomayor, J., dissenting).

246. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 353 (2001).

247. *Id.* at 353 & n.25. *But see Wong Sun v. United States*, 371 U.S. 471, 479 (1963) (mentioning “[t]he history of the use, and not infrequent abuse, of the power to arrest”).

248. CRANK, *supra* note 145, at 118 (discussing “militarism”); *see also* John Van Maanen, *The Asshole*, in *POLICING: A VIEW FROM THE STREET* 221 (Peter K. Manning & John Van Maanen eds., 1978), *reprinted in* *POLICE & SOCIETY: TOUCHSTONE READINGS* 346, 347 (Victor E. Kappeler ed., 2d ed. 1999) (describing “heroic self-perceptions reflecting moral superiority”).

1. *Creating Unnecessary Conflicts*

Under a Warrior worldview, police legitimacy is founded in criminal law, the unique ability of officers to enforce it, and the code that officers must adhere to. Criminal law serves as an external source of legitimacy—officers, as many are often quick to point out, merely enforce the law; they do not make it. While public support for policing may be preferable in this worldview, it is not essential.²⁴⁹ And because public support is not viewed as an essential part of policing, the need to secure public trust is often given a low priority by rank-and-file officers.²⁵⁰ In some cases, officers may even view public trust as counterproductive.²⁵¹ When officers do not appreciate the importance of public trust, they have no motivation to act in a way that increases that trust.

In combination with the low value that many officers put on public trust, training that teaches officers to be hypervigilant to potential threats can lead officers to adopt an adversarial approach to civilian interactions that effectively precludes good police-community relations. Because officers are Warriors, they are trained to consider each civilian they interact with as a potential threat and to approach every civilian interaction as a potential deadly-force encounter.²⁵² For their own safety, officers are taught that they need to take control of a scene—to exhibit an authoritative “command presence.” According to Erwin Chemerinsky, who

249. This view, and the perception of the police role as one of society’s elite protectors, are a far cry from the Peelian Principles that emphasized the need for public trust and the concept that “the police are the public and that the public are the police.” See Home Office, *supra* note 28.

250. Indeed, line officers and union officials often criticize police executives for responding to community concerns or taking steps designed to appease the public, which is often viewed as failing to support the officers. See, e.g., Kate Mather, *Union Official: LAPD Chief Lost Support of Officers After Saying One Should Be Charged*, L.A. TIMES (Jan. 12, 2016, 6:45 PM), <http://www.latimes.com/local/lanow/la-me-ln-lapd-venice-shooting-union-20160112-story.html>.

251. When someone trusts the police, they do not fear them, but sometimes officers rely on people’s fear as a motivation for compliance. See, e.g., BAKER, *supra* note 140, at 229–33 (relating one officer’s description of how he used scare tactics to keep prostitutes off the streets, including threatening to break their legs, driving onto sidewalks as if he would run them over, and leading them to believe that he had killed other prostitutes); Adam Braskich, *Opinion, Stop Demanding the Impossible of Police*, BALTIMORE SUN (May 15, 2015), <http://www.baltimoresun.com/news/opinion/oped/bs-ed-freddie-gray-cops-20150516-story.html>.

252. RONALD J. ADAMS ET AL., *STREET SURVIVAL* 155 (1980) (“As you approach any situation, you want to be in the habit of looking for cover[] so you can react automatically to reach it should trouble erupt.”); John Bennett, *How Command Presence Affects Your Survival*, POLICEONE.COM (Oct. 7, 2010), <https://www.policeone.com/Officer-Safety/articles/2748139-How-command-presence-affects-your-survival/> (“Remain humble and compassionate; be professional and courteous[,] and have a plan to kill everyone you meet.”).

studied the LAPD's internal investigation following the Rampart scandal, officers were taught: "You are in charge, you have to show everyone you are in charge. Be decisive. Have command presence."²⁵³ Command presence is important because, *inter alia*, it is believed to deter criminals from thinking that officers are easy marks.²⁵⁴

Officers are trained to take control by using an "Ask, Tell, Make" approach in interactions with civilians.²⁵⁵ Officers first ask a civilian to do something.²⁵⁶ If the civilian does not do as requested, the officer orders the civilian to comply.²⁵⁷ If the civilian does not comply with the order, the officer forces the civilian to comply, using violence as it is needed.²⁵⁸ This approach is viewed as necessary, or at least as advisable, because it ensures that the officer remains in

253. Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal*, 34 LOY. L.A. L. REV. 545, 563 (2001). For a discussion of the gendered implications of command presence, see generally Frank R. Cooper, "Who's the Man?: Masculinities Studies, Terry Stops, and Police Training", 18 COLUM. J. GENDER & L. 671 (2009).

254. ANTHONY J. PINIZZOTTO ET AL., U.S. DEPT OF JUSTICE, VIOLENT ENCOUNTERS: A STUDY OF FELONIOUS ASSAULTS ON OUR NATION'S LAW ENFORCEMENT OFFICERS 19 (2006), <http://www.fairfaxcounty.gov/policecommission/materials/band-readahead.pdf> [<http://perma.cc/4UJB-69XK>]; Bennett, *supra* note 252. The concept of command presence has been criticized for its association with masculinity and, when included as part of an evaluative process, may lend itself to gender discrimination. See THE WOMEN'S ADVISORY COUNCIL TO THE L.A. POLICE COMM'N, A BLUEPRINT FOR IMPLEMENTING GENDER EQUITY IN THE LOS ANGELES POLICE DEPARTMENT 39–41 (1993). As with much of the terminology in policing, however, command presence is capable of different meanings, some of which are unrelated, at least on the surface, to masculinity or aggression. See GERALD W. GARNER, COMMON SENSE POLICE SUPERVISION: PRACTICAL TIPS FOR THE FIRST-LINE LEADER 81–83 (4th ed. 2008).

255. *Former SWAT Commander Speaks Out on Police Militarization, the War on Drugs, and Civil Liberties*, LIBERTAS INST. (Mar. 26, 2014), <http://libertasutah.org/interview/former-swat-commander-speaks-out-on-police-militarization-the-war-on-drugs-and-civil-liberties/>.

256. *Id.*

257. *Id.*

258. *Id.*; see also Caitlin Doornbos, *Law Enforcement Policy, Training Offer Guidance on Potentially Lethal Situations*, LAWRENCE JOURNAL-WORLD (May 9, 2015), <http://www2.ljworld.com/news/2015/may/09/law-enforcement-policy-training-offer-guidance-pot/> (describing training at a Kansas sheriff's office); Ray Stern, *No Respect: A Prickly Professor's Violent Arrest by a Badge-Heavy Cop Brings Out the Bully in ASU*, PHX. NEW TIMES (Apr. 8, 2015), <http://www.phoenixnewtimes.com/news/no-respect-a-prickly-professors-violent-arrest-by-a-badge-heavy-cop-brings-out-the-bully-in-asu-7287384> (describing training at an Arizona police academy). There is an important racial and class dynamic to this observation, as officers who use "Ask, Tell, Make" with constituents who lack social or political capital may instead adopt a softer approach—one that emphasizes requesting, explaining, and convincing—with constituents they perceive as wielding social or political power. See, e.g., Cooper, *supra* note 101, at 125, 125–26.

control and denies the civilian the opportunity to physically resist.²⁵⁹ Unfortunately, officers who internalize the Warrior perception have sometimes applied this approach even in the absence of legal authority to issue the order in the first place.²⁶⁰ Whether bolstered by lawful authority or not, an approach that emphasizes compliance over cooperation creates conflicts a different cultural norm might well avoid.²⁶¹

The Warrior concept discourages officers from thinking of themselves as members of the public. As the embodiment of the Thin Blue Line, rather than the society that it protects, officers “feel more comfortable distancing themselves from subjects mentally, physically, and emotionally.”²⁶² When officers view themselves as a member of an elite crime-fighting profession, and when that view is reaffirmed by others in the profession, officers come to expect civilians to share that view and to treat officers with a certain level of respect and deference. From the officer’s point of view, the officer is an authority figure that must be respected and obeyed.²⁶³ Indeed, officers may be taught formally or informally to demand respect.²⁶⁴ Under this worldview, disrespect is tantamount to resistance, and resistance indicates that an individual is one of the “bad guy[s],” an “enemy.”²⁶⁵ A civilian who does not accept the police officer’s

259. See, e.g., Luckydog, Comment to *Ask Tell Make*, OFFICER.COM (June 25, 2008, 2:15 AM), <http://forums.officer.com/t94124/> (“[I] dont [sic] like arguing with people while giving them time to sit there and come up with a plan.”).

260. Such was the case with the Ferguson Police Department. U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2 (Mar. 4, 2015) (“Officers expect and demand compliance even when they lack legal authority. They are inclined to interpret the exercise of free-speech rights as unlawful disobedience, innocent movements as physical threats, [and] indications of mental or physical illness as belligerence.”).

261. Both the Christopher Commission and the LAPD’s post-Rampart investigation explicitly tied “command presence” to unnecessary aggression by officers. See INDEP. COMM’N ON THE L.A. POLICE DEP’T, REPORT OF THE INDEPENDENT COMMISSION OF THE LOS ANGELES POLICE DEPARTMENT 99 (1991); Chemerinsky, *supra* note 253, at 569; Thomas M. Riordan, *Copping an Attitude: Rule of Law Lessons from the Rodney King Incident*, 27 LOY. L.A. L. REV. 675, 727–28 (1994).

262. BAKER, *supra* note 140, at 208.

263. Indeed, officers frequently bemoan modern society’s failure or refusal to teach youth to respect authority.

264. Marcel F. Beausoleil, *Police Abuse*, in THE SOCIAL HISTORY OF CRIME AND PUNISHMENT IN AMERICA: AN ENCYCLOPEDIA 1372, 1375 (Wilbur R. Miller ed., 2012) (“When police officers believe that a citizen has a bad attitude because he/she is openly defiant or disrespectful, they may resort to some form of abuse in order to ‘correct’ the attitude problem. It is a way for the police to take control of the situation, to show that they are in charge, and to ensure that the citizen will act ‘respectfully’ toward the police in future encounters.”).

265. John W. Whitehead, *Resistance Is Futile: The Violent Cost of Challenging the American Police State*, RUTHERFORD INST. (Sept. 9, 2014), https://www.rutherford.org/publications_resources/john

understanding of the interaction is, in John Van Maanen's classic taxonomy, an "asshole."²⁶⁶ Assholes are undeserving of respect and must be taught the consequences of "contempt of cop."²⁶⁷ "The police are trained to believe that they must always be in control and that they must win in every encounter. Therefore, disrespect cannot be tolerated and must be rectified."²⁶⁸

Sociologists Richard Sykes and Edward Brent termed this an "asymmetric deference norm" and observed that officers expect civilians to acknowledge their inferior status and defer accordingly.²⁶⁹ But a civilian interacting with an officer may perceive the officer's expectation of deference as an entitled, unnecessary display of dominance, a sign of disrespect from the officer. "Because the actors are not responding [to each other] as expected [by either party to] the encounter, the defiance between them escalates. As both actors discredit each other, they exchange roles as threatening and threatened."²⁷⁰ In 1968, the Supreme Court noted one of the more problematic aspects of policing's adoption of Warrior principles: "officers' perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control on the streets."²⁷¹ The Department of Justice's Investigation of the Ferguson Police Department notes a similar phenomenon: "Force at times appeared to be used as punishment for non-compliance with an order that lacked legal authority."²⁷² Because few people like being humiliated or gratuitously ordered about, an officer's expectation of and insistence on deference increases the potential for conflict. This may be particularly true in times of tension between the police and the community.

[_whiteheads_commentary/resistance_is_futile_the_violent_cost_of_challenging_the_american_police_st.](#)

266. Van Maanen, *supra* note 248, at 346, 355.

267. JACK L. COLWELL & CHARLES HUTH, UNLEASHING THE POWER OF UNCONDITIONAL RESPECT: TRANSFORMING LAW ENFORCEMENT AND POLICE TRAINING 45, 89 (2010) ("It has become fashionable for officers to adopt an adversarial perspective toward the public, especially when they perceive the public as being unsupportive or overly critical of their actions. This distorted perception reinforces the idea that the police are a separate entity from the public and can result in a pattern of self-justification that can be used to legitimize rudeness, a lack of empathy, and, in some cases, illegal behavior. This kind of unconscious programming—reaffirmed over hundreds of interactions and years of typecasting—is the inevitable result of a police culture that has slowly drifted away from a service mentality.").

268. Beausoleil, *supra* note 264, at 1372, 1375.

269. RICHARD E. SYKES & EDWARD E. BRENT, POLICING: A SOCIAL BEHAVIORIST PERSPECTIVE 101 (1983).

270. ALPERT & DUNHAM, *supra* note 54, at 41.

271. Terry v. Ohio, 392 U.S. 1, 14 n.11 (1968) (quoting LAWRENCE P. TIFFANY ET AL., DETECTION OF CRIME 47–48 (Frank J. Remington ed., 2d ed. 1967)).

272. U.S. DEP'T OF JUSTICE, *supra* note 260, at 34–35.

The traffic stop that ended with the arrest of Sandra Bland, a Black Lives Matter activist, by Texas Trooper Brian Encinia on July 10, 2015, provides a compelling example. During the course of the traffic stop, Trooper Encinia observed that Ms. Bland “seem[ed] very irritated.”²⁷³ She was; she was pulled over for changing lanes without using her turn signal, but, according to her account, she did so only to move out of the way of Trooper Encinia’s vehicle, which had been accelerating behind her.²⁷⁴ Her irritation did not sit well with Trooper Encinia, who paused for several seconds before asking dismissively, “Are you done?”²⁷⁵ The trooper then asked Ms. Bland to put out her cigarette.²⁷⁶ She refused.²⁷⁷ At that point, Trooper Encinia put his pen back in his pocket, placed his ticket book on Ms. Bland’s car, and commanded Ms. Bland to get out of the car.²⁷⁸ Ms. Bland refused, challenging his authority to order her out.²⁷⁹ Trooper Encinia then invoked his authority by threatening and ultimately using force to arrest Ms. Bland.²⁸⁰ Trooper Encinia had been prepared to issue a warning ticket while Ms. Bland was seated in her car but changed his approach when she did not defer as he expected.²⁸¹ The result was a use of force and a custodial arrest that were both entirely avoidable.

As the Sandra Bland traffic stop and arrest demonstrates, an unnecessarily aggressive or domineering attitude can put officers and civilians alike at risk in individual encounters in which a different approach may have avoided a physical altercation altogether. But the officers and civilians involved in individual, avoidable incidents are not the only ones at risk. An adversarial approach to policing sets the stage for broader social problems. After Ferguson Police Officer Darren Wilson fatally shot Michael Brown on August 9, 2014, two distinct narratives emerged. One story, first laid out in a press conference the day after the shooting, was that Brown had already assaulted Officer Wilson once and was threateningly advancing toward the officer at the time he was

273. Seth Stoughton, *Cop Expert: Why Sandra Bland’s Arrest Was Legal but Not Good Policing*, TALKING POINTS MEMO (July 24, 2015, 10:07 AM), <http://talkingpointsmemo.com/cafesandra-bland-video-legal-but-not-good-policing>.

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *See id.* While in a jail cell three days after her arrest, Sandra Bland took her own life. *Id.* That ultimate, tragic consequence of what should have been a fairly minor traffic stop raises a host of issues about the criminal justice system that are outside the scope of this Article.

shot.²⁸² The other story, reflected in the statements quoted by news media, was that Brown had been executed with his hands raised in surrender when he was shot.²⁸³ Why was the second story accepted by individuals and organizations around the country, especially given the lack of extrinsic evidence?²⁸⁴ Why was the story reported by the officer and the agency viewed as false? The answer, quite simply, is that the community did not trust the police. The ensuing protests, looting, and confrontations between officers and civilians were less the result of Michael Brown's death than they were the result of the deeply fractured relationship between the local police agencies and the community. That relationship had fractured, the Department of Justice found, in part because of an adversarial agency culture that encouraged an aggressive, enforcement-oriented approach to policing.²⁸⁵

Ferguson is not the only city that has experienced a long-term estrangement between the police and members of the community. Nor is it likely the only place where that estrangement is largely attributable to the Warrior concept. An adversarial approach to civilian encounters signals distrust far more readily than it does any interest in developing meaningful, long-term partnerships with community members,²⁸⁶ and that can have widespread and lasting consequences. For example, the aggressive use of stop-and-frisk tactics was identified as a "major source of friction" in police-community relations in the 1960s.²⁸⁷ New York Mayor Bill de Blasio and Police Commissioner William Bratton made the same observation in a January 2014 speech announcing a settlement related to stop-and-frisk litigation.²⁸⁸ In the long run, the use of

282. U.S. DEP'T OF JUSTICE, DEPARTMENT OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON 7-8 (2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

283. *Id.* at 8. Since August 2014, the "hands up, don't shoot" chant has remained an enduring part of protests related to policing. *Whether History or Hype, 'Hands Up, Don't Shoot' Endures*, NAT'L PUB. RADIO (Aug. 8, 2015, 9:44 AM), <http://www.npr.org/2015/08/08/430411141/whether-history-or-hype-hands-up-dont-shoot-endures>.

284. A Department of Justice investigation later cleared Officer Wilson, concluding that the physical evidence was consistent with the official story: that Michael Brown had assaulted Officer Wilson and was moving toward him at the time of the shooting. U.S. DEP'T OF JUSTICE, *supra* note 282, at 86.

285. U.S. DEP'T OF JUSTICE, *supra* note 260, at 2, 5. The report makes clear that the motivation was to generate revenue through fines and penalties, not ensure public safety. *Id.* at 11.

286. Stoughton, *supra* note 112, at 228-29.

287. PRESIDENT'S COMM'N ON LAW ENF'T AND ADMIN. OF JUSTICE, TASK FORCE REPORT: THE POLICE 183 (1967).

288. When New York Mayor Bill de Blasio and Police Commissioner William Bratton announced the settlement in the stop-and-frisk litigation, both discussed the need to reform what de Blasio referred to as "a broken and

adversarial or aggressive police tactics can engender deep and potentially dangerous resentment among the public. Five of the ten most violent and destructive riots in United States history grew out of perceived police abuses.²⁸⁹ Those riots, and less destructive civic unrest, such as the protests and looting in Ferguson, endanger officers and civilians alike.

2. *Rationalizing Misconduct and Illegal Behavior*

The adversarial approach to policing that results largely from law enforcement's veneration of the Warrior metaphor does not just strain officer-civilian interactions; it also makes it more socially acceptable, among officers, to engage in or tolerate unprofessional conduct, misfeasance, malfeasance, and violations of law. Under a Warrior worldview, the police mission is privileged over, rather than being understood as existing within or being shaped by, the legal principles that constrain police action. As the Wickersham Commission reported, one of the factors that contributed to the failure of Prohibition enforcement was "the attempt to enforce [Prohibition] as something on another plane from the law generally; an assumption that it was of paramount importance and that constitutional guarantees and legal limitations on agencies of law enforcement . . . must yield to the exigencies or convenience of enforc[ement]."²⁹⁰ Officers perceive the criminal justice system—with its multiple layers of protection for defendants and complicated, legalistic restrictions on police behavior—as a failure, "a broken-down machine, spinning its wheels over solipsistic argument rather than turning out clear-cut decisions based on the elemental concepts of right and wrong."²⁹¹

The Warrior brotherhood has its own code; it finds little merit in externally imposed regulations. Legal and administrative constraints thought up by lawyers or liability-sensitive administrators are viewed as unnecessary and unwise obstacles to effective law enforcement. For example, the Fourth Amendment's

misused stop-and-frisk policy." *Transcript: Mayor Bill de Blasio Announces Agreement in Landmark Stop-and-Frisk Case*, NYC: OFF. MAYOR (Jan. 30, 2014), <http://www1.nyc.gov/office-of-the-mayor/news/727-14/transcript-mayor-bill-de-blasio-agreement-landmark-stop-and-frisk-case/>.

289. Some examples include a 2001 Cincinnati riot, the 1992 Rodney King riots, the 1967 riots in Detroit and Newark, and the 1965 Watts riot in Los Angeles. Daniel Bukszan, *America's Most Destructive Riots of All Time*, CNBC (Feb. 1, 2011), <http://www.cnbc.com/id/41372364>. That does not include the 1973 riot in the Oklahoma State Penitentiary, which was at least partially attributable to abuses within the corrections system, or the 1999 Seattle World Trade Organization riot, which was, by many accounts, exacerbated by police tactics. *Id.*

290. NAT'L COMM'N ON LAW OBSERVANCE & ENF'T, REPORT ON THE ENFORCEMENT OF THE PROHIBITION LAWS OF THE UNITED STATES 81–82 (1931).

291. BAKER, *supra* note 140, at 246.

limitations on searches and seizures are viewed as artificial, serving only to protect the guilty at the expense of the crime-fighting mission. One article explains the Warrior mindset in part by stating:

Justice is an easy concept for cops to embrace. It's at the core of our profession. But how many times can you watch a criminal you arrested go free because of something out of your control before you start to give up on "justice?" In truth, the courts have very little to do with what a warrior knows as justice. . . . If a just person looks for approval, it is only from the people he or she respects. . . . Justice is what lets a warrior see what needs to be done when laws and policies don't provide easy answers.²⁹²

In this mindset, laws that frustrate justice betray officers' professional commitment to distinguishing right from wrong. That betrayal calls into question the legitimacy of those rules. Paralleling the effects of legitimacy in officer-civilian encounters, officers' perception of the legal rules that regulate the police as unjust undermines "the moral right of the law to dictate appropriate behavior."²⁹³ As a result, violations of governing law and agency policy become a morally appropriate, and sometimes necessary, component of policing.

This negative view of governing law and agency policy as overly restrictive is troublingly persistent. In a letter to the editor published in the February 2016 issue of *American Police Beat*, a ten-year veteran police officer and police instructor writes, "Legislation is being passed that ties the hands of law enforcement, making it more difficult to do our job. . . . The government needs to step in and pass legislation that allows police to do their job properly."²⁹⁴ A substantial percentage of officers agree. In a 2000 study, about nine hundred officers were asked to respond to the following statement: "Always following the rules is not compatible with getting the job done"; more than 40% of officers agreed or strongly agreed.²⁹⁵ One officer, interviewed in the 1980s, offered a more visceral reflection on legal constraints: "If we're going to catch [criminals], fuck the Constitution, fuck the Bill of Rights, fuck them, fuck you, fuck everybody."²⁹⁶

292. Slade, *supra* note 20.

293. Mike Hough et al., *Procedural Justice, Trust, and Institutional Legitimacy*, 4 POLICING 203, 205 (2010).

294. Delaney, *supra* note 149, at 24. As is often the case, there is neither any specific identification of laws that the author views as making his job more difficult nor a clear identification of what job is being made more difficult.

295. DAVID WEISBURD ET AL., NAT'L INST. OF JUSTICE, POLICE ATTITUDES TOWARD ABUSE OF AUTHORITY: FINDINGS FROM A NATIONAL STUDY 2 (2000), <https://www.ncjrs.gov/pdffiles1/nij/181312.pdf>.

296. BAKER, *supra* note 140, at 247-48.

It is not just “the law” generally that is viewed as inhibiting effective policing; officers can and do identify specific laws that they disagree with, and that disagreement sometimes leads them to act contrary to those laws. The list of potential examples is too long for any single article, but two are particularly illuminative: the use of force and perjury. In the previously mentioned 2000 study, more than 30% of respondents agreed or strongly agreed that “police are not permitted to use as much force as is often necessary in making arrests.”²⁹⁷ Almost 25% agreed or strongly agreed that “it is sometimes acceptable to use more force than is legally allowable to control someone who physically assaults an officer.”²⁹⁸ Troublingly, a substantial number of respondents indicated that officers did not just use more force than legally allowed, but also more force than necessary. Over 21% reported that other officers use more force than necessary sometimes, often, or always.²⁹⁹ Although only 4.1% of respondents “thought that police officers *regularly* used more physical force than necessary when making arrests,” just 16% of respondents reported that officers at their agency “never” use more physical force than necessary.³⁰⁰

It is not just in the use-of-force context that adversarial principles push officers to go beyond the boundaries of law or policy. When, for example, an officer’s violation of the Fourth Amendment leads to the suppression of evidence, it is viewed as a failure of the legal system itself rather than a consequence of the officer’s behavior.³⁰¹ Officers sometimes take steps to remedy the perceived failures of the legal system. The Mollen Commission, which investigated “the nature and extent of corruption in the [New York Police] Department,” identified a pervasive problem with police perjury, writing, “[T]he practice of police falsification . . . is so common in certain precincts that it has spawned its own word: ‘testilying.’”³⁰² This widespread practice resulted from “a persistent

297. See WEISBURD ET AL., *supra* note 295, at 2.

298. See *id.* This is not to suggest that officers do not also use *less* force than would be legally permissible. In one study of nearly three hundred officers, officers self-reported *not* using deadly force in the vast majority of cases when it would have been legally justified. See Anthony J. Pinizzotto et al., *Restraint in the Use of Deadly Force*, FBI L. ENFORCEMENT BULL. (June 2012), <https://leb.fbi.gov/2012/june/restraint-in-the-use-of-deadly-force-a-preliminary-study>. The distinction may be explained by the different foci in the three questions: the use of force to make an arrest is distinct from the use of force to control someone who has physically assaulted an officer, and both are distinct from the use of deadly force. The law may be viewed as overly restrictive in the former two contexts even while officers’ experience suggests that it may be more permissive in the latter context.

299. WEISBURD ET AL., *supra* note 295, at 3.

300. *Id.* (emphasis added).

301. See Stoughton, *supra* note 150, at 882 n.222.

302. THE CITY OF N.Y. COMM’N TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPT.,

belief among many officers that it [was] necessary and justified, even if unlawful.”³⁰³ Officers perjure themselves largely because they view the result the perjury achieves—convicting criminals—as justifying the dishonest means by which that result is achieved; testilying is seen as necessary to overcome the legal obstacles of the courtroom.³⁰⁴ In other words, officers lie to counteract the effect of legal rules, such as the exclusionary rule, that they see as technical barriers that protect criminals from conviction despite ample evidence of guilt.³⁰⁵

As these examples demonstrate, a culture that privileges the police mission over the rules that exist to circumscribe the scope of that mission offers a way to rationalize and justify violations of those rules. The Warrior metaphor also creates an environment where other officers’ violations of the rules are tolerated or implicitly approved of:

[B]ad apples are not always thrown out when they are discovered. Individual cops are all too willing to look the other way when another cop does something wrong. It’s easier and safer to tend to your own business and to ignore someone else’s petty abuses, laziness or corruption. Police department administrations often tacitly condone less than professional behavior rather than stir up bad publicity or incur employee animosity by actively prosecuting cases of misconduct.³⁰⁶

Some of that reluctance, of course, stems from the high probability of costs and uncertain probability of benefits that result from instigating disciplinary action.³⁰⁷ But a Warrior worldview may also make it easy for officers and supervisors to discount the mistreatment of criminal suspects or other civilians; by accusing an officer of misconduct, a civilian may identify themselves as an “asshole” to whom officers are disinclined to be sympathetic. This may explain why more than 80% of surveyed officers indicated a

COMMISSION REPORT: ANATOMY OF FAILURE: A PATH FOR SUCCESS 1, 36 (1994) [hereinafter MOLLEN COMMISSION REPORT].

303. *Id.* at 41.

304. *See id.*; Morgan Cloud, *Judges, Testilying, and the Constitution*, 69 S. CAL. L. REV. 1341, 1350–55 (1996); Andrew McClurg, *supra* note 139, at 411–15 (1999); Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1044–48 (1996); *see also* Jennifer Darrow, *Police Perjury: Examining the Relationship Between Social Tendency and Managerial Considerations* (2015) (unpublished D.M. dissertation, Colorado Technical University) (examining how managerial considerations influence officer perjury).

305. *See* Ronald J. Rychlak, *Replaying the Exclusionary Rule: Fourth Amendment Violations as Direct Criminal Contempt*, 85 CHI.-KENT L. REV. 241, 244–45 (2010).

306. BAKER, *supra* note 140, at 208.

307. *See* Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 797 (2012).

“code of silence” was not an important part of the trust and bond between officers, and yet

about one-quarter (24.9[%]) of the sample agreed or strongly agreed that whistle blowing is not worth it, more than two-thirds (67.4[%]) reported that police officers who report incidents of misconduct are likely to be given a “cold shoulder” by fellow officers, and a majority (52.4[%]) agreed or strongly agreed that it is not unusual for police officers to “turn a blind eye” to other officers’ improper conduct.³⁰⁸

Further, “[a] surprising 6 in 10 (61[%]) indicated that police officers do not always report even serious criminal violations that involve the abuse of authority by fellow officers.”³⁰⁹

3. *Resisting Criticism and Rejecting Reform*

The same worldview that permits officers to rationalize rule breaking by delegitimizing or discrediting those rules also provides justifications for resisting criticism, particularly external criticism, and for rejecting proposals for reform. Officers who have been trained to be wary of civilians during individual encounters can be similarly distrustful of the public at large, particularly when public opinion is critical of policing. The resistance to criticism grows from a culture that individualizes misconduct, celebrates officers’ specialized knowledge, insulates officers from second-guessing, and associates criticism with frustration of the police mission.

As policing has come under increased public scrutiny over the past several years, many voices within policing have sought to defend the profession as a whole from being tarnished by individual acts of misconduct. When an officer engages in misconduct by, for example, using excessive force or racial slurs, the incident is taken to reflect that particular officer’s shortcomings, especially the officer’s failure to live up to the Warrior code.³¹⁰ In other words, many police agencies, officers, and apologists seek to individualize problems by blaming a few “rogue officers” or “bad apples” without acknowledging systemic causes. This view shifts the responsibility for misconduct away from police culture and toward the distinct failures of the officers involved. Under this view there is no need for systemic reform, except perhaps to the extent that the law enforcement industry should seek to better identify and exclude bad actors. Thus, discussions about systemic reform are viewed as a waste of time at best and a dangerous distraction from the real issues—such as the lack of public respect and compliance—at worst.

308. WEISBURD ET AL., *supra* note 295, at 3, 5.

309. *Id.*

310. See Valerie Van Brocklin, *Where Have All the Warriors Gone?*, LAWOFFICER.COM (Mar. 9, 2012), <http://lawofficer.com/2012/03/where-have-all-the-warriors-gone/>.

Additionally, officers view criticism as illegitimate and invalid because they have come to believe that only police can make determinations about good policing. Girded in the vestments of the professional crime fighter, officers may think that “they and they alone are the most capable of sensing right from wrong; determining who is and who is not respectable; and, most critically, deciding what is to be done about it (if anything).”³¹¹ Members of the public do not understand the realities of policing or, if they do, they simply refuse to acknowledge them. One policing text—intended to teach officers the skills they need to prepare for and survive a deadly force encounter—describes policing thus: “Police officers are on the front line of a war that goes undeclared because of politics and political correctness.”³¹² Those who criticize the police are believed to be either ignorant of or willfully ignoring the dangerous environment that officers work in.

Worse, the critics have not “been there”; they have not walked the beat or dealt with the same situations that officers have.³¹³ Their lack of experience entirely discredits their critique of policing. A letter to the editor of the *Washington Post* is representative: “It is very easy for someone who has never walked in a police officer’s shoes to second-guess the decisions that those officers made.”³¹⁴ This mindset is not restricted to street-level interactions; it persists in situations that are entirely capable of being empirically tested with a range of reliable methodologies. David Harris described the skepticism with which officers greet evidence-based reforms that originate outside of law enforcement circles, such as replacing simultaneous photo line-ups with sequential photo line-ups that are less likely to result in erroneous identifications, writing that “police believe that they have special, experience-based and intuitive knowledge that those outside their occupational circle neither share nor understand.”³¹⁵ Police exceptionalism perpetuates the belief that outsiders of all stripes are simply not competent to provide useful feedback.

311. Van Maanen, *supra* note 248, at 346, 347.

312. ARTWOHL & CHRISTENSEN, *supra* note 155, at 6. There is a great deal of unintended irony in the description of the “undeclared” war given the many explicit comparisons between policing and war and between officers and soldiers on the frontline. Nevertheless, the belief that officers are fighting a series of semisecret battles that the public remains ignorant of remains a commonly held view in policing.

313. Hidden underneath this argument is the belief that the members of the public who criticize the police would not be capable of doing the job themselves. See *supra* notes 132–37 and accompanying text.

314. Spencer Pines, Letter to the Editor, *Second-guessing Our Police Officers*, WASH. POST (Dec. 25, 2015), https://www.washingtonpost.com/opinions/second-guessing-our-police-officers/2015/12/24/56beb4a4-a9a1-11e5-b596-113f59ee069a_story.html.

315. HARRIS, *supra* note 136, at 67.

To those within the Warrior circle, only fellow Warriors have the right to censure each other;³¹⁶ but in reality even other officers—or former officers—are discouraged from doing so. This principle is particularly prevalent in the context of judging another officer's actions during a use-of-force scenario. As an article on *Police Firearms Officers Association* states, "You weren't in their shoes during the incident. . . . You didn't see it evolve from their perspective. You may think you would have acted differently, but no one knows for sure how they'll act in a life-threatening encounter until they're actually in one."³¹⁷ That advice was provided to help officers avoid inflicting a "secondary assault" on a colleague involved in a shooting or other critical incident,³¹⁸ which is certainly an important consideration. But the underlying argument has been broadened into the following axiom: an officer's use-of-force decisions should not be subject to criticism by people who were not there at the time, regardless of their own experience or expertise.³¹⁹ Attempts to do so are derisively referred to as "Monday-morning quarterbacking."³²⁰ As one officer bluntly puts it in his memoir:

Even to this day police officers sometimes have to make split second decisions and most of the time you won't know if it's the right one or the wrong one until the problem is over and that's when the Monday morning quarterbacks came in. . . . [I]f you

316. Many officers believe that law enforcement is properly self-regulating. Statements to the effect of "I'm the first one to criticize bad policing" are common predicates for an explanation of why a particular incident was not problematic. As one police union wrote in its newsletter, "Nobody hates bad cops more than other cops, and the [Fraternal Order of Police] doesn't have any sympathy for a cop who crosses the line." Statement From President Caterbury, Grand Lodge Fraternal Order of Police (Apr. 30, 2015), <https://drive.google.com/file/d/0B6ywJyXluiH6X09sd21XM01fOTg/view>.

317. Charles Remsberg, *8 Ways to Help Another Cop After a Shooting*, POLICE FIREARMS OFFICERS ASS'N, <https://www.pfoa.co.uk/292/8-ways-to-help-a-cop-after-a-shooting> (last visited July 15, 2016).

318. *See id.*

319. *See id.* All other things being equal, the inability to condemn an officer's actions because one was not there at the time might be assumed to carry with it the inability to condone the officer's actions for the same reason. Taken logically, this would suggest that officers would reserve judgment about other officers' uses of force, neither condemning nor condoning them. That, of course, is not typically the case.

320. *See* Peter Callaghan, *Avoiding 'Lawful But Awful': How Minneapolis and St. Paul Police Officials Are Looking to Change When Officers Use Deadly Force*, MINNPOST (Mar. 4, 2016), <https://www.minnpost.com/politics-policy/2016/03/avoiding-lawful-awful-how-minneapolis-and-st-paul-police-officials-are-looki>; Kevin Davis, *Officer Survival in 20/20 Hindsight*, OFFICER.COM (Jan. 3, 2013), <http://www.officer.com/article/10847971/officer-survival-in-20-20-hindsight>.

weren't there at the time, then you're probably talking out of your ass.³²¹

Even officers who *were* there and were intimately involved in the events at issue may fall back on insisting that they would not have done anything differently, even in retrospect.³²²

Not only is second-guessing believed to be inappropriate, it is also viewed as an obstacle to effective policing. Questioning and criticism, in this worldview, are proximate to treason; calling an officer's capabilities or honor into doubt shakes that officer's resolve by making an already-difficult duty even less attractive. This allegedly endangers officers and weakens the Thin Blue Line between order and chaos. Most recently, this argument has been made in public discourse about what has come to be known as the "Ferguson Effect."³²³ Patrick Lynch, the head of the largest police union in New York City, blamed an increase in shootings in the city on "multiple levels of intense oversight and constant second-guessing of officers enforcing the law that is counterproductive."³²⁴ In late 2015, Federal Bureau of Investigation Director James B. Comey suggested "that the additional scrutiny and criticism of police officers in the wake of highly publicized episodes of police brutality may have led to an increase in violent crime in some cities as officers have become less aggressive" about policing.³²⁵ When

321. ANTHONY J. CARBO, *MEMOIRS OF A NEWARK, NEW JERSEY POLICE OFFICER* 119 (2004).

322. See *Ferguson Cop Darren Wilson Says He Would Not Do It Differently*, NBC NEWS (Nov. 25, 2014, 7:26 PM), <http://www.nbcnews.com/storyline/michael-brown-shooting/ferguson-cop-darren-wilson-says-he-would-not-do-it-n256026>.

323. There are at least three different definitions of the "Ferguson Effect." First, it can refer to the increased public scrutiny of policing. Second, it can refer to the effect of that scrutiny on officers. Third, it can refer to the effect of how officers respond to that scrutiny, particularly the effect on crime rates. For an empirical analysis of the third definition of the "Ferguson Effect," see David C. Pyrooz et al., *Was There a Ferguson Effect on Crime Rates in Large U.S. Cities?*, 46 J. CRIM. JUST. 1, 1 (2016); Scott E. Wolfe & Justin Nix, *The Alleged "Ferguson Effect" and Police Willingness to Engage in Community Partnership*, 40 L. & HUM. BEHAV. 1, 1 (2015). For a criticism of that work, see Heather Mac Donald, *Stat Crimes Matter*, CITY J. (Feb. 22, 2016), <http://www.city-journal.org/2016/eon0222hm.html>. For a response to that criticism, see Scott E. Wolfe et al., *What Does Science Tell Us About the So-Called Ferguson Effect?*, QUILLETTE (Mar. 1, 2016), <http://quillette.com/2016/03/01/ferguson-effect-crime-spike-reporting-ideology-science/>.

324. Tina Moore et al., *PBA Head Pat Lynch Says City Needs More Cops and Less 'Constant Second-Guessing' to Combat Rise in Murders, Shootings*, N.Y. DAILY NEWS (June 3, 2015, 12:25 AM), <http://www.nydailynews.com/new-york/pba-head-pat-lynch-cops-needed-halt-rise-murders-article-1.2244588>.

325. Michael S. Schmidt & Matt Apuzzo, *F.B.I. Chief Links Scrutiny of Police with Rise in Violent Crime*, N.Y. TIMES (Oct. 23, 2015), <http://www.nytimes.com/2015/10/24/us/politics/fbi-chief-links-scrutiny-of-police-with-rise-in-violent-crime.html>.

officers are less aggressive, or so the story goes, crime increases. That story is particularly puissant when it is applied to crimes against officers themselves. After two NYPD officers were murdered in 2014, a police union official argued that New York City Mayor Bill de Blasio had “blood on [his] hands” because of an earlier comment de Blasio had made acknowledging community members’ concerns about policing.³²⁶

The culture of modern law enforcement too often flatly refuses to acknowledge systemic factors that contribute to misconduct and castigates any form of criticism as misplaced, uninformed, and affirmatively dangerous to officers and communities. The result is a profession that remains resistant to internal and external criticism and resents calls for change.

III. CREATING A GUARDIAN CULTURE

If the principles and value systems of policing have contributed to the profession’s current problems, systemic reform requires changing those principles. If the Warrior is a problem, as I believe it is, then the Guardian may be a suitable replacement. Guardian policing has enjoyed a surge in popularity among some police leaders, and Guardian rhetoric has appeared in the report issued by President Obama’s Task Force on 21st Century Policing,³²⁷ popular media stories,³²⁸ and articles intended for a law enforcement audience.³²⁹ But prior work, including my own, has tended to treat Guardian policing as an abstract concept incapable of precise definition.³³⁰ In this Part, I seek to offer a more robust definition of Guardian policing before charting a course for future work in this area.

A. *Guardian Policing*

Like the Warrior concept, the Guardian metaphor shapes officers’ perceptions of the police mission and their relationship with the communities they serve in a way that ultimately affects their

326. See Douglas Ernst, *De Blasio Has ‘Blood on the Hands’ After NYPD Shooting, Says Union President*, WASH. TIMES (Dec. 21, 2014), <http://www.washingtontimes.com/news/2014/dec/21/de-blasio-has-blood-hands-after-nypd-shooting-says/>.

327. See PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 9, at 1, 11–12 (2015).

328. See Ashley Blacerzak & Julie Tate, *Creating Guardians, Calming Warriors*, WASH. POST (Dec. 10, 2015), <http://www.washingtonpost.com/sf/investigative/2015/12/10/new-style-of-police-training-aims-to-produce-guardians-not-warriors/>; Mather, *supra* note 19; Morgan, *supra* note 19; Roufa, *supra* note 19; Schwartz, *supra* note 19.

329. Not all articles view the change in rhetoric positively. See Glennon, *supra* note 20; Slade, *supra* note 20; Smith, *supra* note 20; Van Brocklin, *supra* note 20.

330. See Stoughton, *supra* note 112, at 231.

behavior. But where Warrior policing has contributed to avoidable conflicts and undermined police-community relations, Guardian policing seeks to instill officers with values that encourage public engagement, foster trust, and build lasting community partnerships. The result is safer and more effective law enforcement.

Guardian principles will lead to safer policing for three primary reasons. First, individuals in communities that trust the police are more likely to cooperate and less likely to resist officers, diminishing the risk to officers and the need for force.³³¹ Second, Guardian policing seeks to avoid confrontations when it is possible to do so, which similarly minimizes the risk to officers and civilians alike.³³² Third, Guardian policing increases the police agency social capital with the community, reducing suspicion of police actions and mitigating the negative effects of high-profile incidents, such as an egregious use of excessive force.³³³ Imagine, for example, what the public response to the shooting death of Michael Brown would have been if the Ferguson Police Department had built a long-standing, positive relationship with the community. No one would have been happy, and hard questions would have been asked (and properly so), but the absence of protests would have improved the safety of hundreds of officers and civilians alike. Guardian policing is also a more effective approach to law enforcement; officers rely on civilians to report crimes, assist with investigations, and provide information during prosecution. “People tell good cops what is going on in their neighborhoods and work with them to keep it safe.”³³⁴ Further, officers’ efforts to build and maintain positive relationships with the community can reduce the incidence of crime.³³⁵ This is so because “police illegitimacy can itself be criminogenic; there are indications that negative perceptions of the police increase violent crime in disadvantaged areas.”³³⁶

Guardian policing accepts as its first principle the responsibility to protect civilians from unnecessary indignity and harm. Officers

331. See Mike Masterson, *Perspective: Improving Officer Safety and Citizen Support: Solving the Puzzle*, FBI L. ENFORCEMENT BULL. (May 6, 2014), <https://leb.fbi.gov/2014/may/perspective-improving-officer-safety-and-citizen-support-solving-the-puzzle>.

332. See Stoughton, *supra* note 112, at 231–33.

333. See generally Lane Crowthers, *Building Social Capital on the Street: Leadership in Communities*, in SOCIAL CAPITAL: CRITICAL PERSPECTIVES ON COMMUNITY AND “BOWLING ALONE” 218 (Scott L. Mclean et al. eds., 2002) (discussing community-oriented policing as a way to build social capital and empower citizens in the community).

334. Rahr & Rice, *supra* note 14, at 3.

335. See Kane, *supra* note 105, at 492; see also *What Is Community Policing?*, CTR. FOR EVIDENCE-BASED CRIME POL’Y, <http://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/community-policing/> (last visited July 18, 2016) (listing studies on crime rates and community policing).

336. Stoughton, *supra* note 16, at 2189.

implement that principle by emphasizing their public service mission, of which crime fighting—crime prevention, identification, investigation, and criminal apprehension—is a relatively small, if important, component. A Guardian agency embraces the democratic ideal that the legitimacy of any government agency—and the moral right to impose the coercive power of the state—depends on the consent of the governed. In this way, Guardian policing adopts the Peelian Principle “that the police are the public and that the public are the police.”³³⁷ To that end, a Guardian culture inculcates officers with the belief that good policing demands more than merely lawful policing; it requires what Tracey Meares calls “rightful policing.”³³⁸ Guardian policing emphasizes cooperation over compliance, communication over commands, and legitimacy over authority.

It is important to recognize that the Guardian concept is not a lesser aspect of the police Warrior. In fact, the opposite is true. Guardian policing retains the four core principles of the Warrior—honor, duty, resolve, and a willingness to engage in righteous violence—but those requirements are joined by five additional, essential attributes: respect for human dignity, empathy, patience, inclusivity, and introspection.

1. *Respect for Human Dignity*

To protect members of the public from unnecessary indignity, Guardians must be attuned to human dignity. Guardian officers must honor the sanctity of human life while at the same time appreciating the importance of others’ perceptions of self-worth, physical and psychological integrity, and sense of empowerment. Moreover, officers must possess an acute awareness of how their own actions may affect those perceptions. The Guardian is aware that some police actions—especially the coercive use of authority to stop, frisk, search, arrest, or interrogate—inevitably impose some level of indignity. For that reason, Guardians must conduct themselves with an eye toward minimizing, to the extent possible given the situation, the potential for humiliation and harm. This principle is most valuable when officers have little reason to respect the person they are interacting with. Officers will be required to interact with admitted child rapists, protestors and demonstrators who espouse repugnant beliefs,³³⁹ and belligerent civilians who

337. Home Office, *supra* note 28.

338. See Meares & Neyroud, *supra* note 13, at 3.

339. Consider what may be the single best example in modern times, and one that occurred only a few blocks away from my office in Columbia, South Carolina. After the state legislature ordered the removal of the Confederate Flag that had flown on the State House grounds for over fifty years, members of the National Socialist Movement, a neo-Nazi party that espouses White Supremacist beliefs, arrived to protest the removal. See Nicole Hensley, *KKK*

make unfounded complaints about police misconduct. Although officers need not agree with or approve of these individuals or their actions, respect for human dignity must guide the officers as they interview or arrest rapists, work with protestors to set up the route of a march, or take a complaint from belligerent civilians. To the extent that indignity is unavoidable, officers should seek to minimize that harm *ex ante* and to take steps *ex post* to reduce the sting. For the Guardian, dignitary harms are regrettable side effects of officer actions; humiliation, indignity, and embarrassment should never be an officer's objective, nor should they be used as tools to "maintain the power image of the beat officer" or for any other reason.³⁴⁰

2. Empathy

As a counterpart to respect for human dignity, Guardians must have both the ability and, perhaps more relevantly, the willingness to take other people's perceptions of a given situation seriously. Empathy refers to the capacity to understand and appreciate another person's sentiments;³⁴¹ officers who are unable or unwilling to do so risk exposing civilians they interact with to unnecessary indignity or harm. Consider the differences between what individuals inside and outside of the police force consider a normal encounter.³⁴² When a veteran officer conducts a traffic stop, makes a misdemeanor arrest, or responds to a report of a burglary, the officer's expectations and actions are guided by a long line of similar experiences. Traffic stops, low-level arrests, and burglaries are, to put it bluntly, business as usual. But to the motorist, arrestee, or burglary victim, the situation may be far outside the range of

Neo-Nazis Are Met by Protestors at S.C. Capitol, N.Y. DAILY NEWS (July 19, 2015, 10:27 AM), <http://www.nydailynews.com/news/national/kkk-neo-nazis-met-protesters-s-captiol-article-1.2296624>. When an older white protestor wearing a shirt adorned with a swastika began suffering from the heat, Leroy Smith, the black director of the South Carolina Department of Public Safety, helped him up the state house steps so he could recover. A photograph of Director Smith helping the unnamed protestor up the steps quickly went viral and demonstrates the remarkable professionalism that officers are expected to demonstrate as a matter of routine. See Dan Barry, *Black South Carolina Trooper Explains Why He Helped a White Supremacist*, N.Y. TIMES (July 25, 2015), <http://www.nytimes.com/2015/07/26/us/black-south-carolina-trooper-explains-why-he-embraced-a-white-supremacist.html>.

340. See TIFFANY ET AL., *supra* note 271, at 47–48.

341. See *What Is Empathy?*, GREATER GOOD SCI. CTR., <http://greatergood.berkeley.edu/topic/empathy/definition> (last visited Aug. 12, 2016).

342. See Johnathan Wender, *The Phenomenology of Arrest: A Case Study in the Poetics of Police-Citizen Encounters*, in *THE POETICS OF CRIME: UNDERSTANDING & RESEARCHING CRIME & DEVIANCE THROUGH CREATIVE SOURCES* 29, 40–44 (M. Jacobsen, ed., 2014) (offering examples of officers using empathy to facilitate peaceful surrender from criminal suspects).

normal experiences. What is a routine aspect of an officer's working life may be nerve-racking for a civilian who feels confused, angry, and powerless.

Further, different civilians may have different perceptions of and responses to officers. A young black male may perceive an officer as officious and harassing, while an older white woman might not. It is incumbent on officers to be aware of those different perceptions and to calibrate their actions, expectations, and reactions accordingly.³⁴³ Treating people equally—which many officers are quick to emphasize as one of their guiding principles—fails to account for the fact that people are different, that civilians come to the encounter with different histories, attitudes, and expectations. Treating people empathetically, on the other hand, prompts officers to take those individual characteristics into account when they interact with people. An officer who cannot perceive or take seriously a civilian's perspective will not be effective at reducing tension, building trust, or protecting civilians from unnecessary indignity or harm.

3. *Patience*

Engaging civilians with empathy and respect for human dignity requires officers to take time and make an effort to do so whenever plausible. Officers must be cognizant that the best outcome is not necessarily the fastest or most efficient but is instead the one that best protects civilians from unnecessary indignity and harm. With that in mind, officers must have the patience to put that core value above other interests, including expediency and other, more personal considerations. For example, when confronted with a belligerent suspect who is offering verbal or physical, but nonviolent, resistance to an impending arrest, an officer's first inclination should be to attempt to de-escalate the situation and talk the person into handcuffs, notwithstanding that it may be far more efficient and, on some occasions, more personally satisfying to wrestle the individual into handcuffs. Just because the conditions for lawfully using force are met does not mean that force is necessary. Patience has costs, primarily time. A Guardian officer recognizes and accepts that such an approach may stretch what could have been a ten-minute encounter into an hour-long, wide-

343. I am not suggesting that the officer has to agree with the young black male that a particular interaction constitutes harassment. Indeed, I would be surprised if that were the case. But an officer whose guiding principles emphasize empathy and respect for human dignity should appreciate the civilian's perspective, understand that it is honestly felt (regardless of the officer's belief about its accuracy), and respond by modifying his or her actions, expectations, and reactions to maximize the potential for a positive encounter. Receiving, respecting, and responding are the core actions of a Guardian officer.

ranging conversation. But for the Guardian this time is well spent because it attempts to avoid unnecessary harm.³⁴⁴

4. *Inclusivity*

As individuals and societies, humans have a troubled history with differences. We fear that which we perceive as different. Officers are not immune from that unfortunate aspect of the human condition. In fact, officers not only have their own biases, they are also called on to investigate or respond to reports and incidents that grow out of *other people's* biases.³⁴⁵ Those differences, and the weight we put on them, can dramatically affect officer actions. Policing can look very different in high-income, low-crime neighborhoods with primarily white residents who enjoy a high degree of social and political capital than it does in low-income, high-crime areas with primarily minority residents who have relatively little social and political capital.³⁴⁶ To some extent, this is pervasive in society.³⁴⁷ Nevertheless, Guardian policing attempts to mitigate such divisions by instilling in officers the belief that all members of the public, without exception or exclusion, deserve to be treated with respect, empathy, and patience. Inclusivity may be particularly important over time, as changing circumstances and perspectives shift the identification of “the Other” from group to group. Just in the past few decades, concerns about black urban

344. In many cases, such an approach may prove to be effective, but it is important to observe that patience remains an important attribute even if the end result in a particular incident requires the use of force.

345. For a dramatic example, consider the recent case of Ahmed al-Menhali, an Emerati citizen, who a hotel clerk reported to family members as wearing a “full head dress” and “pledging his allegiance or something to ISIS” while in the lobby of a hotel in Avon, Ohio. Two family members contacted the police, who responded to what they took as a potential terrorist threat. Yonette Joseph, *Emirates Warn Against Traditional Clothing Abroad after Man Is Mistaken for Terrorist in Ohio*, N.Y. TIMES (July 3, 2016), <http://www.nytimes.com/2016/07/04/world/middleeast/emirates-issues-travel-warning-after-man-in-robe-is-mistaken-for-isis-terrorist-in-ohio.html>.

346. Attorney and sociologist Christopher Cooper, a former law enforcement officer himself, has observed that officers use their authority differently when mediating disputes with different civilians; the race and class of the individuals involved can affect whether officers assert their authority to resolve a dispute for civilians or seek to mediate as civilians resolve a dispute for themselves. See Cooper, *supra* note 101, at 125–26.

347. Psychologically, we are unconsciously inclined to blame people's bad behavior on personal characteristics that distinguish “them” from “us,” such as religion or skin color; psychologists call this “the ultimate attribution error.” See Justin D. Levinson & Kaiping Peng, *Different Torts for Different Cohorts: A Cultural Psychological Critique of Tort Law's Actual Cause and Foreseeability Inquiries*, 13 S. CAL. INTERDISC. L.J. 195, 218–19 (2004).

youth as super-predators in the mid-1990s³⁴⁸ have been supplanted by concerns about Muslims as potential terrorists entering the country by pretending to be Syrian refugees³⁴⁹ or the risk of male predators pretending to be transgendered to gain access to women's restrooms.³⁵⁰ A police force that embraces inclusivity will be less distracted by changing public perceptions and better able to focus on its mission.

5. *Introspection*

Professionalism is difficult. Professionals must not only stay abreast of recent developments in their field but also engage in regular self-assessment to ensure that they are effectively advancing the goals of their profession. For officers, introspection means thinking both about whether they successfully protected civilians from unnecessary indignity and harm in prior encounters and about how they may be able to do so more effectively in the future. Training—ranging from tactical and use-of-force training to cultural awareness training—is part of introspection, but so is rethinking encounters. Officers should solicit feedback and constructive criticism from peers and supervisors and should think seriously about the way that their actions and attitudes affected the result of any given interaction. Even when an officer uses force, including lethal force, in a perfectly legal manner, both the officer and his or her agency should think critically about whether a different approach or tactic could have changed or improved the outcome. The point is not to punish the officer for any missteps—indeed, it will often not have been clear at the time that certain steps *were* missteps. The goal of introspection is to think about potential alternatives so as to improve officer and community safety by reducing risks in the future.

B. *The Path Forward*

In future work, I intend to develop a series of concrete proposals that can help encourage law enforcement to adopt and advocate

348. John J. DiLiulio, Jr., *The Coming of the Super-Predators*, WEEKLY STANDARD (Nov. 27, 1995), <http://www.weeklystandard.com/the-coming-of-the-super-predators/article/8160>.

349. See Mussarat Khan & Kathryn Ecklund, *Attitudes Toward Muslim Americans Post-9/11*, 7 J. MUSLIM HEALTH 1, 11, (2012), <http://quod.lib.umich.edu/cgi/p/pod/dod-idx/attitudes-toward-muslim-americans-post-911.pdf?c=jmmh;idno=10381607.0007.101>; Russel Berman, *A New Threat to the Syrian Refugee Program*, ATLANTIC (Jan. 8, 2016), <http://www.theatlantic.com/politics/archive/2016/01/the-arrest-of-iraqi-refugees-on-terrorism-charges/423339/>.

350. See, e.g., Patrik Jonsson, *Welcome to the Home of the Toughest 'Bathroom Bill' in America*, CHRISTIAN SCI. MONITOR (May 1, 2016), <http://www.csmonitor.com/USA/Society/2016/0501/Welcome-to-the-home-of-the-toughest-bathroom-bill-in-America>.

Guardian principles. For now, it is sufficient to observe that such a cultural shift will require changes that are both extrinsic and intrinsic to law enforcement agencies. Extrinsicly, for example, communities will need to change the way that they evaluate successful policing. As attorney and former Baltimore Police Department officer Adam Braskich has written, using crime rates to assess a police agency or police executives creates perverse incentives that encourage the agency to adopt an aggressive approach that undermines police-community relations.³⁵¹ Similarly, evaluating the success of a law enforcement agency by reviewing average response times to nonemergency calls can encourage dispatchers and officers to minimize the amount of time it takes to handle calls rather than maximize the potential for positive officer-civilian interactions. Intrinsicly, police agencies will need to modify pre-service and in-service training and how supervisors evaluate officer performance. Just as relying on crime rates can create perverse incentives, so too can evaluating officers based on the number of enforcement-related actions they take, such as stops, arrests, or tickets.

Legal reform will also be necessary to prompt the adoption of Guardian policing's principles.³⁵² This is true of legal rules that regulate officer behavior as well as legal rules that govern the investigation of police officers and any resulting administrative discipline or criminal prosecution. For example, scholars have long criticized various Fourth Amendment rules on doctrinal,³⁵³ psychological,³⁵⁴ and equitable grounds,³⁵⁵ but it is also true that constitutional rules permit, and arguably encourage, officers to rely on deception and informational asymmetry in situations where doing so is fundamentally contrary to avoiding unnecessary indignity and harm. Additionally, the special protections offered by

351. See Braskich, *supra* note 251.

352. See, e.g., Julian A. Cook III, *Police Culture in the Twenty-First Century: A Critique of the President's Task Force's Final Report*, 91 NOTRE DAME L. REV. ONLINE 106, 114 (2016) (arguing that police culture cannot change without reform to the laws governing the exclusionary rule).

353. See, e.g., Laurent Sacaroff, *Trespass and Deception*, 2015 BYU L. REV. 359, 359 (2015) (arguing that *Florida v. Jardines*, 133 S. Ct. 1409 (2013) and *United States v. Jones*, 132 S. Ct. 945 (2012) should be read to limit the ability of police to use deception to obtain consent, since that would not be valid consent, and the entry would be a trespass).

354. See, e.g., Michael J. Zydney Mannheimer, *Coerced Confessions and the Fourth Amendment*, 30 HASTINGS CONST. L.Q. 57, 60 (2002) (arguing that when psychological coercion is used, an unreasonable search and seizure has taken place, violating the Fourth Amendment).

355. See, e.g., Peter A. Lyle, *Racial Profiling and the Fourth Amendment: Applying the Minority Victim Perspective to Ensure Equal Protection Under the Law*, 21 B.C. THIRD WORLD L.J. 243, 247 (2001) (arguing that sensitivity to racial perceptions and biases could produce more equitable results under the Fourth Amendment).

the various states' versions of the Law Enforcement Officers' Bill of Rights complicate, and in some instances prevent, agencies from effectively investigating alleged misconduct.³⁵⁶ When officers are found to have engaged in misconduct, statutory or contractual provisions may prevent the agency from responding appropriately. Even in egregious situations where an officer has been terminated—or, more commonly, resigned in lieu of termination—there are few, if any, legal mechanisms that prevent the officer from seeking employment at a different agency.³⁵⁷

Identifying the full panoply of necessary and advisable changes is one thing, but making them happen is something else entirely. Building on the three-part analytical framework that Joanna Schwartz devised to “evaluate the relative strengths and limitations of those engaged in efforts to reform the police,”³⁵⁸ future work will also seek to identify the actors and entities that are in the best position to introduce and implement those changes. While many may think of the Department of Justice in this context, our hyperlocalized law enforcement system does not lend itself to centralized mandates, save perhaps for the constitutional minimums articulated by the Supreme Court. To be truly insightful, future analysis must consider the potential for other actors and mechanisms, such as municipal city councils' budgetary authorities and private insurance agencies, to affect police agency policy and practice.³⁵⁹

Finally, future work must also discuss how we can best measure whether efforts to shift the culture of policing are proving successful, ineffective, or counterproductive. The slow speed of cultural change and the multiplicity of law enforcement agencies in this country may frustrate some reform efforts, but they also offer the potential for careful study; researchers can identify what works and why it works at some law enforcement agencies so that similar measures can be applied and tested at other agencies. There is tremendous diversity within the law enforcement industry, and with that comes the need

356. See Eli Hager, *Blue Shield*, MARSHALL PROJECT (Apr. 27, 2015, 12:06 PM), <https://www.themarshallproject.org/2015/04/27/blue-shield#.RUaYYa2Ss>.

357. Structural flaws in the legal and administrative regulations that govern police have allowed problem officers to move from one agency to another, becoming so-called “gypsy cops.” See Gordon Dill, *South Carolina Police Shortage Means Employment for “Gypsy” Officers*, WSPA.COM (Feb. 11, 2016, 11:00 PM), <http://wspa.com/2016/02/11/south-carolina-police-shortage-means-employment-for-gypsy-officers/>; Roger L. Goldman, *Rogue Cops Should Not Be Recycled from One Department to the Next*, GUARDIAN (May 20, 2015, 7:15 AM), <https://www.theguardian.com/commentisfree/2015/may/20/rogue-cops-should-not-be-recycled-from-one-police-department-to-the-next>.

358. Joanna C. Schwartz, *Who Can Police the Police?*, U. CHI. LEGAL F. (forthcoming 2016).

359. See John Rappaport, *How Private Insurers Regulated Public Police*, 130 HARV. L. REV. (forthcoming 2016) (manuscript at 1).

for a robust but flexible framework to evaluate success and identify failure. Every prescriptive response to any problem has the potential for unintended consequences, but the unintended consequences of changing law enforcement may impact individual officers and civilians far more personally than the side effects of change in other contexts.

CONCLUSION

The idealization of the Warrior concept, ubiquitous in modern law enforcement, was adopted with the best of intentions, but has resulted in rhetoric, attitudes, and actions that fall far short of the principles it purports to venerate. Instead, modern policing principles have fostered many of the problems that officers now face by encouraging unnecessary conflicts, allowing officers to rationalize misconduct and unlawful behavior, and insulating them from criticism. That, in turn, has contributed to an adversarial approach to policing that has undermined police-community relations, frustrated effective law enforcement, needlessly endangered officers and civilians, and stymied meaningful reform.

If the veneration of the Warrior has created problems for policing, the solution requires law enforcement to incorporate its previously cherished principles into a new Guardian culture that views as its highest priority the protection of civilians from unnecessary indignity and harm. This shift is more complicated than providing officers with new training or equipment; it requires shifting the basic principles of the profession itself and changing how officers view the police mission, perceive their relationship to the public, and distinguish between bad, good, and great policing. After all, it is an officer's underlying value system, learned from and reinforced by peers and agency culture, that will inform the officer's decisions and actions. To implement the Guardian paradigm, agencies must focus on instilling in officers an awareness of and commitment to respect for human dignity, empathy, patience, inclusion, and introspection. In future work, I will offer a series of concrete proposals that explore the changes that must be made to encourage the continued evolution of policing and identify the actors and entities that are in the best position to make those changes.

Cultural change in policing is nothing new—indeed, the history of policing is marked by dramatic, if slow, changes in culture and principles. In 1988, as law enforcement moved ponderously away from the Professional Era toward the Community Policing Era, criminologists George Kelling and Mark Moore noted, “If elements of the emerging organizational strategy are identified and the policing institution is guided through the change rather than left blindly thrashing about, we expect that the public will be better served, policymakers and police administrators more effective, and the

profession of policing revitalized.”³⁶⁰ Today, as the policing profession struggles to live up to the promises of community policing, Kelling and Moore’s observation remains equally valid with regard to the shift toward Guardian policing.

360. Kelling & Moore, *supra* note 42, at 14.