

## CHAPTER 7

**Police and Equality**

The last chapter focused on one aspect of democratic policing—the relationship between police forces and the communities they serve. It explored the how that relationship might be affected by a broader, more eclectic theory of democracy, one incorporating, in particular, more ambitious ideas about broad political participation and a greater sensitivity to the oppositional tradition of “anti-inegalitarianism.” This chapter moves that oppositional tradition to center stage. If democracy consists partly in ongoing resistance to entrenched patterns of illegitimate domination, what does that mean for police practices?

We will explore three sets of implications in turn. The first set has to do with the problems ordinarily brought to mind when equality and policing are jointly discussed. These are the problems associated with disproportionate targeting of minority suspects by the police. Over the past decade these problems have been discussed chiefly in connection with allegations of “racial profiling.” The first part of this chapter will examine the issue of racial

profiling, and the broader issue of police practices that disproportionately target members of racial and ethnic minorities, through the lens of the eclectic account of democracy we developed in Chapter 5.

The second part of the chapter will explore the flip side of disproportionate targeting—disproportionate neglect. Minority communities have long complained, with justification, that they suffer not just from unduly harsh policing but also, at the same time, from inadequate police protection. The legal scholar Alexandra Natapoff describes “overenforcement” and “underenforcement” as “twin symptoms of a deeper democratic failure of the criminal system: its non-responsiveness to the needs of the poor, racial minorities, and the otherwise politically vulnerable.”<sup>1</sup> As Natapoff points out, underenforcement has received much less attention from scholars, judges, and activists than overenforcement. But one important way to deepen the “democratic” in “democratic policing” is by worrying not just about police malfeasance but also police nonfeasance. The second part of this chapter will therefore explore how the agenda of democratic policing might be augmented with a commitment to provide all citizens minimally adequate police protection.

The largest part of this chapter, though, will take up concerns about equality inside police departments, exploring the ramifications of the remarkable but still incomplete transformation of the workforce demographics of American law enforcement agencies. Discussions of equality in policing generally spend even less time on police workforces than they do on the problem of inadequate police protection. But the diversification of policing—the gradual demise of the homogeneously white, male departments that were the norm as recently as the early 1970s—has far greater implications than are generally recognized for the agenda of democratic policing.

We will want to focus in this chapter not just on problems but also on solutions. Broadly speaking, inequitable policing can be attacked in three different ways—the same three ways any kind of improper or undesirable police practice can be remedied. The first way is by substantive mandates imposed from without—typically in the form of a court ruling. This was the strategy, of course, of the Warren Court’s “criminal procedure revolution,” and it is by no means a thing of the past. By and large the mandates the Supreme Court has promulgated for police have aimed at controlling officer

discretion and protecting the dignity of suspects. Concerns about equality—particularly racial equality—have often lurked in the background, but they have stayed in the background. That is partly because equality has been marginalized in prevalent ideas about democracy, and therefore in prevalent ideas about democratic policing. But in principle the same kinds of judicial interventions that gave us *Miranda* warnings could give us protections against forms of inequitable policing. Whether this is the best strategy to pursue is another matter.

The second broad strategy for addressing inequalities in policing is by restructuring the political environment in which police departments operate in order to make them more broadly accountable to the communities they serve. This is the strategy of civilian review boards, for example. Despite all the controversy they have inspired, civilian review boards represent a fairly small intrusion into the autonomy of police departments—even smaller, in some respects, than the informal “partnering” and “consultation” at the heart of the community policing movement, which are not limited, as civilian review boards typically are, to disciplinary matters. But external political control of police departments could be expanded and reconfigured in much more ambitious ways.

The third and final way to address inequalities in policing, or any other problem in policing, is by reconstituting police departments themselves—changing their internal structure and, equally or more important, changing the makeup of police workforces, the kinds of people that police officers are. For the internal composition of police forces is not just a measure of one aspect of egalitarianism in policing; it is also a strategy for advancing other aspects of egalitarianism in policing.

These three strategies overlap. Court orders and the external political environment of police departments, for example, can help change the internal composition of police departments and their internal structure and operating procedures. But it will help to keep in mind, as we proceed, that there are multiple dimensions not just to the problems of inequality in policing, but also to the possible solutions. And because the importance of equality inside police departments has received far less attention than it deserves in recent academic discussions of law enforcement, it will receive the lion's share of attention in this chapter.

### *Racial Profiling and “Overenforcement”*

While not nearly so ill-defined as “community policing,” the term “racial profiling” has been applied to a spectrum of different police practices, relying on race to various degrees, in assorted ways, in a range of factual settings.<sup>2</sup> As with community policing, a rounded view of democracy cannot tell us precisely what to think about all of these practices, or even what to think of the paradigmatic case: the systematic use of race (almost always along with other factors) in selecting subjects for investigative attention. Once again, though, it can highlight some important questions and help guard against certain kinds of mistakes.

It can warn us, in particular, not to be too quick to minimize the social costs, and more specifically the democratic costs, of systematically focusing law enforcement scrutiny on members of traditionally disfavored minorities. For reasons I will explain, a rounded view of democratic policing casts doubt on two related notions about racial profiling. The first is that racial profiling is tangential to the central concerns of criminal procedure; this is a view to which the Supreme Court has appeared sympathetic.<sup>3</sup> The second notion is that racial profiling is troubling chiefly to the extent that it is irrational—to the extent, that is to say, that it reflects raw racial animus, a “taste for discrimination,”<sup>4</sup> or fails to take into account the ways that racial profiling can wind up posing practical problems for law enforcement.

What these ways of thinking overlook is the heavy burdens that racial profiling can place on democracy. Those costs are hard to appreciate without a view of democracy that includes a healthy element of anti-inegalitarianism. For an unreconstructed pluralist, racial profiling presents no special problem: racial minorities, like all other groups, are assumed to be capable of defending themselves through the political process. For a believer in participatory democracy—even in its watered-down, mainstream version—things are more complicated. By insulting its targets, undermining their trust in law enforcement, and giving them a sense of second-class citizenship, racial profiling could alienate them from the whole project of collective self-government. On the other hand, perhaps the sting of unfairness will galvanize the victims of racial profiling, making them *more* likely to become politically active. It could go either way.

Once democracy is understood as in large part a matter of anti-inegalitarianism, the democratic costs of racial profiling become more apparent. Racial profiling threatens to re-entrench patterns of social hierarchy—and not just any patterns of hierarchy, but the ones based on race. It may reinforce, that is to say, those systems of illegitimate dominance most notorious, at least in America, for their severity, pervasiveness, and intractability. It could do this in three different ways.

The first way racial profiling may reinforce racial hierarchy is through sheer numbers, imprisoning and otherwise bringing within penal supervision a greatly disproportionate number of minority group members, with a range of familiar, impoverishing consequences for their families and neighborhoods. Bernard Harcourt has shown that the disproportion in rates of arrest and incarceration can greatly exceed any preexisting difference in rates of offending, even if profiling is assumed to be a “rational” policy, pursued only to the point at which minority rates of offending match those among the wider population—a result he calls the “ratchet effect.”<sup>5</sup> The second way racial profiling can reinforce racial hierarchy is by training members of minority groups in patterns of public subservience. Stopped by the police again and again, they learn to adopt roles of exaggerated deference and severely diminished self-agency—roles that can easily carry over to other arenas of social life.<sup>6</sup> The third way is by confirming racial stereotypes: suggesting, through higher rates of arrest, prosecution, and incarceration, that the profiled groups really are more prone to crime.<sup>7</sup>

Several things are worth noting about the mechanisms through which racial profiling threatens to reinforce racial hierarchy. First, they are mutually reinforcing. The ratchet effect can exacerbate the disproportionate numbers of African Americans and Latinos in prisons and on probation or parole, and thereby worsen the apparent confirmation of racial stereotypes.<sup>8</sup> The diminished self-agency taught through repeated contacts with the police may wind up reinforcing racial stereotypes, too. In turn, racial stereotypes—particularly the assumption that certain groups are more prone to criminality—can raise the level of subservience that members of those groups feel obliged to perform for the police.<sup>9</sup>

Second, profiling threatens to re-entrench dominance in the ways I have described only to the extent that it targets a traditionally disadvantaged group. Selectively stopping white motorists, for example, will not trigger

these mechanisms of hierarchy reinforcement. (It might trigger *other* mechanisms of hierarchy reinforcement, depending on why the white motorists are stopped and what happens after they are stopped. Imagine, for example, that they are stopped in a minority neighborhood to warn them that the area is unsafe.) So it is probably a mistake to lump tactics of that kind together with the targeting of racial minorities under the term “racial profiling.” On the other hand, profiling on the basis of a characteristic such as religion or national origin could easily re-entrench dominance in the same way as profiling on the basis of race: applying selective scrutiny to Muslims or to Arab-Americans is, in this respect, very much like applying selective scrutiny to African Americans.<sup>10</sup>

Third, the concerns that racial profiling raise for democracy by threatening to reinforce racial hierarchy do not depend on the fact that profiling involves conscious discrimination by law enforcement officers. Any law enforcement tactic resulting in heavily disproportionate rates of arrest, conviction, and incarceration of members of racial minorities may reinforce racial hierarchy by disrupting minority neighborhoods and reinforcing racial stereotypes. Minority group members are most likely to feel the need to adopt roles of exaggerated deference and subservience if they believe that they attract suspicion because of their race, but that impression can be created by the presence of pervasive stereotypes of minority criminality, with or without a conscious policy of racial profiling. Accordingly, the problems that racial profiling poses for democracy may also be posed by other law enforcement practices that lack the element of conscious targeting but nonetheless have a lopsided impact on minority suspects. A plausible argument can be made, for example, that much of the opprobrium directed at racial profiling should be applied more broadly to the war on drugs.<sup>11</sup>

Fourth and finally, though, there is another side to the equation, just as with order-maintenance policing. Crime hurts minority neighborhoods, too. Higher rates of criminal victimization, in fact, are probably among the worst of the multiple inequalities suffered by members of racial minorities. So if racial profiling, or other tactics that focus law enforcement disproportionately on racial minorities, succeeds in reducing crime in minority neighborhoods, the gains for democracy—both in terms of wider participation and in terms of diminished inequality and the amelioration of hierarchy—may be greater than the costs. This is an empirical question; it is a question

that no theory of democracy, no matter how sophisticated, can hope to resolve. Again, what a richer account of democracy does is make clearer the questions that need to be asked, and what turns on the answer.

Understanding the harm of racial profiling (and of disproportionate enforcement more generally) is one thing; finding remedies for it is another. Broadly speaking, there are three possible lines of attack for this or any other threat posed by police practices: judicially enforced rights against the evil to be prevented, external systems of political accountability, and internal reconstitution of police forces. These three approaches sometimes overlap: judges and elected officials, for example, can put pressure on police departments to reconstitute themselves. External pressure of this kind has in fact been responsible for most of the dramatic changes in police forces over the past several decades—a point to which we will return later in this chapter. But distinguishing among these three lines of attack is nonetheless helpful. They suggest different, but complementary, responses to the problems of racial profiling and disproportionate enforcement.

The first response is doctrinal. The elaborate set of rules the Supreme Court began promulgating for police departments in the early 1960s focuses overwhelming on issues of fairness writ small: reining in the discretion of individual law enforcement officers and protecting the dignity of individual suspects. Distributional justice has largely been left out of the picture. A search or seizure, for example, cannot be challenged as “unreasonable” under the Fourth Amendment on the ground that it was motivated by prejudice; the Supreme Court has said that claims of discriminatory policing must be brought under the Equal Protection Clause, not the Fourth Amendment.<sup>12</sup> But that approach has costs. Equal protection doctrine treats claims of inequitable policing the same as any other claim of inequality; it gives no recognition to the special importance of evenhanded law enforcement. As a result, challenges to discriminatory police practices will fail without the *sine qua non* of a successful claim under the Equal Protection Clause as interpreted and applied by the Supreme Court—proof of conscious animus. The Court has reasoned that the Equal Protection Clause generally prohibits only decisions made with “discriminatory purpose,” which is to say decisions made “‘because of,’ not merely ‘in spite of,’ . . . adverse effects upon an identifiable group.”<sup>13</sup> All this amounts to saying that the challenges will nearly always fail. Actual animus, even when it occurs, is notoriously difficult

to prove. And many of the most troubling forms of discriminatory policing today—including many if not most instances of racial profiling—do not, in fact, reflect conscious animus, but rather a neutral, unobjectionable motive coupled with failure to take into sufficient account the harms posed by the practice.<sup>14</sup>

Constitutional doctrine could take other shapes. Fourth Amendment law, in particular, could be modified to take explicit account of the distributional aspects of search and seizure rules. This is something a wide range of legal scholars have long recommended. A rounded understanding of democratic policing lends support to their arguments.

The second broad strategy for combating inequitable “overpolicing” is changing the external political environment within which police departments operate. Some promising possibilities along these lines were mentioned in the last chapter: restructuring civilian oversight boards to make them more broadly representative, and using increased transparency of police decision making to empower community groups. Much of the progress that has been made over the past decade on the issue of racial profiling has resulted from police departments being pressured to address practices that have come to light through public scrutiny of data on police stops, searches, and arrests. Some of that information has, in turn, been collected pursuant to court orders—a good illustration of the way in which the strategy of court orders can overlap with the strategy of external political control.

The third broad strategy for addressing disproportionate targeting is by changing the insides of police departments: their organizational structures and the composition of their workforces. We will take up that topic at the end of this chapter.

### *Disproportionate Neglect and Minimally Adequate Policing*

If democracy means, in part, opposition to entrenched patterns of illegitimate domination, private as well as public, then inadequate policing can be as much a threat to democracy as overly harsh policing. And there is no doubt that many places and many people in the United States suffer from inadequate police protection.<sup>15</sup> What strategies are available to address that problem? The most obvious strategies, again, are judicial intervention,

external political control, and internal reconstitution of police departments. We will consider each in turn.

Start with the judiciary. The Fourteenth Amendment, passed in the aftermath of the Civil War, promises all Americans both “due process of law” and the “equal protection of the laws.” The background of these provisions strongly suggests that they were meant to guarantee, in part, protection against private violence; much of what concerned the Reconstruction Congress, which passed the Fourteenth Amendment, was the failure of southern states to protect freed blacks from white vigilantes.<sup>16</sup> But that understanding long ago dropped out of constitutional law. Today the Supreme Court refuses to recognize a right to minimally adequate policing, reasoning that the Constitution protects only against injuries directly inflicted by the government. Due process of law, the Court has said, limits government’s “power to act,” but does not “guarantee . . . minimal levels of safety and security.”<sup>17</sup> In dicta, the Court has read the Equal Protection Clause to prohibit a state’s selective denial of “protective services to certain disfavored minorities.”<sup>18</sup> But since the Equal Protection Clause generally is violated only by decisions made with “discriminatory purpose”—that is, conscious animus—that clause, too, is of little help in challenging inadequate policing.

State tort law mirrors constitutional law in this respect. The vast weight of case law refuses to impose liability on states, municipalities, or police departments for failing to provide adequate police protection. The reasoning that courts offer for this result varies. Some courts describe it as a matter of governmental immunity; others declare simply that the state has no duty to furnish police protection, or that the duty is owed to the public at large, and not to any individual. But the result is almost always the same: tort law, like constitutional law, provides no remedy for inadequate policing.<sup>19</sup>

Lurking behind these results is a sense that judicial involvement is unnecessary here, because elected officials have strong political incentives to provide adequate levels of police protection. Thus, for example, Judge Richard Easterbrook has reasoned that “[t]he body with the power to create a rule also has the right incentives to police it. Cities and states are not hostile to their own laws; they do not need federal courts to prod them to enforce rules voluntarily adopted.”<sup>20</sup>

There are grounds for doubt about that. To begin with, American police departments have a long history of providing more protection, or different

kinds of protection, in wealthier areas, with well-connected voters, than in poor areas, with residents who are not citizens, do not vote, or simply have less political clout. This problem is exacerbated by the flight of white, wealthier voters to the suburbs, where they have their own police departments, and by the recent, explosive growth in private policing—both ways for white, wealthy voters to provide police protection for themselves but not for poor, minority neighborhoods.<sup>21</sup>

Both doctrinal and structural responses to this problem deserve consideration. Doctrinally, one path would be to reconsider whether the constitutional guarantee of “equal protection” should be understood to include some kind of right to minimally adequate policing. An obvious analogy here would be to the right to minimally adequate education—also rejected on the federal level, but recognized by some state courts. The effectiveness of school finance litigation remains controversial, but the best evidence suggests that at the very least lawsuits have succeeded in drawing public and legislative attention to problems of educational funding, attention that in several states has led to meaningful reform.<sup>22</sup> Once again, the strategy of judicial intervention turns out to blur into the strategy of political control.

Structurally, there may be ways to reform the political environment within which police departments operate, in order to make Judge Easterbrook’s confidence in political checks on inadequate policing more justified. Gerald Frug, for example, has argued cogently for moving significant amounts of law enforcement budgeting and policy making from the local to the regional level, in order to force suburban and urban communities to work together on the problems of policing.<sup>23</sup> Proposals for regional governance are often greeted with suspicion, and justifiably so. There is always the risk that “region” simply means, as Jane Jacobs suggested, “an area safely larger than the last one to whose problems we found no solution.”<sup>24</sup> But Frug’s proposal is not tied, as similar schemes in the past often have been, to notions that larger governmental units will have greater administrative capacity. His argument is different: it is an attempt to use governmental structure to promote good politics. In this respect it is very much in the tradition of the kind of eighteenth-century political economy at work in *The Federalist Papers*—a tradition worth trying to recover in a rounded theory of democratic policing.

### *Equality Inside Police Departments*

When people think about issues of equality in policing, they usually think about how the police treat suspects, victims, complainants, and witnesses of different races, ethnicities, genders, sexual orientations, and socioeconomic statuses. They focus on what we can call *external* equality, not on equality of treatment *inside* police departments—equal treatment of police personnel themselves. But the two dimensions of equality are closely intertwined. The dramatic but incomplete advances over the past several decades in the desegregation of American police departments turns out to be an important and underappreciated asset in the struggle to make *external* equality more of a reality in policing.

American police forces are far more diverse now than they were in 1970, and far more representative of the communities that they serve. Minority officers, female officers, and openly gay and lesbian officers are slowly but dramatically transforming a profession that thirty-five years ago was virtually all white, virtually all male, and uniformly homophobic.

Blacks, for example, made up somewhere around 6 percent of sworn officers in the three hundred or so largest American police departments in 1970; today the figure is around 18 percent.<sup>25</sup> In cities with populations over 250,000, 20 percent of sworn officers are black, and 14 percent are Latino—up from figures of 18 percent and 9 percent, respectively, in 1990.<sup>26</sup> In 2005, for the first time in the history of the New York City Police Department, a majority of the new officers graduating from its academy were members of racial minorities.<sup>27</sup> In some major cities—including Los Angeles, Detroit, and Washington, D.C.—the entire police force is now majority minority.<sup>28</sup> Minority officers remain concentrated in lower ranks,<sup>29</sup> but not across the board. In Los Angeles, for example, where the black share of the city population in 2000 was 11 percent, black officers that year comprised 14 percent of the police force, 15 percent of supervisors, and 22 percent of command-level personnel.<sup>30</sup>

Women were 2 percent of sworn officers in large police agencies in 1972; today they are close to 13 percent. Again, the figure in some departments is significantly higher, although it tops out around 25 percent. Like minority officers, female officers remain concentrated in lower ranks—although, as

with minority officers, the extent and uniformity of the concentration is less than one might expect.<sup>31</sup>

The mere fact that there are *any* openly gay officers, let alone gay police executives, is a sea change from the situation thirty years ago. San Francisco had no openly gay officers as late as 1979; Chicago had none as recently as 1991.<sup>32</sup> Even today, gay and lesbian officers can feel strong pressures to keep their orientation hidden or at least unadvertised. This is particularly true for gay male officers.<sup>33</sup> It is therefore difficult to estimate the number of gay and lesbian police officers, or even those who are, to a greater or lesser extent, open about their status. The latter category is clearly growing, though, to the point where, in some departments, “the presence of self-disclosed gay and lesbian officers has become normalized.”<sup>34</sup> Between 1992 and 2001, for example, the number of “self-identified gay men and women” working for the San Diego Police Department increased from five to somewhere between thirty-five and fifty. In San Diego as elsewhere, as the number of “out” cops has risen, their presence on the force has become increasingly taken for granted.<sup>35</sup> The participation of uniformed police officers in gay pride parades is now commonplace, if still at times controversial. And in November 2004, the annual meeting of the International Association of Chiefs of Police included, for the first time, a workshop on gay, lesbian, bisexual, and transgendered officers.<sup>36</sup>

### *Why Internal Equality Matters*

American law enforcement has come a long way from the overwhelmingly white, virtually all-male, pervasively homophobic police forces of thirty or forty years ago—although there is still a good way left to go, and the extent of the changes varies greatly from department to department. What have been the effects of this dramatic, if uneven and incomplete, transformation? It is helpful to distinguish three different kinds of possible effects: *competency effects* (distinctive sets of skills and abilities that minority officers, female officers, and gay and lesbian officers may bring to their work); *community effects* (consequences that integrating a police department may have for the relationship between the department and the community it

erves); and *organizational effects* (ways in which the presence of minority, female, and gay and lesbian officers may change the internal dynamics of a police department).

Competency effects have long been an important part of the case for diversifying police departments, dating back at least until the 1960s. *The Challenge of Crime in a Free Society*—the landmark report by President Johnson's Commission on Law Enforcement and the Administration of Justice—blamed much of the difficulties that police experienced in the inner city on white officers' "lack of understanding of the problems and behaviors of minority groups," and on the inability of all-white police departments "to deal successfully with people whose ways of thought and action are unfamiliar."<sup>37</sup> Here, as elsewhere, minority officers were suggested to have two different kinds of special competence: greater *understanding* of minority communities, and greater *credibility* in minority communities.

Minority officers have long believed that they do, in fact, have these special competencies.<sup>38</sup> But the quantitative evidence on this score is actually quite conflicting. There are studies finding that black officers shoot just as often as white officers;<sup>39</sup> that black officers arrest just as often as white officers;<sup>40</sup> that black officers are often prejudiced against black citizens;<sup>41</sup> that black officers get less cooperation than white officers from black citizens;<sup>42</sup> and that black officers are just as likely, or even *more* likely, to elicit citizen complaints and disciplinary actions.<sup>43</sup> But there are also studies concluding that black officers get *more* cooperation than white officers from black citizens;<sup>44</sup> that black officers are less prejudiced against blacks<sup>45</sup> and know more about the black community;<sup>46</sup> and that black officers are more likely to arrest white suspects and less likely to arrest black suspects.<sup>47</sup> On both sides of this debate, many of the findings are hard to interpret. If, for example, black officers draw more complaints, is that because they act more aggressively, or because they are assigned to tougher beats, or because prejudice makes their assertions of authority seem more objectionable, or because minority citizens feel more comfortable complaining about officers from whom they do not fear retaliation?

The fairest summary of the evidence is probably that we simply do not know whether black officers, or minority officers more generally, bring a significantly different set of pertinent abilities and understandings to their work. But that is not the way the evidence is usually understood. Instead,

the evidence is typically viewed as demonstrating that minority officers do not, in fact, differ appreciably in their on-the-job behavior from white officers. The scholarly consensus is that "no evidence suggests that African American, Hispanic, and white officers behave in significantly different ways."<sup>48</sup> Or, as Edward Conlon puts it in his recently published memoir of his work as a New York City police officer, "[o]ver time and in the main, cops tend to think like other cops."<sup>49</sup>

The evidence has been understood in this way in part because there is an orthodox, long-standing explanation why minority officers should be expected to behave the same as white officers. The explanation is occupational ethos and organizational culture. As an influential scholar of policing explained in the mid-1970s, "[t]he pressures for conformity are so strong that the new officer will either be forced into the police subculture, with the values and orientation of the larger group replacing his own, or his life will be made so unpleasant that he will decide to resign."<sup>50</sup> This view has become pervasive among scholars who study the police, including legal scholars writing about criminal procedure. The governing assumption is that police behavior is determined by "situational and departmental factors," not by race.<sup>51</sup> Nor, for that matter, by gender: the consensus view is that "male and female officers," like white and black officers, "have been found to behave in roughly similar ways."<sup>52</sup>

In fact, the quantitative evidence regarding the differential performance of women officers, like the corresponding evidence about minority officers, is equivocal. Several studies have found that female officers are slightly less proactive than male officers but otherwise behave substantially the same.<sup>53</sup> Other studies have found no differences whatsoever.<sup>54</sup> Still other studies have concluded that female officers are substantially less apt to shoot or to use excessive force,<sup>55</sup> and significantly more helpful to victims of domestic violence.<sup>56</sup> There are also studies, though, suggesting that women officers may be *more* apt to shoot than male officers.<sup>57</sup> Again, many of these findings are difficult to interpret: the greater helpfulness of female officers to domestic violence victims may simply reflect the fact that female officers tend to be better educated than male officers and are more likely to be single.<sup>58</sup>

Whereas minority officers tend to believe that they do in fact have special competencies—specifically, understanding of their communities and credibility in their communities—female officers appear to be divided on that

question. The divide is mirrored in the arguments advanced by advocates of increased hiring and promotion of women in police departments, arguments that reflect, in turn the broader divide between "equality feminism" and "difference feminism." A recent report, for example, from the National Center for Women and Policing argues one the one hand that male and female officers are "equally capable" and, one the other hand, that women are *better* officers in a range of respects: less prone to use excessive force, more skillful at "defusing and de-escalating potentially violent confrontation," better at securing the "cooperation and trust," and more effective in responding to incidents of domestic violence.<sup>59</sup>

There has been virtually no research on the relative competencies of gay and straight officers. Anecdotally, though, claims have been made for gay and lesbian officers that echo claims long made for minority officers: that they bring to their work a valuable understanding of their off-the-job community, as well as greater credibility within that community.<sup>60</sup> There are suggestions, too, that gay and lesbian officers, because of "their own experience in marginalized groups," may be especially skilled in "responding to the needs of other oppressed groups."<sup>61</sup> But there are also suggestions that homosexual officers, like minority officers and female officers, are strongly constrained by the "white, male, heterosexual ethos" of policing and by the overriding determination to be perceived as "good cops," both by their fellow officers and by themselves.<sup>62</sup>

So much for competency effects. What about community effects—the consequences of diversifying a police department in terms of its relations with the communities the department serves? Just as black officers, for example, may have more credibility than white officers in a predominantly black neighborhood, a department that recruits, retains, and promotes a significant number of black officers may find the credibility of its entire force enhanced in black neighborhoods. That prospect has, in fact, long served as a significant part of the case for diversifying police workforces. President Johnson's Crime Commission, for example, argued strongly in the late 1960s that improving relations between the police and minority communities required "recruiting more, many more, policemen from minority groups"—because "every section of the community has a right to expect that its aspirations and problems, its hopes and fears, are fully reflected in the police."<sup>63</sup> A similar argument has been made, more recently, for hiring more

gay and lesbian officers. Gay and lesbian officers in San Diego, for example, believe that the success of community policing in San Diego is attributable in part to the involvement of openly homosexual officers. As one gay officer explained, "You gain way more respect from the community that you're policing if you have members of the diverse community working as cops."<sup>64</sup>

As with competence effects, though, the objective evidence regarding community effects is mixed. Just as there is some evidence that black officers get more cooperation than white officers from black citizens, and some evidence that they get less,<sup>65</sup> so there is some evidence that minority citizens think minority officers improve the overall quality of policing, but also some evidence that they perceive no difference.<sup>66</sup>

Again, there is a long-standing, broadly accepted explanation for the lack of any clear effect of police diversity on community relations, and, here as well, the explanation blames the police subculture. That subculture has long been thought to sever a minority officer, for example, "from his community and his roots."<sup>67</sup> An early, influential ethnographic study of black police officers concluded that they forfeited, in becoming officers, much of their credibility as blacks. Occupying "a doubly marginal position between the marginal police and his own [racial] marginality," the black officer was "a man exposed to the shame of his race," because his occupational role was perceived as antagonistic to the interests of the ghetto.<sup>68</sup> A pioneering, equally influential study of female officers found that they, too, suffered from a kind of double marginality, forced to choose between "defeminization" and "deprofessionalization": only by relinquishing much of their identity as women could they fully succeed as police officers.<sup>69</sup> Gay and lesbian officers, too, have been said to lead "double lives"; by joining the ranks of law enforcement they estrange themselves from the gay and lesbian community.<sup>70</sup>

The clearest benefits provided by the growing numbers of minority officers, female officers, and gay and lesbian officers pertain not to what I have called competency effects and community effects but, rather, to the consequences that the new demographics have had for the internal dynamics of police departments. The organizational effects can usefully be subdivided into *one-on-one interactions*, *rival trade groups*, and *social fragmentation*.

By *one-on-one interactions* I mean the way that a minority, female, or openly homosexual officer can change the attitudes and behavior of other officers with whom he or she comes into contact—particularly his or her



partner. Minority officers tend to believe these effects are significant.<sup>71</sup> So do gay officers<sup>72</sup> and appreciable numbers, if not a majority, of female officers. Quantitative studies of this matter are limited, but they do suggest that the officers are correct. There is evidence, for example, that biracial teams of partners use less force,<sup>73</sup> and men partnered with women handle domestic violence calls as well as women.<sup>74</sup> These results are broadly consistent with the large body of research on integration outside of policing, which suggests on the whole that “the experience of working together across lines of social division . . . though not untroubled by prejudice and hostility, tends to reduce prejudice and hostility.”<sup>75</sup>

By *rival trade groups* I mean groups that compete for membership with the long-standing police benevolent associations, which generally serve today not only as social and fraternal organizations but also as collective bargaining agents and lobbying groups. The police benevolent associations now coexist with a range of organizations, many highly vocal, representing the interests of minority officers.<sup>76</sup> In Los Angeles, for example, the Police Protective League competes for members with the Oscar Joel Bryant Foundation, which represents black officers, and the Latin American Law Enforcement Association, known informally as “La Ley.” On the national level, there is the National Black Police Association, the National Organization of Black Law Enforcement Officers, the National Organization of Black Law Enforcement Executives, the Hispanic National Law Enforcement Association, and the National Latino Peace Officers Association.

At both the local and national levels, these organizations often take positions at dramatic variance with the position of mainline police organizations—not just on hiring and promotion policies, but on issues such as racial profiling and police brutality,<sup>77</sup> and on questions of police leadership. In Los Angeles, for example, when Chief Bernard Parks was being considered for reappointment in 2002, he was strongly opposed by the Police Protective League, supported by the Oscar Joel Bryant Foundation, and opposed by La Ley.<sup>78</sup> Another, earlier example: in 1991, after Milwaukee’s police chief suspended three officers in the fallout from the Jeffrey Dahmer case, the Milwaukee Police Association voted “no confidence” in the chief, but the League of Martin—an organization of black officers—pointedly distanced itself from the vote and defended the suspensions.<sup>79</sup>

One-on-one interactions and rival trade groups are important, but not

nearly as important as the third subcategory of organizational effects, *social fragmentation*—the decline of the monolithic police subculture. This is something that older officers—particularly white, male, heterosexual officers—talk about a lot. A white male officer interviewed by sociologist Robin Haarr in the mid-1990s put it this way: “It used to be we were all ‘blue,’ but that has changed over the past years. Today there is black, white, and female segregation.”<sup>80</sup> Haarr agrees. Expressing what seems to be the emerging consensus among police ethnographers, she reports that “unified occupational subculture” of policing is being replaced by workplaces marked by “division” and “segmentation.”<sup>81</sup>

This is exactly what many people feared thirty years ago, when courts began imposing race- and gender-conscious hiring plans on police departments. Samuel Williams, a black lawyer serving as president of the Los Angeles Board of Police Commissioners, warned in 1975 that “[t]he entrance of minorities into a department under a judge-fashioned statistical umbrella can only lead to an organization . . . torn by faction and laced with angry mutterings,” an organization “deprived of that crucial cooperation among brother officers so critically essential to effective service.”<sup>82</sup>

The factions and angry mutterings have come. Police officers today report lines of division, distrust, and resentment not only between white officers and minority officers, but also between male and female officers, between gay and straight officers, and sometimes between black officers and Latino officers, Latino officers and Asian-American officers, and so on. It is not clear how much of this can be laid at the feet of the courts; some of it may have happened no matter what route police departments took to greater workforce diversity. But the decline in solidarity is everywhere apparent. The good news is that it has turned out to be a much more beneficial development than Williams and others anticipated. The decline in solidarity does not seem to have impaired police effectiveness. For operational purposes, it appears still to be true that “blue is blue.”<sup>83</sup> In between calls to service, police officers are a less cohesive group than they used to be. But that appears to be a very good thing. It makes the internal cultures of police departments less stifling, and it opens up space for dissent and disagreement. Studies of police departments today read far differently than those of thirty or forty years ago: instead of a single police perspective on any given issue, investigators today typically find a range of conflicting perspectives.<sup>84</sup>

Moreover, the social fragmentation has gone hand in hand with a decline in police insularity, for identity binds as well as divides.<sup>85</sup> Minority officer organizations frequently work closely with minority organizations outside law enforcement; to a lesser extent, female officers sometimes form organizational ties with women working in other historically male professions. The National Center for Women and Policing, for example, is part of Eleanor Smeal's Feminist Majority Project. Organizational alliances like this coexist with and help to foster less formal ties of affinity between minority cops and minority citizens, female cops and women more broadly, and gays and lesbians inside and outside law enforcement.<sup>86</sup> Both the formal, organizational alliances and the less formal ties of affinity create channels for expanding civilian involvement in the shaping and directing of law enforcement.<sup>87</sup> The social fragmentation I have been discussing might more accurately be described, therefore, as social realignment.

The benefits of social realignment would come at a steep cost if, as people like Williams predicted, the decline in police solidarity meant the police did a worse job controlling crime. But that does not seem to have happened. John Lott concluded several years ago that affirmative action in policing had raised crime, particularly in black neighborhoods. He attributed this effect not to a decline in solidarity but the relaxed hiring standards that he claimed had been part and parcel of affirmative action in policing.<sup>88</sup> Lott's results, though, have never been duplicated, and more recent work casts them in serious doubt.<sup>89</sup>

The growing, still far from complete acceptance of openly gay and lesbian officers may contribute in a particularly powerful way to the social realignment of law enforcement—in part by accelerating the fragmentation of the police subculture, in part by creating new channels of communication with groups outside of law enforcement, and in part by challenging the endemic homophobia of law enforcement.<sup>90</sup> There is good reason to think that the suppression of homosexuality has played a central role in cementing police solidarity, in part by rendering professional male-male partnerships sexually unthreatening, and in part by helping to shape a whole, hyper-masculinized professional ethos.

When William Westley did his pioneering ethnography of an American police department in the 1950s, for example, he found that the rampant condoning of illegal violence among police officers owed a good deal to the

experiences that officers had policing "sex cases"—a category which for him, and for the officers he studied, lumped homosexuals together with rapists, peeping toms, and exhibitionists. Westley thought the police correctly understood the public to approve "extremely rough treatment" in sex cases, but to want that treatment carried out unofficially and without their involvement. The experience of the police in these cases, Westley concluded, "encourage[d] them to use violence as a general resource," and left them embittered and cynical about what the public expected of them. It helped to convince them that their jobs required them to exercise discretion in a way that could not be publicly acknowledged—that police work was essentially and necessarily outside the law.<sup>91</sup>

The presence of openly gay and lesbian officers, particularly once they begin to rise through the ranks, challenges the easy, taken-for-granted homophobia of the law enforcement, and all that it has helped to foster—the nominally desexualized police workplace, the hyper-masculinized ethos of the profession, and the tacit acceptance of extra-legal violence. All of that is on top of the ways in which gay and lesbian officers, like minority officers and female officers, will help to fragment the police subculture and to build identity-based bridges to groups outside of law enforcement. The social realignment of policing—the decline in the solidarity and insularity of the police—has turned out to be the most important effect of the profession's growing diversity.

### *Taking Stock*

Unfortunately, it is far from certain that police forces will continue to diversify at the rate they have over the past three decades. Much of the past progress was produced by court-ordered programs of affirmative action, which are now growing less common. The overwhelming weight of the evidence suggests these programs played a pivotal role in the diversification of American police departments.

Some of the most striking evidence is the progress over time in particular departments. In Pittsburgh, for example, the percentage of women officers went from 1 percent in 1975, when court-ordered hiring quotas were imposed, to 27.2 percent in 1990, the highest figure at the time for any large

city in the nation. When the quota was lifted in 1991, the female share of new hires plummeted from 50 percent (required under the court order) to 8.5 percent, and by 2001 the percentage of women in the rank of police officer had dropped to 22 percent and was continuing to decline.<sup>92</sup>

Justin McCrary has compiled a more extensive set of data about the integration of the Chicago Police Department. A lawsuit challenging racial discrimination in police hiring in Chicago was filed in 1970 by the Afro-American Patrolmen's League; it was joined by the United States Department of Justice in 1973, and it resulted in 1974 in a court-ordered hiring quota, made permanent in 1976. The black share of new hires rose from roughly 10 percent in 1971-1973 to 40 percent in 1975.<sup>93</sup> (The percentage of black officers on the force as a whole rose much more slowly, even following the hiring change. There is a lesson here: police departments have low turnover. The annual quit rate is around 4 percent.<sup>94</sup> So it takes a while for changes in hiring practices to alter the composition of the workforce.)

McCrary also conducted a more systematic comparison of changes in what he calls the "representation gap"—the difference between the percentage of black officers and the black share of the relevant city population. He compared changes in this figure in two groups of cities: those that were sued for discriminating against blacks in hiring, and those that were not. The bulk of the lawsuits were filed in the 1970s, and they were concentrated in big cities with large black populations—populations that were growing faster than the black share of the local police workforce. Many of the hiring quotas remained in effect into the 1990s, and some are still in place.<sup>95</sup> McCrary found that the representation gap in the 1970s was much more sizeable in litigated cities than in unlitigated cities, but that in the 1980s and 1990s, when hiring quotas would be expected to begin having an effect on workforce composition, the gap in litigated cities improved markedly, while there was relatively little change in the unlitigated cities.<sup>96</sup>

McCrary's study is the most sophisticated and wide-ranging work to date on the relationship between affirmative action decrees and either racial or gender integration of police departments. But the broad conclusion he reaches—that affirmative action has played a large role in the demographic transformation of American police forces—is the same conclusion reached by virtually everyone who has studied these questions. Fifteen years ago, for example, William Lewis ran regressions on black police employment in

forty-six municipal police departments between 1975 and 1985. He found that the most powerful variables associated with increases in the black percentage of the police force were "Black majors, Black police chiefs, and affirmative action consent decrees."<sup>97</sup> Even John Lott is in agreement on this point. Reviewing data on the race and gender composition of 189 American police forces in 1987 and 1993, Lott concluded that the median change in the percentage of black officers was 3.2 percent in cities with consent decrees as opposed to 0.73 percent in other cities, and that the 90th percentile change in the percentage of black officers was 18.2 percent in cities with consent decrees and 6.0 percent in cities without them.<sup>98</sup>

The available statistical work on women officers points in a similar direction. After surveying 446 departments in the mid-1980s, Susan Martin reported that police forces with consent decrees addressing gender in hiring or promotion were 10.1 percent female, compared with 8.3 percent for forces with voluntary affirmative action programs, and 6.1 percent for all other departments.<sup>99</sup> Based on a smaller survey, the National Center for Women in Policing estimated in 2003 that 17.8 percent of the officers in municipal police departments with consent decrees were women, compared to 10.1 percent in surveyed departments without consent decrees, and 14.2 percent of all municipal departments.<sup>100</sup> Tim Sass and Jennifer Troyer, performing a regression analysis of EEOC hiring, concluded that prior anti-discrimination rulings were associated in the 1980s with an increase of 7-10 percent in the female proportion of newly hired officers.<sup>101</sup> Lott reported that, in his sample of 189 large departments, the median increase in the percentage of female officers between 1987 and 1993 was 2.8 percent in departments with consent decrees and 1.1 percent in departments without decrees.<sup>102</sup>

Because the statistics regarding gay and lesbian officers are so paltry, it is much more difficult to assess the role of lawsuits here. Anecdotally, however, lawsuits appear to have played a significant role in spurring departments to become more welcoming to, and tolerant of, openly gay and lesbian cops,<sup>103</sup> just as earlier lawsuits were pivotal in bringing more race and gender diversity to policing.

The heavy role that court-ordered affirmative action has played in integrating police departments provides reason to be concerned that progress may stall, or even be reversed, as consent decrees expire or are rescinded—often well before departments are fully integrated. (The court-ordered

hiring quotas in Boston, for example, were rescinded in 2004, despite the fact that the minority representation gap remained around 6–8 percent: racial minorities make up 38–40 percent of the population in Boston, but only 32 percent of the police force.) The worry is that the Pittsburgh experience will be replicated nationwide.

There is some evidence that this is already occurring. Figures on the female percentage of departments with one hundred or more officers suggest that gender integration of American police departments has stalled and even suffered a slight reversal since 2000. The researchers who compiled this set of figures for the National Center for Women and Policing believe that the decline is in fact real, and that it reflects the expiration of consent decrees.<sup>104</sup>

All of this suggests that safeguarding and expanding the gains already achieved in diversifying police departments should be a central component of the police reform agenda, and of what we mean by “democratic policing.” The evidence regarding the competence and community effects of police integration is equivocal, but certainly not sufficiently negative to warrant discounting the belief, very broadly held by minority, female, and openly gay officers, that they bring special understandings and special credibility to their work. All the more so when much of the reason for skepticism about these benefits has stemmed from concern about the insular and monolithic police subculture—a subculture that is itself now being transformed, segmented, and rendered more porous by the growing diversity of the police workforce. By weakening the social solidarity of the police, the growing diversity of law enforcement workforces makes it more likely that departments will be able to take advantage of the special competencies of minority officers, female officers, and openly gay and lesbian officers. It also paves the way for bolder experiments with participatory management and workplace democracy in policing—matters to be taken up in the next chapter. And by weakening the *political* solidarity of the police, and the uniformity of viewpoints within police departments, police diversity greatly facilitates other reforms, including civilian oversight, community policing, and systematic efforts to ameliorate racial bias in policing—the *external* dimension of equality in policing.

52. Sklansky, *supra* note 4, at 1178 & n.57.
53. Robert B. Reich, *Secession of the Successful*, N.Y. TIMES, Jan. 20, 1991, § 6, at 16.
54. See Sklansky, *supra* note 4, at 1224 n.342.
55. Murray Kempton, *Son of Pinkerton*, N.Y. REV. OF BOOKS, May 20, 1971, at 22.
56. See, e.g., Steven Spitzer & Andrew T. Scull, *Privatization and Capitalist Development: The Case of the Private Police*, 25 SOC. PROBS. 18 (1977).
57. See, e.g., MUIR, *supra* note 13, at 73-77 (discussing tactics employed by private police in Oakland's skid row in the early 1970s); Heather Barr, *More Like Disneyland: State Action*, 42 U.S.C. § 1983, and *Business Improvement Districts in New York*, 28 COLUM. HUM. RTS. L. REV. 393, 400-03 (1997) (describing similar tactics by private security personnel in midtown Manhattan in the 1990s); William Wan & Erin Ailworth, *Flak over Downtown Security Guards*, L.A. TIMES, June 8, 2004, at B1, B10 (reporting allegations of similar conduct by private guards patrolling downtown Los Angeles).
58. Joh, *supra* note 8, at 15.
59. Wan & Ailworth, *supra* note 57, at B10 (quoting Carol Schatz, president of the Downtown Center Improvement District).
60. David H. Bayley & Clifford D. Shearing, *The Future of Policing*, 30 L. & SOC'Y REV. 585, 594, 602 (1996).
61. See Sklansky, *supra* note 4, at 1199-1200, 1216-17 & n.305.
62. Joh, *supra* note 8, at 65-66; see PHILIP SELZNICK, LAW, SOCIETY, AND INDUSTRIAL SOCIETY 75-120 (1969); PHILIP SELZNICK, THE MORAL COMMUNITY 289-318 (1978).
63. See DAVID GARLAND, THE CULTURE OF CONTROL 114-17, 188-90 (2001); cf. Ian Loader, *Democracy, Justice and the Limits of Policing: Rethinking Police Accountability*, 3 SOC. & LEGAL STUD. 521, 521-22 (1994) (discussing the "managerialist turn" in British policing).
64. See Thacher, *Conflicting Values*, *supra* note 10, at 765, 765, 768, 772, 792-95.
65. See, e.g., GEORGE S. RIGAKOS, THE NEW PARAPOLICE: RISK MARKETS AND COM-MODIFIED SOCIAL CONTROL 119-46 (2002).

## NOTES TO CHAPTER 7

1. Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715 (2006).
2. For a helpful overview, see Samuel R. Gross & Debra Livingston, *Racial Profiling Under Attack*, 102 COLUM. L. REV. 1413 (2002).
3. See *Whren v. United States*, 517 U.S. 806 (1996); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271, 277-79, 284-91, 307-23.
4. GARY S. BECKER, THE ECONOMICS OF DISCRIMINATION 16-17 (2d ed. 1971). For a helpful overview and critique of studies of racial profiling proceeding from this

assumption, see Bernard E. Harcourt, *Rethinking Racial Profiling: A Critique of the Economics, Civil Liberties, and Constitutional Literature and of Criminal Profiling More Generally*, 71 U. CHI. L. REV. 1275 (2004).

5. See Harcourt, *supra* note 4. On the consequences of high rates of arrest and incarceration on minority neighborhoods, see also, e.g., Richard Banks, *Beyond Profiling: Race, Policing, and the Drug War*, 56 STAN. L. REV. 571, 594-97 (2003); Dorothy Roberts, *Foreword: Race, Vagueness, and Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775, 815-16 & n.143 (1999).

6. The best discussion of this problem I know is Devon W. Carbado, (*E*)*racing the Fourth Amendment*, 100 MICH. L. REV. 946, 974-1034 (2002). On the ways in which criminal justice practices can help to shape self-identity, particularly with respect to race, see also IAN F. HANEY LÓPEZ, *RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE* (2003). "More and more," Haney López argues, "we know ourselves by how the police and the courts treat us. If we receive respect, courtesy, fair treatment, and due process, we are white; if we are harassed, beaten, arrested or detained by executive fiat, we are black, brown, yellow, or red." *Id.* at 111.

7. See, e.g., Banks, *supra* note 5, at 577-78, 598.

8. See Harcourt, *supra* note 4.

9. See Carbado, *supra* note 6, at 982.

10. At least from the standpoint of democracy, therefore—and probably from any other standpoint—the Justice Department has been on thin ice in distinguishing sharply between "racial profiling," which it continues to condemn, and profiling based on nationality, which it defends. See Gross & Livingston, *supra* note 2, at 1419-21. There is a difference, of course, between discriminating on the ground of *nationality* and discriminating among United States citizens on the ground of *national origin*. But Gross and Livingston seem right that "[t]he Department's focus on visitors from countries with an active al Qaeda presence . . . raises the specter of ethnic profiling," by producing "an interview list that is dominated by Middle Eastern men." See *id.* at 1419-20.

11. See, e.g., Banks, *supra* note 5, at 593-98.

12. *Whren v. United States*, 517 U.S. 806, 813 (1996).

13. *Personnel Admin'r v. Feeney*, 442 U.S. 256, 279 (1979); see also, e.g., *McCleskey v. Kemp*, 481 U.S. 279, 298 (1987).

14. See, e.g., Sklansky, *supra* note 3.

15. See, e.g., Natapoff, *supra* note 1.

16. E.g., Robert Goldstein, Blyew: *Variations on a Jurisdictional Theme*, 41 STAN. L. REV. 469 (1989).

17. *DeShaney v. Winnebago County Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989)

18. *Id.* at 197 n.3.

19. See David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165, 1281-82 (1999).

20. *Archie v. City of Racine*, 847 F.2d 1211, 1218 (7th Cir. 1988) (en banc); see

also, e.g., Barbara E. Arnacost, *Affirmative Duties, Systemic Harms, and the Due Process Clause*, 94 MICH. L. REV. 982, 1014 (1996).

21. See Gerald Frug, *City Services*, 73 N.Y.U. L. REV. 23, 81 (1998).

22. See, e.g., John Dayton, *Examining the Efficacy of Judicial Involvement in Public School Funding Reform*, 22 J. EDUC. FIN. 1 (1996); Phil Weisser, *What's Quality Got to Do with It? Constitutional Theory, Politics, and Education Reform*, 21 N.Y.U. REV. L. & SOC. CHANGE 745, 787-89 (1994-95).

23. See Frug, *supra* note 21.

24. JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 410 (Vintage 1992) (1961).

25. See Justin McCrary, *The Effect of Court-Ordered Hiring Quotas on the Composition and Quality of Police*, 44 (Nov. 30, 2003) (unpublished manuscript).

26. See BRIAN A. REAVES & MATTHEW J. HICKMAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *POLICE DEPARTMENTS IN LARGE CITIES, 1990-2000*, at 3 (2002). This report compiles figures from the 2000 Law Enforcement Management and Administrative Statistics (LEMAS) survey.

27. Jennifer 8. Lee, *In Police Class, Blue Comes in Many Colors*, N.Y. TIMES, July 8, 2005, at B2.

28. See LOS ANGELES POLICE DEPARTMENT ANNUAL REPORT 2000, at 27; REAVES & HICKMAN, *supra* note 26.

29. See, e.g., Lee, *supra* note 27.

30. See LOS ANGELES POLICE DEPARTMENT ANNUAL REPORT 2000, *supra* note 28, at 27. Latino officers in Los Angeles remain strongly concentrated in the lower ranks—at least in part, presumably, because the Latino percentage of the city population has been steadily growing over the past several decades, and with it the Latino percentage of new officers hired by the department. Nationwide, as in Los Angeles, the Latino officer-to-resident ratio lags behind the black officer-to-resident ratio, but leads the corresponding figure for other minorities. See REAVES & HICKMAN, *supra* note 26, at 3.

31. See KIM LONSWAY ET AL., NATIONAL CENTER FOR WOMEN & POLICING, *EQUALITY DENIED: THE STATUS OF WOMEN IN POLICING: 2001* (2001). Women comprise a much larger share of the civilian workforce in large police departments. In departments with over one hundred sworn officers, women hold more than two-thirds of the civilian positions, which generally are lower paid and offer fewer opportunities for advancement. See *id.* at 8. Chiefly to save money, American police departments have greatly increased their reliance on civilian employees in recent years; large departments now employ more civilians than sworn officers. See, e.g., REAVES & HICKMAN, *supra* note 26, at 2. The stark gender difference between the two groups—the vast majority of officers are men, and the vast majority of civilian employees are women—both exacerbates and makes more troubling the way in which "civilianization" has tended to create two-tier departments, with civilian employees treated as second-class citizens.

32. See STEPHEN LEINEN, *GAY COPS* 11 (1993); Katy Butler, *The Gay Push for S.F.*

*Police Jobs*, S.F. CHRON., Apr. 9, 1979, at A1; Randy Shilts, *Gay Police—“We’re Not All That Different,”* POLICE MAGAZINE, July 1980, at 32. The novelist Jonathan Kellerman recalls that he created the character of a gay Los Angeles homicide detective in the early 1980s “because I wanted to avoid clichés, and a gay officer was a revolutionary concept.” Jonathan Kellerman, *Two Identities, but One Compulsion*, N.Y. TIMES, Mar. 31, 2003, at E1. Most police chiefs at the time adamantly opposed hiring gay officers. Shilts, *supra*, at 32.

On the growing but still incomplete acceptance of gay officers, see, e.g., Aaron Belkin & Jason McNichol, *Pink and Blue: Outcomes Associated with the Integration of Open Gay and Lesbian Personnel in the San Diego Police Department*, 5 POLICE Q. 63 (2002); Susan L. Miller, Kay B. Forest & Nancy C. Jurik, *Diversity in Blue: Lesbian and Gay Police Officers in a Masculine Occupation*, MEN & MASCULINITIES 355 (2003); Kristen A. Myers, Kay B. Forest & Susan L. Miller, *Officer Friendly and the Tough Cop: Gays and Lesbians Navigate Homophobia and Policing*, 47 J. HOMOSEXUALITY 17 (2004); Tracy Gordon Fox, *Seminar to Focus on Gay Officers*, HARTFORD COURANT, May 5, 2004, at B11; James Sterngold, *Possible Candidate for LAPD’s Top Job Is Gay—So What?*, S.F. CHRON., Aug. 26, 2002, at A1.

33. See, e.g., DAVID E. BARLOW & MELISSA HICKMAN BARLOW, POLICE IN A MULTICULTURAL SOCIETY 275–76 (2000).

34. Belkin & McNichol, *supra* note 32, at 78; see also, e.g., SUSAN L. MILLER, GENDER AND COMMUNITY POLICING: WALKING THE TALK 134 (1999).

35. Belkin & McNichol, *supra* note 32, at 77–83.

36. See Fox, *supra* note 32, at B11; Laurel J. Sweet, *O’Toole Aims for Gay Cops’ Acceptance at Powwow*, BOSTON HERALD, June 21, 2004, at 12.

37. PRESIDENT’S COMM’N ON LAW ENF’T & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 107 (1967).

38. See, e.g., KENNETH BOLTON, JR., & JOE R. FEAGIN, BLACK IN BLUE: AFRICAN-AMERICAN POLICE OFFICERS AND RACISM 6–7, 215–16, 250 (2003).

39. See James J. Fyfe, *Who Shoots? A Look at Officer Race and Police Shooting*, 9 J. POLICE SCI. & ADMIN. 367, 372 (1981); William A. Geller & Kevin J. Karales, *Shootings of and by Chicago Police: Uncommon Crises Part I: Shootings by Chicago Police*, 72 J. CRIM. L. & CRIMINOLOGY 1813, 1815 (1981); Mark Blumberg, *The Use of Firearms by Police Officers: The Impact of Individuals, Communities, and Race 72–80* (1982) (unpublished dissertation on file with author); cf. Albert J. Reiss, *Police Brutality, in CRIME AND JUSTICE: THE CRIMINAL IN THE ARMS OF THE LAW* 157 (Leon Radzinowicz & Marvin E. Wolfgang eds., 2d ed. 1977) (finding little difference in the likelihood of black and white officers to use force).

40. See Robert E. Worden, *Situational and Attitudinal Explanations of Police Behavior: A Theoretical Reappraisal and Empirical Assessment*, 23 L. & SOC. REV. 667, 700 n.42 (1989).

41. See Jack L. Kuykendall & D. E. Burns, *The Black Police Officer: An Historical Perspective*, 4 J. CONTEMP. CRIM. J. 4, 9–10 (1980).

42. See Stephen D. Mastroski et al., *Compliance on Demand: The Public’s Response to Specific Police Requests*, 33 J. RES. CRIME & TECH. 269, 289 & tbl. 2 (1996).

43. See BERNARD COHEN & JAN CHAIKEN, POLICE BACKGROUND CHARACTERISTICS AND PERFORMANCE xii & tbl. 24 (1972); ANTONY PATE & LORIE FRIDELL, POLICE USE OF FORCE: OFFICIAL REPORTS, CITIZEN COMPLAINTS, AND LEGAL CONSEQUENCES 102, 155 (1993); Liqun Cao & Bu Huang, *Determinants of Citizen Complaints Against Police Abuse of Power*, 28 J. CRIM. JUST. 203, 209 (2000); COHEN & CHAIKEN 1972; Kim Lersch & Tom Mieczkowski, *Who Are the Problem-Prone Officers? An Analysis of Citizen Complaints*, 15 AM. J. POLICE 23, 33 (1996).

44. See Albert J. Reiss, Jr., *Career Orientations, Job Satisfaction, and the Assessment of Law Enforcement Problems by Police Officers* 81, in 2 STUDIES OF CRIME AND LAW ENFORCEMENT IN MAJOR METROPOLITAN AREAS (Albert J. Reiss ed., 1967).

45. See Donald J. Black & Albert J. Reiss, *Patterns of Behavior in Police and Citizen Transactions* 132–37, in 2 STUDIES OF CRIME AND LAW ENFORCEMENT IN MAJOR METROPOLITAN AREAS, *supra* note 44.

46. See Rita M. Kelly & Gorman West, *The Racial Transition of a Police Force: A Profile of White and Black Policemen in Washington, D.C.*, in THE URBAN POLICEMAN IN TRANSITION 354, 374–77 (John R. Snibbe & Homa M. Snibbe eds., 1978) [hereinafter THE URBAN POLICEMAN IN TRANSITION].

47. See John J. Donohue III & Steven D. Levitt, *The Impact of Race on Policing and Arrests*, 44 J. L. & ECON. 367, 371 & tbl. 2 (2001).

48. SAMUEL WALKER, CASSIA SPOHN & MIRIAM DELONE, THE COLOR OF JUSTICE: RACE, ETHNICITY AND CRIME IN AMERICA 111 (2d ed. 2000); see also, e.g., BARLOW & BARLOW, *supra* note 33, at 249.

49. EDWARD CONLON, BLUE BLOOD 320 (2004).

50. HERMAN GOLDSTEIN, POLICING A FREE SOCIETY 259 (1976).

51. WALKER, SPOHN & DELONE, *supra* note 48, at 111; see also, e.g., JOHN L. COOPER, THE POLICE AND THE GHETTO 29–53, 116–19, 125–28 (1980); Ellis Cashmore, *Black Cops Inc.*, in OUT OF ORDER?: POLICING BLACK PEOPLE 87, 104–08 (Ellis Cashmore & Eugene McLaughlin eds., 1991); Reiss, *supra* note 39, at 157; cf. Janet Chan, *Changing Police Culture*, 36 BRIT. J. CRIMINOLOGY 109, 110 (1996) (“Conspiracy theory aside, the most powerful and currently popular explanation for the recalcitrance of police organizations to change has been to postulate the existence of a ‘police culture.’”)

52. *Id.*; see also COMMITTEE TO REVIEW RESEARCH ON POLICE POLICY & PRACTICES, NATIONAL RESEARCH COUNCIL, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 147 (Wesley Skogan & Kathleen Frydl eds., 2004) [hereinafter FAIRNESS AND EFFECTIVENESS IN POLICING] (reporting the “received wisdom from the research community . . . that whatever influence race and gender may exert on behavior is overwhelmed by the unifying effects of occupational socialization”).

53. See PETER B. BLOCH & DEBORAH ANDERSON, POLICEWOMEN ON PATROL: FINAL REPORT 2–3 (1974); JOYCE SICHEL, WOMEN ON PATROL: A PILOT STUDY OF POLICE

PERFORMANCE IN NEW YORK CITY 28-31 (1978); Lewis J. Sherman, *An Evaluation of Policewomen on Patrol in a Suburban Police Department*, 3 J. POLICE SCI. & ADMIN. 434, 435 (1975).

54. See John R. Snortum & John C. Beyers, *Patrol Activities of Male and Female Officers as a Function of Work Experience*, 6 POLICE STUD. 36, 41 (1983); Sean A. Grennan, *Findings on the Role of Officer Gender in Violent Encounters with Citizens*, 15 J. POLICE SCI. & ADMIN., 78, 83-4 (1987); Alissa Pollitz Worden, *The Attitudes of Women and Men in Policing: Testing Conventional and Contemporary Wisdom*, 31 CRIMINOLOGY 203, 227-29 (1993).

55. See REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 83-84 (1991); Frank Horvath, *The Police Use of Deadly Force: A Description of Selected Characteristics of Intrastate Incidents*, 15 J. POLICE SCI. & ADMIN. 226, 229 (1987).

56. See Robert J. Homant & Daniel B. Kennedy, *Police Perceptions of Spouse Abuse: A Comparison of Male and Female Officers*, 13 J. CRIM. JUST. 29, 42-43 (1985).

57. See John R. Lott, Jr., *Does a Helping Hand Put Others at Risk? Affirmative Action, Police Departments, and Crime*, 38 ECON. INQUIRY 260 (2000); Brad W. Smith, *The Impact of Police Officer Diversity on Police-Caused Homicides*, 31 POLICY STUD. J. 147, 155 (2003).

58. See Houmant & Kennedy, *supra* note 56, at 34-35.

59. KIM LONSWAY ET AL., NATIONAL CENTER FOR WOMEN & POLICING, HIRING AND RETAINING MORE WOMEN: THE ADVANTAGES TO LAW ENFORCEMENT 2-4 (2003).

60. See, e.g., ROBIN A. BURKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 25-131 (1996); Belkin & McNichol, *supra* note 32, at 87; Britany Wallman, *Police Try to Recruit More Gay Officers*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Dec. 18, 2005, Community News, at 1.

61. Miller, Forest & Jurik, *supra* note 32, at 378; see also *id.* at 370-71, 376; Myers, Forest & Miller, *supra* note 32, at 34.

62. Myers, Forest & Miller, *supra* note 32, at 35; Shilts, *supra* note 32, at 32-33.

63. PRESIDENT'S COMM'N ON LAW ENF'T & ADMIN. OF JUSTICE, *supra* note 37, at 107.

64. Belkin & McNichol, *supra* note 32, at 87.

65. See *supra* notes 42 & 44.

66. See Irving A. Wallach & Colette C. Jackson, *Perception of the Police in a Black Community*, in THE URBAN POLICEMAN IN TRANSITION, *supra* note 46, at 382, 401; Ronald Weitzer, *White, Black, or Blue Cops? Race and Citizen Assessments of Police Officers*, 28 J. CRIM. JUST. 313, 316 (2000).

67. See BARLOW & BARLOW, *supra* note 33, at 249.

68. NICHOLAS ALEX, BLACK IN BLUE: A STUDY OF THE NEGRO POLICEMAN 20-21 (1969); accord, e.g., COOPER, *supra* note 51, at 111-15, 119-25; Cashmore, *supra* note 51, at 96; Edward Palmer, *Black Police in America*, BLACK SCHOLAR, Oct. 1973, at 19, 21-23.

69. SUSAN E. MARTIN, BREAKING AND ENTERING: POLICEWOMEN ON PATROL 197-98 (1980).

70. Marc Burke, *Homosexuality as Deviance: The Case of the Gay Police Officer*, 34 BRIT. J. CRIMINOLOGY 192 (1994); see also, e.g., Myers, Forest & Miller, *supra* note 32, at 31.

71. See, e.g., BOLTON & FEAGIN, *supra* note 38, at 22.

72. See, e.g., Belkin & McNichol, *supra* note 32, at 77-79.

73. See Robert J. Friedrich, *Police Use of Force: Individuals, Situations, and Organizations*, 452 ANNALS AM. ACAD. POL. & SOC. SCI. 82, 90 (1980).

74. See Michael Cassidy, Caroline G. Nicholl, Carmen Ross & Kimberly A. Lonsway, *The Victims' View: Domestic Violence and Police Response*, at 4-15 (August 2003) (unpublished paper available at <<http://perso.wanadoo.fr/societe.internationale.de.criminologie/pdf/Intervention%20Cassidy%20et%20ocie.pdf>>).

75. CYNTHIA ESTLUND, WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY 84 (2003); see also *id.* at 60-101.

76. See, e.g., BARLOW & BARLOW, *supra* note 33, at 235-41; Erin Aubry Kaplan, *Rethinking the LAPD Black and Blue*, L.A. WEEKLY, Sept. 6, 2002.

77. See, e.g., SAMUEL WALKER & CHARLES M. KATZ, THE POLICE IN AMERICA 433 (4th ed. 2002); Cashmore, *supra* note 51, at 96.

78. See, e.g., *Latino Group Opposes Parks' Bid for Second Term*, L.A. TIMES, Mar. 12, 2002, at B5; Jill Leovy, *Review of Parks Will Be Private*, L.A. TIMES, Apr. 2, 2002, at B1.

79. Melissa Hickman Barlow, David Barlow & Stan Stajkovic, *The Media, The Police and the Multicultural Community: Observations of a City in Crisis*, 17 J. CRIME & JUST. 133, 137, 140, 144-45 (1994).

80. Robin N. Haarr, *Patterns of Interaction in a Police Patrol Bureau: Race and Gender Barriers to Integration*, 14 JUSTICE Q. 53, 66 (1997).

81. *Id.* at 53; see also, e.g., BARLOW & BARLOW, *supra* note 33, at 205; FAIRNESS AND EFFECTIVENESS IN POLICING, *supra* note 52, at 80-82; STEVEN MAYNARD-MOODY & MICHAEL MUSHENO, COPS, TEACHERS, COUNSELORS: STORIES FROM THE FRONT LINES OF PUBLIC SERVICE 64-76 (2003). Samuel Walker has been pressing this point for twenty years. See WALKER, SPOHN & DELONE, *supra* note 48, at 115; Samuel Walker, *Racial Minority and Female Employment in Policing: The Implications of "Glacial" Change*, 31 CRIME & DELINQ. 555, 556, 565 (1985).

82. Samuel L. Williams, *Law Enforcement and Affirmative Action*, POLICE CHIEF, Feb. 1975, at 72.

83. See, e.g., Myers, Forrest & Miller, *supra* note 32, at 34.

84. See, e.g., Barlow, Barlow & Stajkovic, *supra* note 79, at 140.

85. See Trish Oberweis & Michael Musheno, *Policing Identities: Cop Decision Making and the Constitution of the Citizen*, 24 L. & SOC. INQUIRY 897, 901-02, 904 (1999).

86. See *id.* at 910-17; BARLOW & BARLOW, *supra* note 33, at 235-41.

87. I owe this point to Michael Musheno.



88. See Lott, *supra* note 57.

89. Using data regarding hiring of police officers in New York City, Justin McCrary has found that "even aggressive hiring quotas change the test score distribution of new hires only minimally." McCrary, *supra* note 25, at 26-31, 33. McCrary also did a time series comparison of crime rates in cities that had been sued for discriminatory police hiring and in cities that had not, and an "event study" analysis of crime rates before and after litigation. He found little evidence that litigation was related to crime rates. *See id.* at 26-29.

90. Cf. FAIRNESS AND EFFECTIVENESS IN POLICING, *supra* note 52, at 80 (noting that "in important respects" the new employment of openly gay and lesbian officers "represents an even greater transformation of the traditional police subculture than the employment of female officers as equals in the 1970s").

91. WILLIAM A. WESTLEY, *VIOLENCE AND THE POLICE: A SOCIOLOGICAL STUDY OF LAW, CUSTOM, AND MORALITY* 61-63, 89-90, 107 (1970); William Westley, *Violence and the Police*, 59 AM. J. SOC. 34, 37-38 (1953). Seven of fifteen law enforcement agencies in Los Angeles County interviewed by law students in 1966 admitted engaging in organized, extralegal harassment of homosexuals. *See* Project, *The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County*, 13 UCLA L. REV. 643, 719 (1966).

92. KIM LONSWAY ET AL., NATIONAL CENTER FOR WOMEN & POLICING, *UNDER SCRUTINY: THE EFFECT OF CONSENT DECREES ON THE REPRESENTATION OF WOMEN IN SWORN LAW ENFORCEMENT I* (2003).

93. McCrary, *supra* note 25, at 8.

94. *See id.* at 9.

95. *See id.* at 7, 14, 26.

96. *See id.* at 47.

97. William G. Lewis, *Toward Representative Bureaucracy: Blacks in City Police Organizations, 1975-1985*, 49 PUB. ADMIN. REV. 257 (1989).

98. See Lott, *supra* note 57, at 244.

99. Susan E. Martin, *The Effectiveness of Affirmative Action: The Case of Women in Policing*, 8 JUSTICE Q. 489 (1991). Martin ran a series of regressions to control for the effects of region, city size, and minority representation. The results indicated that "both court-ordered and voluntary affirmative action were significantly associated with the proportion of women in a department," after controlling for other variables. *Id.* at 494.

100. LONSWAY ET AL., *supra* note 92.

101. Tim R. Sass & Jennifer Troyer, *Affirmative Action, Political Representation, Unions, and Female Police Employment*, 20 J. LAB. RES. 571 (1999). They found no similar effect on hiring rates in 1991, a result they speculated might reflect the fact that most of the decisions were handed down in the early 1980s: "[o]f the 65 decisions in gender-related cases against municipal police departments decided by 1991, only 16 decisions occurred in the 1986-1991 period." *Id.* at 579 & 585 n.14.

102. See Lott, *supra* note 57, at 244.

103. On the impact, in particular, of a lawsuit filed by a gay LAPD officer in 1988, see Belkin & McNichol, *supra* note 32, at 69; Marita Hernandez, *2 LAPD Officers Join Homosexual Bias Suit*, L.A. TIMES, Nov. 22, 1989, at B3.

104. See LONSWAY ET AL., *supra* note 31, at 6.

#### NOTES TO CHAPTER 8

1. On "the dominant view of police unions," see George L. Kelling & Robert B. Kliehmet, *Police Unions, Police Culture, and Police Abuse of Force*, in *POLICE VIOLENCE: UNDERSTANDING AND CONTROLLING POLICE ABUSE OF FORCE 191* (William A. Geller & Hans Toch eds., 1996).

2. EDWARD CONLON, *BLUE BLOOD* 243 (2004).

3. See Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Commentators, and the New Policing*, 97 COLUM. L. REV. 551, 573-74 (1997).

4. HANS TOCH & J. DOUGLAS GRANT, *POLICE AS PROBLEM SOLVERS: HOW FRONT-LINE WORKERS CAN PROMOTE ORGANIZATIONAL AND COMMUNITY CHANGE* 81 (2d ed. 2005); Thomas J. Cowper, *The Myth of the "Military Model" of Leadership in Law Enforcement*, in *CONTEMPORARY POLICING: CONTROVERSIES, CHALLENGES, AND SOLUTIONS* 113 (Quint C. Thutman & Jihong Zhao eds., 2004).

5. See, e.g., Gerald Frug, *City Services*, 73 N.Y.U. L. REV. 23, 81 (1998); Jerome Skolnick, *Neighborhood Police*, THE NATION, Mar. 22, 1972, at 372; Arthur L. Waskow, *Community Control of the Police*, TRANS-ACTION, Dec. 1969, at 4.

6. JOHN DEWEY, *THE PUBLIC AND ITS PROBLEMS* 217 (1946 ed.) (1927).

7. See, e.g., DAVID MONTGOMERY, *THE FALL OF THE HOUSE OF LABOR: THE WORKPLACE, THE STATE, AND AMERICAN LABOR ACTIVISM, 1865-1925*, at 214-56 (1987).

8. See, e.g., BARBARA GARSON, *ALL THE LIFELONG DAY: THE MEANING AND DE-MEANING OF ROUTINE WORK* 214-18 (1975); MIKE ROSE, *THE MIND AT WORK: VALUING THE INTELLIGENCE OF THE AMERICAN WORKER* 142-47 (2004); JOHN FABIAN WITT, *THE ACCIDENTAL REPUBLIC: CRIPPLED WORKINGMEN, DESTITUTE WIDOWS, AND THE REMAKING OF AMERICAN LAW* 109 (2004).

9. FREDERICK WINSLOW TAYLOR, *THE PRINCIPLES OF SCIENTIFIC MANAGEMENT* (1911); see also, e.g., FRANK BARKLEY COPLEY, *FREDERICK W. TAYLOR: FATHER OF SCIENTIFIC MANAGEMENT* (1923).

10. See, e.g., CYNTHIA ESTLUND, *WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY* 56-59 (2003).

11. DEWEY, *supra* note 6, at 217.

12. See, e.g., HARRY BRAVERMAN, *LABOR AND MONOPOLY CAPITALISM: THE DEGRADATION OF WORK IN THE TWENTIETH CENTURY* (1974); GARSON, *supra* note 8; William H. Simon, *Ethics, Professionalism, and Meaningful Work*, 26 HOFSTRA L. REV. 445, 447-57 (1997).