

POLICE TRAINING AS AN INSTRUMENT OF ACCOUNTABILITY

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INTRODUCTION

The matter of how to hold police officers and agencies accountable to the public they are sworn to serve has been a perennial issue since local police departments first formed in the United States in the middle of the nineteenth century.¹ American law enforcement during the formative years was not particularly responsive to the needs and wishes of the polity as many agencies were wracked with corruption, inefficiency, and low personnel standards.² During the first phases of the police professionalism movement in the early twentieth century, training came to be viewed as a promising means to develop more responsible officers and agencies.³ Since that time, training has become a mainstay of American policing as it is believed that providing training to officers will enable them to carry out their duties in a fair, effective, and lawful manner.⁴ Today, almost all officers start their careers by attending a months-long police academy where they receive basic law enforcement training, then move on to serve an on-the-job apprenticeship wherein they patrol with experienced officers who provide additional "field" training for a few months, and then periodically attend various "in-service" training classes and courses throughout the rest of their careers.⁵

While much of the basic, field, and in-service training is directed at mundane topics such as how to properly operate department equipment and file reports, a good bit of the training that officers receive at various stages of their careers concern matters that are highly salient where public accountability is concerned.⁶ Officers receive training on many such topics. For example: how to properly investigate crimes (so that they can identify perpetrators, avoid

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1. ROGER LANE, *POLICING THE CITY* 1-2 (1967).
2. ROBERT M. FOGELSON, *BIG-CITY POLICE* 2-3 (1977).
3. GENE E. CARTE & ELAINE H. CARTE, *POLICE REFORM IN THE UNITED STATES* 26 (1975).
4. SAMUEL WALKER & CHARLES M. KATZ, *THE POLICE IN AMERICA: AN INTRODUCTION* 48 (6th ed. 2008).
5. *Id.* at 144-49.
6. *Id.* at 145.

arresting innocents, and, thus, help bring justice to victims),⁷ how to enhance public safety by preventing crimes from occurring in the first place,⁸ and how to abide by laws that govern their own behavior and behave judiciously as they carry out their duties.⁹ Instruction on lawful and judicious behavior addresses many topics including: avoiding corruption by neither taking nor soliciting bribes, treating all citizens equally by eschewing racial profiling, and avoiding the use of excessive force by using only that amount of force reasonably necessary to accomplish a legitimate police objective.¹⁰

While each of these domains of police behavior is important, the use of force stands above the rest in the realm of accountability. The capacity to use force lies at the core of the police role in American society¹¹ since forceful police actions always involve the stark exercise of state power against citizens. And because the use of force is the single sort of police behavior that most regularly leads to notable public outcry and community disruption, including rioting.¹² Given the high stakes involved, it is not surprising that instruction related to the use of force is among the most common training that police officers receive.¹³ One core goal of such training is to ensure that when officers use force against citizens that the officers' actions conform to relevant department policy, state statutes, and federal law.¹⁴ Implicit in this goal of getting officers' behavior to conform to legal and policy guidelines is a desire to reduce the number of incidents in which officers resort to physical force, and to reduce the level of force that officers use when they do take forceful actions.¹⁵ After all, if officers do not use force in the first place, there is no legal or policy question to examine vis-à-vis the appropriateness of force and no concern about community backlash—there has yet to be a riot because the police did *not* beat, choke, or shoot a citizen.¹⁶ Moreover, if officers use lesser levels of force when they do use some force, their actions are less likely to violate law or policy and are less likely to lead to community disruption.¹⁷

For training to reduce the frequency and level of forceful police actions, it must address the reason or reasons why officers sometimes use excessive

7. *Id.*

8. *Id.*

9. *Id.*

10. WALKER & KATZ, *supra* note 4, at 145.

11. EGON BITTNER, NAT'L INST. OF MENTAL HEALTH, THE FUNCTION OF THE POLICE IN MODERN SOCIETY, NO. 2059, 39–40 (1970).

12. DAVID KLINGER, INTO THE KILL ZONE: A COP'S EYE VIEW OF DEADLY FORCE 203–04 (2004).

13. *Id.* at 33–34.

14. *Id.*

15. *Id.* at 34.

16. WALKER & KATZ, *supra* note 4, at 394.

17. KLINGER, *supra* note 12, at 34.

force. The remainder of this Article identifies four distinct reasons why police officers might use more force than needed during interactions with citizens, outlines how training can be directed at each of these potential sources of abuse, and discusses the prospects for success that each of these approaches have for controlling police violence.

I. WHY DO POLICE OFFICERS SOMETIMES USE TOO MUCH FORCE?

Researching why police officers sometimes use excessive force yields four primary sources that can be translated into four Weberian "ideal types" of police officers whose needlessly forceful actions stem from these four sources.¹⁸ As ideal types, these four sorts of police officers should not be viewed as covering the entire spectrum of sources of excessive force in police work, nor should they be viewed as creating mutually exclusive categories of officers wherein excessive force can stem from only one source for a given officer. Rather, these ideal types frame the problem of excessive force in police work, provide clarity about the issues at hand, and offer perspective about the potential benefits of additional training to address the problem.

Before turning to these four ideal types of officers, the use of excessive force by a police officer must first be explained. This is so because the notion of excessiveness that applies to the first three types of officers is quite different from that which applies to the fourth. For simplicity's sake, this Article will define the excessive force relevant to the first three types of officers as "too much" force and the second sort as "preventable" force. Too much force comes in two forms. The first is using some physical force when none is justified; for example, punching a suspect who does nothing more than refuses to provide his name to an officer. The second form is using more force than is necessary to accomplish a legitimate police objective when some force is called for; for example, striking a resistant suspect with a baton when simply grabbing the suspect would have brought the situation under control.

Preventable force is distinguishable because with preventable force the officer's actions at the moment he or she applied force were perfectly appropriate. The issue of excessiveness, where preventable force is concerned, lies in the fact that police officers can often shape how interactions with citizens will play out. And officers can sometimes, through their actions, create situations where they must use force that was otherwise avoidable. A more thorough discussion that develops this notion is presented below.

18. LEWIS A. COSER, *MASTERS OF SOCIOLOGICAL THOUGHT: IDEAS IN HISTORICAL AND SOCIAL CONTEXT* 217 (Robert K. Merton ed., 1977).

II. THE FOUR IDEAL TYPES OF POLICE OFFICERS

The first ideal type of officer who uses excessive force simply believes that it is appropriate for police officers to use physical force against citizens as they see fit.¹⁹ Such officers may be motivated by a belief that they and their fellow officers hold the power to mete out justice on the street. They may have sought out a career in law enforcement because it affords the opportunity to use physical force against others, they may have learned to enjoy the use of force through their time on the job, or they may believe that it is okay to use force beyond what is necessary to accomplish legitimate police objectives for some other reason.²⁰ Whatever the case, officers who fall into this category use force excessively as part of their routine occupational practice.²¹ In short, such officers fit the bill of what is sometimes referred to as the "brutal cop;" one who *intentionally* uses more force than is needed with some regularity.²² Thus, these officers regularly hit, punch, bludgeon, or otherwise brutalize citizens with whom they come into contact; both those who did nothing to warrant any force and those against whom some force was justified (for example, continuing to strike a suspect who has ceased resisting).²³

The second ideal type of officer also intentionally uses more force than is necessary, but not as part of their occupational routine. Such officers are normally in control of themselves, do not generally believe they should be meting-out street justice, did not join the police force to bully people, or possess some character-rooted motivation towards brutality. Rather, such individuals are regular officers who typically behave judiciously, but find themselves caught up in the moment of a tense confrontation with a bad actor such as a child molester, a violent rapist, or some other heinous criminal. In the heat of the moment they go overboard and either use some measure of force against the suspect who presented no resistance worthy of forceful police action, or use more force than was needed to control the suspect. This officer is referred to as "a good cops who loses it"—they know they stepped over the line because they know the difference between correct and incorrect force.

A third ideal type of officer uses force improperly because he or she does not have a clear understanding of the rules governing the application of force and how to apply them in the field. These officers intentionally use the force

19. BITTNER, NAT'L INST. OF MENTAL HEALTH, *supra* note 11.

20. See David Lester, *Officer Attitudes Toward Police Use of Force*, in POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE 180, 189 (William A. Geller & Hans Toch eds., 1996).

21. See *id.* at 190.

22. See Susan O. White, *A Perspective on Police Professionalization*, 7 LAW & SOC'Y REV. 61, 71 (1972).

23. JEROME H. SKOLNICK & JAMES J. FYFE, ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE 2 (1993).

they apply, but believe their actions to be correct and not excessive. Despite basic discussions on the rules governing forceful police action describing the rules as always simple and straightforward, this is not the case.²⁴ It is true that the rules governing some aspects of police force usage are crystal clear. For example, officers may not punch people who merely refuse to provide their names, nor may they shoot unarmed burglars who are fleeing from them²⁵—but most matters are not so clear. Courts, starting with *Graham v. Connor*, have repeatedly pointed out that officers must often make choices about the application of force under conditions that are “tense, uncertain, and rapidly evolving.”²⁶ Decisions about whether the use of force in a given instance was warranted “requires careful attention to the facts and circumstances of each particular case.”²⁷ Because the appropriate usage of force in police work involves substantial complexity, officers need to possess solid understanding of the rules governing the use of force and sound judgment in order to apply force properly. Officers who do not possess these qualities can easily use too much force, not because they regularly brutalize citizens, or temporarily lose their cool, but because they fall into the ideal type of “cops who just do not get it.”

The final sort of officer who uses unnecessary force is well intentioned, is not overcome by events, understands when and how to apply force, and yet still manages to use force that is not needed.²⁸ This is the officer who uses preventable force—understanding this ideal type requires a shift in thinking away from officers’ mind-sets as the source of problematic force usage, and towards the social nature of interactions between police officers and citizens.²⁹ Police–citizen encounters are dynamic social events in which how officers act at earlier stages can have dramatic effects on how matters play out at later stages.³⁰ Often, but not always, police officers can behave in ways early on in the encounter that will shape an interaction so that force is not needed—or if force could not be avoided, reduce the level of force necessary to overcome a citizen’s resistance. Additionally, officers can do things during encounters that create a situation where force is needed to deal with citizen resistance or aggressiveness that would not have occurred had the officer pursued a wiser course of action.

24. *Id.* at 38.

25. *Tennessee v. Garner*, 471 U.S. 1, 11 (1985).

26. *Graham v. Connor*, 490 U.S. 386, 397 (1989).

27. *Id.*

28. See James J. Fyfe, *Training to Reduce Police-Civilian Violence*, in *POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE* 165, 168 (William A. Geller & Hans Toch eds., 1996).

29. See *id.*

30. See SKOLNICK & FYFE, *supra* note 23, at 37.

Take, as an example of preventable force, a situation where an officer is called to a home by the parents of a distraught high-school football lineman who is sitting in his room holding a knife against his throat. The teen has committed no crime and has not yet harmed himself. The officer rushes into the room with the noble intention of disarming the youth, restraining him, and then taking the youth to a mental health facility where he can get assistance. Unfortunately, as the officer enters the room, the teen takes the knife from his throat, stands up, and slashes at the officer. Fearing for her life, the officer draws her sidearm and shoots the teen. While shooting to defend herself in the face of a potentially fatal knife attack is a perfectly reasonable act at the moment she pulled the trigger, the shooting could have been avoided if the officer had simply maintained a safe distance from the distraught teen, tried to start a dialogue with him, and called for the assistance of specially trained and equipped officers who would likely be able to peacefully resolve the situation.³¹

In police work, how officers approach locations, how they deploy upon arrival, how they approach citizens, and all of the other aspects of how they manage the physical space in which they handle the situations they encounter are often referred to as “field tactics.”³² Because preventable force such as that described above stems from less than stellar tactical practice on the part of the police, the fourth ideal type of police officer is described as “the cop who used poor tactics.”

III. TRAINING TO DEAL WITH THE FOUR TYPES OF POLICE OFFICERS

Consideration of the nature of problems posed by the four ideal types of police officers suggests that each can, at least theoretically, be addressed by training. However, each ideal type requires different training directed at different issues.

The brutal officer presents perhaps the greatest challenge to training as a means of controlling excessive force because such officers should not be in police work in the first place. Unfortunately, with hundreds of thousands of people serving in police agencies across the nation,³³ some individuals whose temperament is ill-suited to police work will manage to get hired as police officers, and some whose temperament was initially sound will change for the worse. While monitoring officers’ conduct, meting-out discipline when improper force is used, and terminating officers whose conduct is egregious

31. MICHAEL J. MCMAINS & WAYMAN C. MULLINS, *CRISIS NEGOTIATIONS: MANAGING CRITICAL INCIDENTS AND HOSTAGE SITUATIONS IN LAW ENFORCEMENT AND CORRECTIONS* 14–15 (4th ed. 2010).

32. KLINGER, *supra* note 12, at 35.

33. BRIAN A. REAVES, *CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES*, 2008, at 1 (2011), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2216>.

are widely touted as best practices for controlling excessive force;³⁴ post hoc approaches miss the mark because they come into play only *after* the brutal cop has caused damage. Because some among the ranks of America's police corps harbor ill-intent and are liable to regularly abuse their lawful authority, waiting until after such officers cross the line to address the problem the brutal cop poses is inadequate. Moreover, this situation provides an opening for training as a means to potentially assist.

A good deal of research exists showing that in many domains of human endeavor there often exists a substantial gap between the attitudes that people hold and the actions they take.³⁵ Thus, the fact that there are police officers that are disposed towards brutality does not mean they will necessarily act on their violent orientation.³⁶ One of the things that has been shown to forestall people from acting on their desires is a concern that if they do, they will suffer negative consequences.³⁷ Such consequences can take many forms—verbal condemnation, the withholding of favors, ostracism, and many others³⁸—but in formal organizations such as police departments, the threat of punishment for misdeeds holds great promise as a control mechanism.³⁹ Additionally, because the excessive force engaged in by brutal cops can often involve the violation of statutes, the power of the criminal law can be invoked as an additional negative consequence; in other words, the threat of legal punishment could potentially deter brutal cops from acting out.⁴⁰

However, the threat of punishment cannot deter unless those who are liable to misbehave believe that such punishment will actually be forthcoming.⁴¹ This is where training can help. First, an agency can use training sessions to clearly articulate that intentional acts that involve what have been herein described as “too much” force will be sternly punished.⁴² Whether any brutal cops have been punished at this point is immaterial, as the training has established the marker that brutality will not be tolerated.⁴³ Training of this sort can set in

34. SAMUEL WALKER & CHARLES M. KATZ, *THE POLICE IN AMERICA: AN INTRODUCTION* 434 (6th ed. 2008).

35. Deborah J. Terry & Michael A. Hogg, *Group Norms and the Attitude-Behavior Relationship: A Role for Group Identification*, 22 PERS. SOC. PSYCHOL. BULL. 776, 776 (1996).

36. Hans Toch, *The Violence-Prone Police Officer*, in *POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE* 94, 105 (William A. Geller & Hans Toch eds., 1996).

37. Gerald Dworkin, *Acting Freely*, 4 NOÛS 367, 368, 372–73, 379 (1970).

38. DONALD BLACK, *THE BEHAVIOR OF LAW* 109–10 (1976).

39. See Amitai Etzioni, *A Basis For Comparative Analysis of Complex Organizations*, in *A SOCIOLOGICAL READER ON COMPLEX ORGANIZATIONS* 59, 61 (Amitai Etzioni ed., 2d ed. 1961).

40. See CESARE BECCARIA, *ON CRIMES AND PUNISHMENTS* 94 (1963).

41. JACK P. GIBBS, *CRIME, PUNISHMENT, AND DETERRENCE* 39 (1975).

42. Fyfe, *supra* note 28, at 166.

43. See WALKER & KATZ, *supra* note 4, at 144 (describing police academy curricula focusing on legal and behavior aspects of police work).

officers' minds that they are liable to suffer negative consequences if they step over the line, and would thus be a mechanism for producing anticipatory deterrence.⁴⁴ Second, training sessions can highlight cases where officers were disciplined for using too much force and remind officers that they are liable to suffer the same fate if they similarly engage in brutal behavior.⁴⁵ Training of this sort would be a mechanism for producing general deterrence. In sum, by using training as a vehicle to clearly state that the intentional application of too much force will result in serious sanctions, it can play a role in deterring brutal cops from acting on their dispositions to abuse citizens.

The benefits of training sessions devoted to starkly stating that too much force will not be tolerated extends to the problem of good cops who lose it. Because all non-brutal officers are susceptible to falling into this category, training regarding the negative consequences that will accrue if they lose control can also serve to deter officers from stepping over the line when dealing with a problematic situation. In this connection, training about the negative consequences that will follow the application of too much force should include an emphasis on the stake in conformity that officers have—emphasizing that all the benefits of conventional life they have worked hard to secure could be stripped away for momentarily losing control.⁴⁶ By stressing this, such training can provide officers who might otherwise cross the line in a moment of frustration a vivid reminder of the stark consequences of losing their cool.

Training to deal with the problem of officers who just do not get it should focus on enhancing officers' understanding of the rules governing the use of force and their capacity to make sound judgments in the field. These twined matters are core components of the basic academy training that all officers receive at the beginning of their careers.⁴⁷ However, training around the country is not always top-notch, as even the best basic training cannot fully address all of the complexities of force usage. Not all officers will fully grasp the basic training they receive, and whatever sound understanding officers develop in the academy can deteriorate as time passes. Over time, moreover, laws and policies governing force usage change, new force related technologies are used, and other shifts occur in the world of policing. Consequently, training on the rules about force usage and how to apply them in the field should be on-going if it is going to prevent the inappropriate

44. See Patrice N. Rogers & Steve E. Schoening, *A Time Series Evaluation of California's 1982 Driving-Under-The-Influence Legislative Reforms*, 26 ACCIDENT ANALYSIS AND PREVENTION 63, 64, 66, 70, 74, 76 (1994).

45. See GIBBS, *supra* note 41, at 34, 72.

46. See TRAVIS HIRSCHI, *CAUSES OF DELINQUENCY* 144–45 (1969) (arguing that those more attached to their peers are less likely to be delinquent).

47. See Toch, *supra* note 36, at 109.

application of force by officers who do not get it. There is some empirical evidence that training in new policy prescriptions can affect the behavior of officers on the street.⁴⁸ In the early 1970s, the New York City Police Department (NYPD) introduced a new shooting policy that restricted the circumstances in which officers could use deadly force against citizens and trained officers on the new policy.⁴⁹ A time series analysis indicated that the use of deadly force by NYPD officers dropped notably in the months after the policy change, which suggests NYPD officers did learn to bring their actions into conformance with the new policy in which they were trained.⁵⁰

Training directed at the problem of preventable force also seeks to enhance officers' knowledge and understanding of the rules governing their craft, albeit in a different domain.⁵¹ Where training on the rules governing force usage addresses what officers are permitted to do and when they may do it, training aimed at avoiding preventable force seeks to enhance officers' understanding of how to carry out their duties in a tactically sound fashion.⁵² The arena of field tactics is a complex, multi-faceted one in which there exist few absolutes about how to manage situations.⁵³ There are, however, some general principles that dictate how officers should proceed in the vast majority of circumstances that they may face.⁵⁴ For example, in most cases, it is wise for officers to keep a good distance between themselves and people armed with knives because getting too close to a knife wielding citizen is dangerous for officers—citizens generally cannot cut officers who are beyond arm's reach. Thus, it was unwise for the officer in the above hypothetical to rush into the room.⁵⁵

A full discussion of field tactics and their implications for preventing violence would take far longer than the space allotted for this Article. Nevertheless, there exists a set of tactical principles and practices that have been developed over the last several decades that are designed to preclude the use of various sorts of force and permit the use of lesser forms of force when some is needed. Case studies have demonstrated that utilizing sound tactics can

48. Robert E. Worden, *The Causes of Police Brutality: Theory and Evidence on Police Use of Force*, in *POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE* 23, 29 (William A. Geller & Hans Toch eds., 1996); Fyfe, *supra* note 28, at 174.

49. James J. Fyfe, *Administrative Intervention on Police Shooting Discretion: An Empirical Examination*, 7 J. CRIM. JUST. 309, 311 (1979).

50. *Id.* at 315; see also PETER SCHARF & ARNOLD BINDER, *THE BADGE AND THE BULLET: POLICE USE OF DEADLY FORCE* 190 (1983).

51. Geoffrey P. Alpert & William C. Smith, *Developing Police Policy: An Evaluation of the Control Principle*, 13 AM. J. POLICE 1, 10, 12 (1994).

52. See Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 470 (2004).

53. See, e.g., Fyfe, *supra* note 28, at 169.

54. See, e.g., *id.*

55. See *supra* Part II.

prevent forceful police actions that would otherwise almost certainly have occurred.⁵⁶ Additionally, there is some empirical evidence that training rooted in basic tactical principles and procedures can reduce the level of force officers use during interactions with citizens.⁵⁷

In the mid-1980s, the researchers from the Washington, D.C. based Police Foundation conducted a controlled experiment in the Metropolitan Dade County Police Department to test the utility of a tactics-based training program designed to reduce the level of force patrol officers used against citizens.⁵⁸ Approximately one hundred officers from three patrol districts were accompanied on patrol by trained observers who recorded information about numerous aspects of officers' interactions with citizens, including the level of force (if any) that officers used during the encounters.⁵⁹ After an initial wave of observation, approximately half of the officers attended a three-day training course that sought to improve officers' routine tactical practice.⁶⁰ Once the training was completed, observers again rode with the officers, both those who had attended the training and those who had not, and recorded information about what transpired during interactions with citizens.⁶¹ After accounting for the potential influence of several factors that might have affected officers' actions, analysis of the data collected during the study indicated that those officers who had attended the training typically used less force against citizens than did their peers who had not received the training.⁶²

IV. CONCLUSION

The assertion put forth in this Article that excessive force in police-work flows from at least four distinct sources means that attempts to control excessive force must address the distinct sources of the problem. This Article argues there is sound reason to believe that source-specific training holds some promise for reducing the number of cases in which officers use more force than is necessary to carry out their duties. Unfortunately, most of the argumentation put forth is rooted in social theory and the empirical evidence proffered is quite limited. This state of affairs is due to the fact that little research has been undertaken that carefully examines the effects of police training on officers' behavior in the field. Thus, while there is sound theoretical (and a bit of

56. *See id.* at 165, 167.

57. *See id.* at 167.

58. David Klinger, *Can Police Training Affect the Use of Force on the Streets? The Metro-Dade Violence Reduction Field Experiment*, in *HOLDING POLICE ACCOUNTABLE* 95 (Candace McCoy ed., 2010).

59. *Id.* at 99.

60. *Id.*

61. *Id.*

62. *Id.* at 103.

empirical) reason to believe that training can be a useful mechanism for controlling how police officers exercise their prerogative to use force against citizens, the evidence for the proposition is by no means strong. As noted at various points throughout this Article, American law enforcement vests a lot of time, energy, and money into police training programs of various sorts to prepare officers for the field. It would be nice to know much more than we presently do about the extent to which training can affect officers' coercive activities. In the meantime, it is hoped that this Article will serve as food for thought about the possibility of using training as a mechanism for how to enhance police accountability regarding the use of force.

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