

## **Shrinking the Police Footprint\***

March 2022

Forthcoming in *Criminal Justice Ethics*, vol. 41, no. 1 (April 2022).

Published version available at <https://doi.org/10.1080/0731129X.2022.2062546>

David Thacher  
Gerald R. Ford School of Public Policy and  
A. Alfred Taubman College of Architecture and Urban Planning  
The University of Michigan  
dthacher@umich.edu

## **Shrinking the Police Footprint**

### **ABSTRACT**

The most influential agenda for progressive police reform today aims to shrink the police footprint by reassigning many problems they currently manage to other institutions. This paper argues that this agenda relies on faulty understanding of the police role, but a more promising agenda based on a better understanding is available. Police are a residual institution, charged with managing the crises that other institutions cannot handle adequately on their own, and it is not easy to reassign that work to anyone else. In the course of doing it, however, they develop expertise in the nature and sources of these crises that positions them to identify and help repair the institutional failures that generate them. The paper illustrates these claims with case studies of the challenges that efforts to reassign police work elsewhere have encountered and the role that police have played in institutional repair. It concludes by considering the normative concerns that this important aspect of the police role raises.

**Keywords:** Police, Abolition, Post-Bureaucratic Organization, Diversion, Egon Bittner

The police, more and more people have concluded, have been asked to do too much. Abolitionists in the United States want to “defund” or “abolish” them and reassign the problems they currently manage elsewhere, hoping that other institutions can resolve those problems less violently and more effectively.<sup>1</sup> Reformers merely want to “unbundle” or “disaggregate” the police, but their immediate plans come to the same thing: They, too, want to send medics and counselors rather than armed police officers to mental health crises, to send outreach workers to the homeless and people struggling with drug and alcohol addiction, to enlist violence interrupters to prevent retaliatory shootings, and to enlist anyone other than armed police officers to enforce the traffic laws.<sup>2</sup> Even many police leaders in the U.S. agree with parts of this rough agenda. (They would like nothing better than to turn mental health calls over to someone else.) Although there is no widely accepted name for this influential agenda, I will refer to it as the “diversion” agenda for police reform. That agenda has become a major priority for those who hope to mitigate the harms that contemporary policing imposes, particularly on the racial and ethnic minorities and people with disabilities who are most likely to be subjected to police intervention.

The diversion agenda is not new,<sup>3</sup> and it is worth asking why it has not succeeded before. This paper will argue that the challenges arise out of the nature of the police function, which fails to align with the categories that many popular proposals rely on. Reformers and abolitionists commonly say that American social policy has “turned over” problems like drug abuse, mental illness, and homelessness to the police, but that claim is too simple. What has been turned over to the police is not each of these problems in its entirety but a particular, hard-to-define slice of it. Police are a residual institution, invested with the authority to manage the crises that other institutions cannot handle on their own.<sup>4</sup> We can and should strive to reduce the role of police in

society, but wholesale talk of “getting police out” of social problems like mental health, homelessness, and traffic safety fails to grapple with what is at stake.

By clarifying this residual character of the police role, it is possible to formulate a more defensible strategy for shrinking the police footprint than the one that currently dominates public debate. Because police officers are systematically exposed to the limitations of other organizations’ routines—we call the police precisely when we face (certain kinds of) crises that we cannot handle using our usual tools—they become experts in institutional breakdown. They should use that expertise to help those organizations prevent and resolve their crises more independently. As students of post-bureaucratic organization have argued, one of the most important ways that organizations improve their capacity to overcome recurrent problems is by redoubling their efforts to identify and learn from their own failures.<sup>5</sup> Police can bring a distinctive perspective to those efforts. Like other professionals who tend to broken systems, police often gain unique insights about the weaknesses of those systems and the possibilities for overcoming them.<sup>6</sup> They can mobilize those insights through strategies that progressive police reform has embraced for decades, particularly problem-oriented policing and learning-oriented incident reviews.<sup>7</sup> As forms of post-bureaucratic organization, those strategies establish routines for systematically identifying and repairing institutional failures,<sup>8</sup> including failures of the institutions that police interact with.

This strategy provides a distinctive alternative to the diversion agenda, one that better realizes the commitments that many of its advocates embrace. Instead of striving to replace police with some unarmed alternative that can respond to crises or prevent them, this alternative agenda aims to reform the institutions and practices that generate those crises in the first place. Angela Davis influentially argued that prison abolition should not aim to replace prisons with a

gentler ‘alternative’ but to restructure society to make prisons unnecessary.<sup>9</sup> When prison reformers have tried to devise one-to-one replacements for troubled carceral institutions, the new, supposedly more progressive alternatives have often run into the same problems that plagued the less enlightened institutions they replaced.<sup>10</sup> The troubled history of community patrols, private security, and other attempts to devise alternative forms of policing suggests that the same may hold true for police abolition.<sup>11</sup> Instead of trying to establish or expand alternative institutions that can more humanely manage and prevent the crises currently handled by the police, we should try to restructure existing institutions to make those crises less likely to arise in the first place. To be sure, there are many ways to pursue that agenda, and it may seem paradoxical or even perverse to suggest that the police themselves should play a role in it, but the nature of police work potentially gives the police unique insights into the sources of institutional breakdown.

This agenda for police reform flows from and extends a compelling conception of the police mandate. Egon Bittner influentially argued that the mission of policing is best understood in terms of the fickle but significant cultural commitment of many modern societies to regulate and restrain the use of coercive authority in everyday life: Paradoxically, the whole point of creating an institution with a monopoly on the legitimate use of coercive force is to professionalize it—to try to ensure that coercive force will be used less intensively and more responsibly than it otherwise would be.<sup>12</sup> For Bittner himself, that mandate implied that individual officers and the agencies that employ them have a professional duty to cultivate the skills they need to resolve urgent problems and conflicts with minimal resort to force.<sup>13</sup> That duty centers on the capacity of police officers to humanely manage difficult incidents during the moments when they arise, and it implies that meaningful police reform should always aim to

refine that capacity.<sup>14</sup> But the aspiration to minimize society's recourse to coercive force demands more than that; it also demands efforts to prevent the incidents that lead to police intervention (and the potential use of coercive force that goes with it) from arising in the first place. The police should aspire not only to be the responsible custodians of institutional breakdown but also the far-sighted agents of institutional repair. (Indeed, those two roles are intimately connected, since the reactive work involved in the first is what gives them distinctive insights into the second.) This broader vision of the police mission finds expression both in historical models of policing and in influential ideas about police reform today. By extending Bittner's analysis of the police role in this way, it is possible to accommodate important insights from his most sophisticated critics and theoretical competitors.<sup>15</sup>

The next section examines the limits of the diversion agenda in two steps: first, by illustrating the problems it has encountered in practice; and second, by analyzing the roots of those problems in the nature of the police role as Bittner understood it. The third section then articulates an alternative strategy for reducing the police role by developing two case studies that illustrate it, and the fourth section clarifies the organizational logic and conception of the police role that this alternative strategy embodies. The final section considers a significant challenge that this aspect of the police role must contend with: The work of institutional repair often puts the police at odds with the institutions they set out to reform, and those tensions raise difficult normative questions about the appropriate division of responsibility for the problems that sparked them.

### **Policing as a Last Resort**

During the 1960s, when the crime of "drunkenness" accounted for over one-third of all arrests made by police in the U.S., there was a major effort to shift responsibility for drunkenness

from the criminal justice system to the public health and social welfare systems. Encouraged by public health advocates and the President's Commission on Law Enforcement and the Administration of Justice, many state legislatures decriminalized public drunkenness and invested in an expanded network of civil detoxification and treatment centers, which police could use as an alternative to jail for people detained for public drunkenness. "If drunkenness were dealt with by medically qualified people," the Commission's task force on policing opined, "police would not have to contend with the habitual drunk."<sup>16</sup> Many of these reforms took shape as police diversion programs, in which officers still served as first responders but brought public inebriates to detox centers rather than jails. Others took the form of co-response initiatives, in which service providers responded to public intoxication alongside police officers. In still others, outreach workers patrolled skid row areas to bring inebriates to the detoxification centers voluntarily, without involving police at all.<sup>17</sup>

Regardless of the model, the centers generally proved unsuccessful at managing the kinds of incidents that had previously drawn police attention. The staff who ran treatment and detox facilities often refused admission to the most uncooperative and combative people or called police when they decided they could not handle them. Nonpolice van programs allowed the public health system to reach more people and offer them better services, but they had little impact on policing because they did not reach the defiant and sometimes belligerent people who had drawn police attention in the past. As the leading evaluation of these initiatives put it: "The cases the police are forced to handle are often not the cases a detox van system is designed to serve. The existence of a voluntary van system is not likely to produce a significant decrease in the police time spent coping with the public intoxication problem."<sup>18</sup> In the meantime, police continued to handle the difficult cases that the van systems and diversion facilities bypassed.

Many states had made this task more difficult by repealing their public drunkenness statutes, but police could and did arrest such people on alternative charges like disorderly conduct instead.<sup>19</sup>

Perhaps too little money was devoted to these reforms; perhaps police were still too involved in most of them. The experience made clear, however, that police had not been managing “the drunkenness problem” but one particularly difficult subset of it. Reformers could not easily reallocate it to other institutions by an act of legislative and budgetary fiat.

### *The Police Mandate*

Bittner’s analysis of the police role helps to understand the challenges these initiatives encountered. Having observed thousands of hours of police work, Bittner rejected the common view that the mission of policing is to fight crime or enforce the law. Instead “the police are nothing else than a mechanism for the distribution of situationally justified force in society.”<sup>20</sup>

That claim has two components. The first, broadly familiar in policing scholarship, is that what makes police unique is not that they are responsible for crime control but that they have the authority to force people to do things they refuse to do voluntarily—not just to use physical force but to issue non-negotiable commands (and of course to use physical force to enforce them if necessary). The scope of that responsibility does include many serious crimes, since many people who violate the criminal law will not surrender voluntarily, but it also includes an endless range of miscellaneous emergencies that have little to do with crime as normally understood: Preventing someone from committing suicide, protecting a disoriented person from harm, dispersing a crowd that is blocking an ambulance, helping an animal control officer take custody of a dangerous dog over the owner’s objections, securing a tenant’s access to urgently needed medications that his landlord is stubbornly holding with his other possessions in bailment during an eviction, “and so on almost endlessly, and entirely without regard to the substantive nature of



the problem, as long as it could be said that it involved *something-that-ought-not-to-be-happening- and-about-which-someone-had-better-do-something-now!*"<sup>21</sup> The police mandate is not confined to a single substantive domain like crime control but ranges widely across all substantive domains. "On the periphery of the rationally ordered procedures of medical and social work practice lurk exigencies that call for the exercise of coercion," Bittner explained by way of illustration. "Since neither physicians nor social workers are authorized or equipped to use force to attain desirable objectives, the total disengagement of the police would mean allowing many a problem to move unhampered in the direction of disaster."<sup>22</sup>

In this respect, the police mandate is a residual: It is that part of *any* substantive problem (not just "crime") that may require coercive authority. If a building official condemns a business and demands that the owner must leave the premises and lock the doors, she has no authority to drag the owner out of the building if he refuses; only the police can do that. If a suicidal man insists that he will run headlong into traffic despite the best efforts by a mental health counselor to persuade him otherwise, only the police have the authority to physically restrain him. If a social worker reaches the horrible conclusion that a woman's daughter is no longer safe in her home but she refuses to relinquish custody voluntarily, the social worker has to call the police. It is tempting in cases like these to ask why police are doing the work of building officials, psychiatrists, and social workers, particularly when our knowledge about each case comes from the condensed summary in police records ("unsafe building," "suicidal ideation", "child welfare"). But in fact they are doing no such thing. They are doing the distinctive work of policing, making situational judgments about their own responsibility to manage difficult problems that they share with other professionals who sometimes need their support when all else fails.

The second component of Bittner's claim, often ignored in ritual citations of his work,<sup>23</sup> is that the police decide *when* to use their coercive authority on the basis of "situational" judgments—on the basis of an intuitive evaluation of a case in context, rather than a deductive application of general rules to particular facts.<sup>24</sup> This situational character of police judgment plays a crucial role in Bittner's account of the police mandate introduced earlier. Although police have the authority to resort to coercion if necessary, they have a mandate to avoid using that authority whenever possible. "The skill involved in police work," Bittner insisted, "consists of retaining recourse to force while seeking to avoid its use, and using it only in minimal amounts."<sup>25</sup> Part of this skill consists of generic interpersonal skills, including the same tactics of de-escalation, mediation, and persuasion that other professionals use (albeit with the threat of coercion hanging in the background). Part of it, however, is more situational, consisting of an understanding of the resources, skills, expectations, and institutional capacity prevailing at a particular time and place.<sup>26</sup> For example, in his ethnographic study of police decisions about people with mental illnesses, Bittner concluded that police invoke the emergency commitment laws to take custody of someone undergoing a mental health crisis only as a last resort, when there are no family, neighbors, landlords, or other caretakers who can effectively support the person during the current crisis the brought them to police attention.<sup>27</sup> In this respect, the police mandate is defined in relation to the limits of other organizational practices. In the course of their work, police officers gain an intimate understanding of the nature (and sometimes the sources) of those limits.

### *The Police Role and Police Diversion*

These features of the police role have significant implications for the diversion agenda. At root, that agenda aims to identify work currently done by police that lies outside the scope of

their proper mandate and expertise. If the true mandate of policing could be defined as crime control or law enforcement, this task would be easy: Any problem that does not involve serious crime or lawbreaking could be reassigned elsewhere. But in fact the police mandate is much more complex than those definitions imply.

Public and academic discourse about diversion often ignores that complexity. Advocates of the diversion agenda often begin with the claim that that the police have inappropriately been asked to manage problems like “homelessness”, “mental illness”, and “substance abuse”, and then maintain that this work should be reassigned to other agencies and community groups.<sup>28</sup> To accomplish that goal, public policy should remove these problems from police responsibility, reassigning them to professionals with more relevant skills.<sup>29</sup> That task might be accomplished through decriminalization and greater investment in social welfare programs<sup>30</sup> or by creating nonpolice crisis response teams.<sup>31</sup> The goal, as Megan Quattlebaum and Tom Tyler summarize it, is for police to “exit the social welfare field” in favor of “supportive community programming that is designed to address the problems that police departments used to tackle”.<sup>32</sup>

This agenda echoes the drunkenness initiatives of the 1960s and 1970s (indeed Quattlebaum and Tyler describe public drunkenness as part of the “social welfare field” that police might exit).<sup>33</sup> Those initiatives aimed to relocate responsibility for a major social problem from the criminal justice system to public health specialists. In fact, however, the problem of public drunkenness *in policing* encompassed some number of cases in which the voluntary tools available to treatment providers were inadequate. Those cases comprised the stubborn core of police responsibility for “public drunkenness”, and they remained so even in states that decriminalized that offense. Meanwhile, the alternative interventions developed at the time ended up serving cases that had not really been a significant part of police work. Successful

diversion cannot focus on broad substantive problems like “drunkenness”, “homelessness”, or “mental illness”. It requires a more fine-grained analysis of the specific nature of the incidents in these categories that the police are managing, the social priorities that those incidents implicate, and the range of policing and nonpolicing strategies that could be tailored to the distinct components of these complex problems.<sup>34</sup>

### **Diverting Police Work**

Police work becomes necessary when established community practices for pursuing urgent priorities run into intractable obstacles. A call to the police typically signifies that someone believes a problem has gone beyond what they can or will handle with the authority available to them, and when police arrive they must sort out whether in fact they should invoke their own unique authority to resolve it. Often they find they can resolve these situations informally, without relying on coercive authority, but these informal interventions are usually provisional; they rarely provide long-term solution that prevents similar problems from reemerging in the future.<sup>35</sup>

In some cases, however, police try to repair the institutional breakdowns that brought them into contact with a problem in the first place. Particularly in agencies committed to problem-oriented policing, and sometimes also in agencies committed to learning-oriented incident reviews, officers and those who support them have a mandate to build the community’s capacity to prevent these problems from reoccurring.<sup>36</sup> As Bittner himself put it in a sympathetic discussion of community policing and problem-oriented policing, those strategies represent attempts to “enlarge the scope of police responsibilities from keeping a lid on things to reducing the pressures that cause the eruption of disorder and deviance”, particularly by “mobilizing and directing the defense of the community with the community’s own resources.”<sup>37</sup> When the police

play this role, they marshal the distinctive insights about the nature and sources of institutional breakdown they have developed in the course of their work to force the broader organizational field to confront previously unrecognized problems.<sup>38</sup>

### Walmart

In 2015, the two Walmart stores in Paducah, Kentucky, generated nearly one in seven calls handled by local police, including two-thirds of all calls for shoplifting. In one police zone, 71% of the police reports came from Walmart, and officers complained that they sometimes spent their entire shift at the store.<sup>39</sup>

After a detailed review of the incidents that had brought police to the stores, police officials in Paducah eventually concluded that the huge volume of crime at Walmart stores resulted from their abdication of their own responsibility to control theft and other crimes. Years of removing door greeters, automating checkouts, and otherwise shrinking the number of employees in each store led to an environment with little guardianship to prevent shoplifting before it occurred. Moreover, store policies elevated prosecution above all other loss prevention strategies. As the police department's crime analyst wrote along with two coauthors:

Members of the asset protection team patrolled the store in plain clothes looking for people who might shoplift. They followed that person until they committed an offense, exited, and then stopped the shopper. Although there is always an opportunity to discourage offenders during the instrumental actualization stage (or even earlier), asset protection never did so, and jumped to the final step of calling the police.<sup>40</sup>

When police officials met with store managers to discuss the problem, they asked them to take steps to reduce the opportunities and temptations to shoplifting, such as reintroducing door greeters and requiring asset protection employees to wear clearly labeled security shirts. Store

managers, however, refused to cooperate, insisting that “they were entitled to police presence” and that “the PPD should play a more active role in deterring shoplifters”, according to the crime analyst.<sup>41</sup>

As it became clear that the stores would not improve their loss prevention efforts on their own, police pressured Walmart to take more responsibility for preventing and controlling shoplifting. Henceforth, all nonviolent thefts of less than \$500 would be reported online: Walmart staff, rather than Paducah police officers, would process low-level thefts, and the department would not send an officer to the scene at all. As soon as it enacted this policy change, the PPD began reviewing 911 calls and body camera footage from officers who were still being summoned to the stores. Those sources revealed that Walmart staff seemed to misrepresent some incidents to try to get police to respond, and some store employees were rude and uncooperative with call takers. Armed with this unflattering portrait of the way the local stores were handling the problem, police confronted regional Walmart managers and prevailed on them to force the local stores to work more cooperatively on the problem. Theft incidents reported to the police by the two stores fell by roughly two-thirds over the next three months,<sup>42</sup> and the total number of theft arrests in Paducah dropped by nearly two-thirds.<sup>43</sup> Eventually, the two Paducah stores implemented what they called a “restorative justice” program, which allows shoplifters to avoid criminal charges by attending an educational program and paying a fee. That program diverted shoplifters from the criminal justice system entirely.<sup>44</sup>

In short, local police used the knowledge they had developed about the shoplifting problem at Walmart to redefine their responsibility for it. The crushing volume of calls they had been getting from the two stores—much larger than the volume from other big box stores in the city—made a *prima facie* case that store management was abdicating its responsibility to prevent

and resolve minor incidents on its own, and officers' long experience responding to problems there reinforced that case. In response, police shrank the footprint of their work in Paducah by forcing a major business to take more responsibility for managing its own problems.

### *Patient Management in Multnomah County Mental Health Facilities*

Nearly 20 years ago, a Portland, Oregon police officer shot and killed Jose Santos Victor Mejia Poot, a patient inside the city's Pacific Gateway psychiatric hospital. Earlier that day, hospital staff had called 911 because Mejia had become violent, grabbed other patients, and tried to stab staff with a pencil. The responding officers successfully deescalated Mejia and returned him to the facility's seclusion room. A few hours later, Mejia escaped from the room, and hospital staff called 911 again. Mejia eventually tore a metal rod off a door and charged at police while swinging it. Pepper spray and beanbag projectiles failed to stop him, and eventually an officer fired two rounds with his handgun.

Amidst widespread public outrage about the killing, a grand jury declined to indict the officers involved, but it took the unusual step of asking the District Attorney to write a letter to the hospital outlining concerns about its security and treatment procedures. Why was Mejia, an epileptic, in a psychiatric hospital at all, and why had staff rebuffed family members who tried to give them his medications and medical history? Why had the hospital listed "English" as the Yucatan native's first language and turned away a translator? How had Mejia escaped from the secure room where he had been confined after the first 911 call? Most important, why had police been called twice in one day for a routine patient management situation, and why had the hospital allowed police to bring firearms into the facility?

Faced with troubling evidence about problems with Pacific Gateway Hospital, the state of Oregon stopped sending new patients there, and two months later the hospital shut down

permanently. In the meantime, Mejia’s killing set in motion a series of organizational changes in the Portland Police Bureau that eventually led police to restrict the scope of their responsibility for patient management in psychiatric hospitals. That story provides another illustration of the way police can reallocate responsibility for specific problems to other institutions; it also illustrates what is involved in developing the organizational capacity to identify and act on opportunities to do that routinely.

At the time of Mejia’s shooting, a debate about civilian oversight of the PPB was already unfolding before the Portland City Council. Earlier in the year, City Auditor Gary Blackmer had proposed a traditional civilian complaint review structure that would focus on the review of individual complaints. Mayor Vera Katz and other councilors, however, insisted that Mejia’s death illustrated the need for systematic review of policies and procedures implicated by officer-involved shootings and in custody deaths, such as the policy that allowed Portland Police to bring firearms into mental hospitals. Such reviews already happened on an ad hoc basis inside and outside the bureau—for example, multiple reviews of the Mejia incident were already in progress—but an ongoing structure staffed by knowledgeable community members and city officials would make them more systematic and cumulative. Despite Blackmer’s reservations about the workload involved in such reviews and the risk of “patchwork policymaking”, he reluctantly agreed to design an oversight structure that would routinely review closed cases, both to audit the quality of the PPB’s internal investigations and identify changes in policy, training, and procedure that contributed to each incident.<sup>45</sup>

Although the process unfolded slowly, eventually the new Independent Police Review (IPR) agency began reviewing every closed case about an officer involved shooting or in-custody death. In 2005, IPR hired the Police Assessment Resource Center (PARC) to study these



critical incidents in detail. Specifically considering the Mejia case, PARC concluded that Mejia “died as a result of the hospital’s failure to manage its patient.”

Mental health facilities have a responsibility to capably deal with run-of-the-mill agitation and physical resistance by their patients. Their staff should be trained and their facilities equipped to cope with such problems without police intervention. The presence of the police in this incident escalated the man's agitation, increasing the likelihood of a physical confrontation. The second time the hospital called the police on the evening in question, all the patient had done was to walk out of an isolation room with a faulty lock. The Portland Police Bureau should not have had to respond to that call (or the earlier one) from the mental hospital. Dealing with garden-variety management of agitated patients is the responsibility of the hospital and its staff, not armed police officers who have not been trained to control persons with mental illness, particularly in a hospital setting.<sup>46</sup>

In fact, Pacific Gateway Hospital had no security staff at all, and a detailed review of police experience at the facility found that it had called police dozens of times a year to manage unruly patients; nurses had repeatedly raised alarms about low staffing levels. Although most mental health facilities in the area almost never called police, Pacific Gateway—which had been owned by a private, for-profit company that ran the second-largest chain of psychiatric hospitals in the country—was not unique.<sup>47</sup> Although Pacific Gateway had already closed by the time this review was conducted, PARC recognized the potential for similar problems to arise elsewhere, so it called on the Bureau to develop and disseminate a more restrictive policy on police response to mental health facilities that would “put every mental health facility in the City of Portland on notice that it is inappropriate for police officers to respond to routine patient management situations and that the facilities have the responsibility of managing such situations without

police assistance” and require the 911 call center to screen calls from mental health facilities more vigorously.<sup>48</sup> After several months of deliberation and review of relevant experience in the past, the PPB eventually adopted a new directive clarifying when it would not respond to calls, emphasized “the responsibility of mental health facilities to have the proper resources to manage people in mental health crisis”, and listed alternative resources that could be used instead of the police in specific circumstances.<sup>49</sup>

Inappropriate demands for police response continued to arise, and the PPB revised the new policy several times in response to that experience. Recently, Disability Rights Oregon (DRO) issued a report describing how often area hospitals (including but not limited to psychiatric hospitals) contacted police to remove patients, who were usually people experiencing mental health crises. After noting that the PPB had adopted a policy insisting that mental health facilities had an obligation to maintain their own capacity to manage patient behavior rather than relying on police, DRO argued that “the same expectation should apply to hospitals who rely on police to remove a patient who refuses to discharge”.<sup>50</sup> Indeed, when Portland’s troubled Unity psychiatric hospital recently called police to remove a patient undergoing a mental health crisis outside the facility, officers refused to make an arrest, and eventually the man was re-admitted to the hospital. A DRO Attorney praised police for challenging Unity’s request to jail the man.<sup>51</sup>

Once again, police drew on their experience responding to calls from psychiatric hospitals—beginning with the Meija case and then continuing for many years after—to redefine the scope of their own responsibility in this domain, insisting repeatedly that the hospitals had to expand their capacity to manage challenging situations on their own. They did so by focusing on a specific set of institutional failures that Meija’s death and other incidents had disclosed, and they eventually established a policy limiting police response to mental health facilities that was

designed to force them to take greater responsibility for patient management. That policy, in turn, served over a long period of time as an imperative to progressively expand hospitals' responsibility to manage patients undergoing mental health crises without police intervention. In that way the PPB pushed back against local mental health facilities and hospitals who tried to draw police more and more deeply into patient management, sometimes with tragic results.

### **The Logic of Institutional Repair**

These two efforts emerged out of two different policing practices—problem-oriented policing in one case and learning-oriented incident review in the second—but both converged on the same basic strategy for shrinking the police role: A bottom-up strategy that mobilizes the knowledge police accrue by continually responding to crises to identify significant incident types, analyze how existing practices contribute to those crises, and reform those practices to prevent similar incidents from recurring.<sup>52</sup> They reduced the scope of the police role not by focusing on broad incident categories like “theft” and “mental health crises” but by focusing on more fine-grained and context-specific categories like “low-value theft from two area Walmarts” and “routine patient management in for-profit mental health facilities”. It is easier to devise non-police alternatives for manage those precisely defined problems than the broader categories that diversion often focuses on.<sup>53</sup> There are many other examples of this basic strategy.

We might reasonably worry that this strategy is too modest because it only abolishes very small categories of police intervention at a time. For reasons given earlier, however, more wholesale diversion efforts are likely to fail because they ignore the complexity of the police role. Moreover, even though each individual project usually has only a modest impact on the overall footprint of policing, a sustained commitment to this approach can eventually accumulate into major reduction in the police footprint.<sup>54</sup> In Cincinnati, for example, problem-oriented

policing became the centerpiece of a years-long reform agenda pressed by activists, civil rights lawyers, and federal oversight agencies, and over more than a decade the city substantially reduced the overall number of police contacts, arrests, and uses of force.<sup>55</sup>

We might also wish that police themselves did not have to play such a large role in driving these efforts—that community institutions would identify and overcome the limitations of their current practices on their own, and that community-driven inquiry could independently identify opportunities to reduce the need for police intervention.<sup>56</sup> Those possibilities are clearly worth pursuing. (They are more complementary to strategies like problem-oriented policing than either police or their critics have usually recognized.) Sometimes, however, the dysfunctional community practices that create a need for police intervention persist indefinitely, unrecognized or ignored by institutions that engage in them and the community where they occur—perhaps, as in both cases described here, because the institutions involved have a financial incentive to ignore or conceal them. Instead, the symptoms of these dysfunctional practices become visible as recurrent calls for police intervention. In those cases, the police can serve as “an informed early-warning system” that alerts society to the existence of problems that other community institutions cannot or will not manage adequately on their own.<sup>57</sup> Moreover, the expertise that officers develop as they respond to these problems can be a resource for diagnosing and resolving the institutional failures that produce them. Without access to something like it, reformers tend to fall back on idealized models of the social systems that might serve as an alternative to police intervention, ignoring the gaps in authority, capacity, and motivation that prevent them from expanding their role (as the reformers who tried to reimagine society’s response to public drunkenness did in the 1960s and 1970s). Individuals and organizations often conceal their weaknesses and failures from themselves and others.<sup>58</sup> The police, as the agency

called on to manage those breakdowns and failures, have a unique vantage point on their nature and sources, and in any case they are less likely to conceal them.<sup>59</sup>

These ideas suggest a different way of thinking about the police role than the one that usually informs contemporary debates about policing. We typically expect police to play a first-order role regulating individuals engaged in deviant acts (though we may debate which acts should count as deviant and what tools police should use to combat them). By contrast, organizational strategies like problem-oriented policing view the police role partly in terms of the second-order task of monitoring whether community institutions play that first-order role adequately.<sup>60</sup> That model has a long history in American policing. For example, from the colonial era through much of the 19<sup>th</sup> century, the central task that peace officers played in regulating the use of alcohol was to ensure that taverns and other liquor sellers adequately policed the behavior of their customers, rather than to police that behavior themselves.<sup>61</sup> This alternative conception of the police role conceives of police as an institution with a mandate to monitor breakdowns in the community's capacity to manage challenging situations on its own, intervene in the most restrained way possible to resolve the problems that those breakdowns generate, and use the knowledge they gain by doing this work to repair and extend that capacity so that they will not need to intervene again so often in the future. That conception extends the police mandate to minimize the use of force in society beyond the relatively narrow domain that Bittner himself emphasized—the parsimonious use of coercive authority to resolve individual emergencies during the moments when they arise—by emphasizing a further responsibility to try to repair the institutional breakdowns that contributed to those emergencies in the first place. In that respect, the second-order role of the police makes a distinctive contribution to the police mission of striving to minimize the need to resort to coercive force in everyday life.

This role may be especially important today. The division of labor in policing has been unsettled for decades, as a range of public and private actors continually shuffle responsibilities for security provision among themselves.<sup>62</sup> In particular, the informal capacity of many institutions to maintain public safety seems to have been in decline for years, as responsibility for social control has become increasingly formalized—shifted from functionaries for whom it is only an incidental job to specially designated security personnel in the public and private sectors.<sup>63</sup> In many cases, the second-order role of the police involves an effort to resist that decline, as public police push back against efficiency-driven institutional tendencies to eliminate door greeters, minimize staff in psychiatric facilities, and otherwise offload responsibility for safety onto the public police.

### **Who Will Regulate the Regulators?**

This effort to resist the formalization of social control can advance an important strand of today's police reform agenda, but it also raises important ethical, practical, and legal challenges that have rarely received the attention they deserve.<sup>64</sup> The Walmart stores in Paducah vigorously resisted police requests to revise their own security practices, insisting that they were entitled to police assistance; police, in turn, maintained that Walmart was making many more demands on them to control minor and preventable forms of wrongdoing than other retail stores in the area were. How should such disputes between police and those they aim to influence be resolved? What authority should the police have to force (or even try to persuade) institutions to reform their own practices? Walmart's position in this particular dispute is hardly sympathetic, particularly in the wake of recent incidents across the United States where the police response to minor crimes at Walmart ended in tragedy.<sup>65</sup> An example like this one provides a paradigm case

of the legitimate authority that police should sometimes have to force recalcitrant institutions to take more responsibility for their own problems.

As we move away from the paradigms, however, harder cases will clearly arise. Some police efforts to “reform” institutions to prevent emergencies have clearly undermined important social priorities. For example, for decades many police departments have embraced “landlord training programs” and “nuisance property abatement ordinances” that impose crime prevention duties on landlords, and in some cases those efforts have arguably gone too far—for example, by pressuring landlords to callously evict repeat domestic violence victims who have called the police too many times or to refuse to rent to people who have been convicted of a crime.<sup>66</sup> With their single-minded emphasis on the value of crime control and a Manichean worldview that distinguishes “good guys” from “bad guys”, some police officers may advocate for crassly punitive and exclusionary interventions that give little weight to such important social values as freedom, tolerance, and mercy. Even if their efforts successfully reduce the police footprint, we might worry that they will do so in a way that recasts other institutions in their own carceral mold. Regardless, it is not always self-evidently good to shift responsibility from police to private institutions: If the private institutions simply develop police-like capabilities without the potential for public oversight that public policing at least potentially carries, the shift may be worse than useless.<sup>67</sup>

In the two examples described here, the case for imposing new duties on the institutions involved was comparative: Other big box stores in Paducah did not generate nearly as many shoplifting arrests and calls to the police as Walmart did, and other mental health facilities did not call the police nearly as often as Pacific Gateway did; those other organizations were able to perform their roles effectively and safely with less need for police intervention.<sup>68</sup> These

comparative judgments are not, however, the end of the debate. A homeless shelter may generate far more police calls than other shelters do because it refuses to impose widely used behavioral rules and screening practices, but it may do so not out of incompetence or a selfish desire to cut costs but because it is deliberately trying to serve a distinctive clientele—the hard-to-serve homeless population that simply will not or cannot access other shelters with stricter rules.<sup>69</sup> The important claim about Paducah’s Walmarts and the Pacific Gateway Hospital was not just that they did things differently from their competitors; the key claim was that they were being *irresponsible*, forcing the police to manage problems they ought to manage themselves. The comparison with their competitors’ practices can support that claim by providing a concrete picture of what the police are asking them to do, which in turn makes it easier to evaluate whether it is reasonable to expect the same from them. In the end, however, the normative question of whether those organizations have a responsibility to adopt those practices—whether it is fair and appropriate to expect them to do what police have asked them to do, in light of their own mandate and the norms that govern how they ought to treat people they interact with—must be engaged on its own terms, based on the norms appropriate to the domain involved.<sup>70</sup>

These questions are probably too complex and context-dependent to be answered by any general framework, but it is clear that the police should not have the authority to answer them unilaterally, since their occupational mandate to resolve and prevent emergencies does not exhaust the social values at stake. Police may bring significant epistemic and motivational advantages to the second-order role of monitoring how well other community institutions manage crises and disorder, but they also bring significant blind spots and biases; they should not have unlimited authority to tell other institutions how to behave, but they should sometimes have



a voice. The essential task is to establish appropriate forms of oversight for this important but sometimes perilous aspect of the police role.

At their best, problem-oriented policing and learning-oriented incident reviews can accommodate the kind of oversight that is needed. As forms of post-bureaucratic organization, those models embody the ideals of democratic experimentalism,<sup>71</sup> which in turn takes its inspiration from John Dewey's attempt to reimagine democracy in the modern world. Responding to technocratic critics of democracy,<sup>72</sup> and building on his own analysis of the role that distributed social intelligence plays in refining ongoing social routines,<sup>73</sup> Dewey tried to articulate new forms of democratic practice that could successfully mobilize the expertise that complex modern societies require without descending into rule by experts and unaccountable public officials.<sup>74</sup> Believing that professional expertise (such as the expertise that police develop in the course of their work) plays an important but limited role in contemporary governance, he stressed the need for corrigible institutions that are shaped by that expertise but always remain open to scrutiny from others.<sup>75</sup>

Institutional designs that advance these ideals strive to enlist a wide range of stakeholders in continual efforts to identify and repair broken organizational routines in the specific contexts where those routines have encountered trouble.<sup>76</sup> By focusing on existing organizational practices and the problems they encounter, these designs direct attention to concrete and immediate choices about how failing organizational routines should be reformed without getting sidetracked by unhelpful ideological abstractions.<sup>77</sup> Abstract debates about whether police should be responsible for shoplifting, mental health, domestic violence, or homelessness give way to more concrete questions about whether and how to reform specific practices used by big box stores, private mental hospitals, apartment managers, or homeless shelters. As a philosophical

pragmatist, Dewey insisted that it is only at this level—the level of practice, where values are implicated in specific actions—that democratic oversight can play a meaningful role.<sup>78</sup>

The best examples of problem-oriented policing and learning-oriented incident review illustrate the form that this kind of oversight can take. In one of Cincinnati's problem-oriented policing initiatives, for example, police and city staff drew on their accumulated knowledge of neighborhood violence to propose a variety of specific measures designed to prevent it (such as altering parking restrictions and traffic patterns along a road plagued by drive-by shootings or shutting down a corner store involved in money laundering for a violent drug operation), and they convened a group of neighborhood stakeholders to consider and critique those proposals, making it possible to consider not only their crime prevention potential but their implications for other relevant community priorities.<sup>79</sup> Similarly, a learning-oriented incident review of two in-custody deaths in Tucson, Arizona enlisted staff from every organization that participated in the events leading up to the two incidents, as well as elected community representatives or their designates, in order to bring a broad range of perspectives and insights to bear on proposals to reform existing organizational routines.<sup>80</sup> In efforts like these, the goal is to establish participatory mechanisms to monitor and reform the current allocation of institutional responsibility for the work of policing, subjecting the existing division of labor to evaluation and critique by a wide range of affected stakeholders and continually reforming it in response to them.<sup>81</sup>

Much more needs to be said about the conception of democratic accountability that informs this model and the institutional designs that best realize it in various contexts, as well as the steps that can be taken to make it more likely that its democratic potential will be realized in practice.<sup>82</sup> Too often, both problem-oriented policing and learning-oriented incident reviews

have unfolded as technocratic initiatives with little guidance from outside stakeholders; given what is at stake in the work of reallocating the division of policing labor, that technocratic approach is clearly inadequate. All of that said, examples like those from Tucson and Cincinnati indicate that more democratic ways of shrinking the police footprint are realistically available, and they illustrate viable organizational models that can potentially guide this work.

Future scholarship is needed to elaborate on this brief account. In the meantime, the main goal in this paper has been to articulate an important but relatively neglected strategy for shrinking the police footprint and clarify some of the challenges it will need to engage with. That strategy can potentially play a central role in the police reform agenda today, and it comprises an essential part of the police mission to minimize the use of coercive force in society.

## References

- Aaronson, David, Thomas Dienes, and Michael Musheno. *Decriminalization: Tracing the Implementation of a Public Policy*. Washington, D.C.: USGPO, 1982.
- Argyris, Chris. "Teaching Smart People How to Learn." *Harvard Business Review* 69 (1991): 99-109.
- The Audre Lord Project. "Safe Party Toolkit", 2016. <https://alp.org/programs/sos>
- Bernstein, Maxine. "Portland police find discharged patient, handcuffed and shivering, outside Unity psychiatric hospital." *The Oregonian*, December 9, 2019.
- Bittner, Egon. *Aspects of Police Work*. Boston: Northeastern University Press, 1990.
- Brewer, Russell and Peter Grabosky. "The Unraveling of Public Security in the United States: The Dark Side of Police-Community Coproduction." *American Journal of Criminal Justice* 39 (2014): 139-154.
- City of Tucson. "Report of the Tucson Sentinel Event Review Board (SERB) on the Deaths in Custody of Mr. Damien Alvarado and Mr. Carlos Adrian Ingram-Lopez", September 18, 2020.
- Cordner, Gary. *People with Mental Illness, Problem-Oriented Guides for Police Problem-Specific Guides Series, Guide No. 40*. Washington, DC: USDOJ, 2006.
- Critical Resistance. *People First! An Oakland Power Projects Report on Policing and Emergencies*. Oakland: Author, 2018.

Daggett, Laurin and Edward Rolde. “Decriminalization of drunkenness: effects on the work of suburban police.” *Journal of Studies on Alcohol* 41 (1980): 819-828.

Davis, Angela. *Are Prisons Obsolete?* New York: Seven Stories Press, 2003.

Desmond, Matthew, and Nicol Valdez. “Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women.” *American Sociological Review* 78 (2012): 117-141.

Dewey, John. *Human Nature and Conduct*. New York: Henry Holt, 1922.

Dewey, John. *The Public and Its Problems*. New York: Henry Holt, 1927.

Radcliffe, Sarah. *The Unwanted: Looking for Help, Landing in Jail*. Portland: Disability Rights Oregon, 2019.

Dorf, Michael, and Charles Sabel. “A Constitution of Democratic Experimentalism.” *Columbia Law Review* 98 (1998): 267-473.

Doyle, James. “Learning about Learning about Error in Policing”, *Ideas in American Policing*, no. 14. Washington, DC: Police Foundation, 2012.

Doyle, James. “A ‘Safety Model’ Perspective Can Aid Diagnosis, Prevention, and Restoration after Criminal Justice Harms.” *Santa Clara Law Review* 59 (2019): 107-34.

Eck, John. “The Status of Collaborative Problem Solving and Community Problem-Oriented Policing in Cincinnati”, School of Criminal Justice, University of Cincinnati, 2014.

Engel, Robin *et. al.* *Deconstructing the Power to Arrest: Lessons from Research* Washington and Cincinnati: IACP and University of Cincinnati Center for Police Research and Policy, 2018.

Fogelson, Robert. *Big-City Police*. Cambridge, Mass.: Harvard University Press, 1977.

Friedman, Barry. "Disaggregating the Policing Function," *University of Pennsylvania Law Review* 169 (2021): 925-99.

Goldstein, Herman. *Policing a Free Society*. Cambridge, Mass.: Ballinger, 1977.

Goldstein, Herman. *Problem-Oriented Policing*. New York: McGraw-Hill, 1990.

Hamaji, Kate *et. al.* *Freedom to Thrive: Reimagining Safety and Security in Our Communities*. New York: Center for Popular Democracy, 2017.

Hammer, Matthew, and Tamara Madensen. "P.I.V.O.T.: Place-based Investigations of Violent Offender Territories", Herman Goldstein Award Submission, June, 2017.

Hollway, John, Calvin Lee, and Sean Smoot. "Root Cause Analysis: A Tool to Promote Officer Safety and Reduce Officer Involved Shootings Over Time". *Villanova Law Review* 62 (2017): 883-924.

Jackson, Steven. "Rethinking Repair". In *Media Technologies: Essays on Communication, Materiality, and Society*, edited by Tarleton Gillespie, Pablo Boczkowski, and Kirsten Foot, 221-39. Cambridge, Mass.: MIT Press, 2014.

Jones, Trevor, and Tim Newburn. "The transformation of policing? Understanding current trends in policing systems." *British Journal of Criminology* 42 (2002): 129-146.

Jones, Trevor, and Tim Newburn, eds. *Plural Policing: A Comparative Perspective*. London: Routledge, 2006.

Kaba, Mariame. *We Do This 'Til We Free Us*. Chicago: Haymarket Press, 2021.

Kaplan, Jacob. *Uniform Crime Reporting (UCR) Program Data: Arrests by Age, Sex, and Race, 1974-2019*. Ann Arbor, MI: ICPSR [distributor], 2021.

Kelling, George. *"Broken Windows" and Police Discretion*. Washington, DC: National Institute of Justice, 1999.

Kleinig, John. *The Ethics of Policing*. New York: Cambridge University Press, 1996.

Liebow, Elliot. *Tell Them Who I Am*. New York: Free Press, 1993.

Liker, Jeffrey. *The Toyota Way*. New York: McGraw-Hill, 2004.

Lister, Stuart, and Trevor Jones. "Plural Policing and the Challenge of Democratic Accountability." In *Accountability of Policing*, edited by Stuart Lister and Michael Rowe, 192-213. London: Routledge, 2016.

Loader, Ian. "Plural Policing and Democratic Governance." *Social and Legal Studies* 9 (2000): 323-345.

Madyun, Haaziq. "Oakland considers policing model involving civilians responding to specific 911 calls", *KRON4.com*, June 8, 2020.

Marks, Anne, Gary Slutkin, AT Mitchell, and Kyndra Simmons. "Time for a New Vision: Violence is a Public Health Issue That Requires Community-Driven Solutions", *The Guardian*, July 20, 2020.

Martin, Kelly. "The Croft Unit: Who's Behaving Badly?" Herman Goldstein Award Submission, 2018.

Mazerolle, Lorraine, and Janet Ransley. *Third Party Policing*. New York: Cambridge University Press, 2006.

Meehan, Albert. "Egon Bittner and the Language Practices of the Police." *Ethnographic Studies* 15 (2018): 159-188.

Morabito, Melissa. "Horizons of Context: Understanding the Police Decision to Arrest People with Mental Illness." *Psychiatric Services* 58 (2007): 1582-7.

Moskos, Peter. *Cop in the Hood*. Princeton: Princeton University Press, 2008.

Nimmer, Raymond. *Two Million Unnecessary Arrests*. Chicago: American Bar Foundation, 1971.

Okeowo, Alexis. "How to Defund the Police", *The New Yorker*, June 26, 2020.

PARC [Police Assessment Resource Center]. *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths, First Follow Up Report*. Los Angeles: PARC, 2005.

President's Commission on Law Enforcement and the Administration of Justice. 1967. *Task Force Report: Drunkenness* Washington, DC: G.P.O.

President's Commission on Law Enforcement and the Administration of Justice. *Task Force Report: The Police*. Washington, DC: G.P.O, 1967.



- Quattlebaum, Megan, and Tom Tyler. "Beyond the Law: An Agenda for Policing Reform." *Boston University Law Review* 100 (2020): 1017-46.
- Rappaport, John. "Criminal Justice, Inc." *Columbia Law Review* 118 (2018):2251-2321.
- Reason, James. *The Human Contribution*. Boca Raton: CRC Press, 2008.
- Sabel, Charles. "A Real-Time Revolution in Routines." In *The Firm as a Collaborative Community*, edited by Charles Heckscher and Paul Adler, 106-56. New York: Oxford University Press, 2006.
- Sabel, Charles. "Dewey, Democracy, and Democratic Experimentalism." *Contemporary Pragmatism* 9 (2012): 35-55.
- Sabel, Charles, and William Simon. "The Duty of Responsible Administration and the Problem of Police Accountability." *Yale Journal on Regulation* 33 (2016): 165-211.
- Schenwar, Maya, and Victoria Law. *Prison By Any Other Name: The Harmful Consequences of Popular Reforms*. New York: New Press, 2020.
- Schmeltzer, Elise. "Former Loveland police officers criminally charged following arrest of 73-year-old woman with dementia", *Denver Post*, May 19, 2021.
- Schön, Donald. *The Reflective Practitioner*. New York: Basic, 1983.
- Scott, Michael. "Shifting and Sharing Police Responsibility to Address Public Safety Problems." In *Handbook of Crime Prevention and Community Safety*, edited by Nick Tilley. 385-409. Devon, UK: Willan Publishing, 2005.

- Scott, Michael. "Effective Policing Through Regulatory Control." *Annals of the Academy of Political and Social Science* 679 (2018): 86-104.
- Scott, Michael, and Ronald Clarke. *Problem-Oriented Policing: Successful Case Studies*. New York: Routledge, 2020.
- Siegel, Micol. *Violence Work: State Power and the Limits of Police*. Durham: Duke University Press, 2018.
- Simon, William. "The Institutional Configuration of Deweyan Democracy." *Contemporary Pragmatism* 9 (2012): 5-34.
- Stenning, Phillip, and Clifford Shearing. "The Shifting Boundaries of Policing." In *Policing: Politics, Culture and Control*, edited by Tim Newburn and Jill Peay, 265-84. Oxford: Hart Publishing, 2012.
- Stenning, Phillip, and Clifford Shearing. "Governing Plural Policing Provision." In *Comparative Policing from a Legal Perspective*, edited by Monica den Boer. Northampton, Mass.: Edward Elgar, 2018.
- Syed, Matthew. *Black Box Thinking: Why Most People Never Learn from Their Mistakes--But Some Do*. New York: Penguin, 2015.
- Teplin, Linda, and N.S. Pruett. "Police As Streetcorner Psychiatrist—Managing the Mentally Ill." *International Journal of Law and Psychiatry* 15 (1992): 139-56.
- Thacher, David. "The Rise of Criminal Background Screening in Rental Housing." *Law and Social Inquiry* 33 (2008): 5-30.

- Thacher, David. "Community Policing Without the Police?" In *Community Policing and Peacekeeping*, edited by Peter Grabosky, 55-70. London: Taylor and Francis, 2009.
- Thacher, David. "How Law Shapes Policing: The Regulation of Alcohol in the U.S.: 1750-1860." *Policing and Society* 30 (2020): 1171-1190.
- Thacher, David. "The Learning Model of Use-of-Force Reviews." *Law and Social Inquiry* 45 (2020): 755-786.
- Vasilogambros, Matt. "If the Police Aren't Needed, Let's Leave Them Out Completely", *Stateline*, June 23, 2020.
- Vitale, Alex. *The End of Policing*. New York: Verso, 2017.
- Vitale, Alex. "The answer to police violence is not 'reform'. It's defunding." *The Guardian*, May 31, 2020.
- von Hirsch, Andreas, David Garland, and Allison Wakefield. *Ethical and Social Perspectives on Situational Crime Prevention*. London: Hart Publishing, 2003.
- Walzer, Michael. *Spheres of Justice*. New York: Basic Books, 1983.
- Wood, Jennifer, Amy Watson, and Anjali Fulambarker. "The 'Gray Zone' of Police Work During Mental Health Encounters: Findings from an Observational Study in Chicago." *Police Quarterly* 20 (2016): 81-105.
- Woods, Jordan. "Traffic without the Police", *Stanford Law Review*, 73 (2021): 1471-1549.

Zidar, Michael, Jillian Shafer, and John Eck. “Reframing an Obvious Police Problem: Discovery, Analysis and Response to a Manufactured Problem in a Small City.” *Policing: A Journal of Policy and Practice* 2 (2018): 316-331.

---

\* Thanks to Brandon del Pozo, James Doyle, Barry Friedman, Jessica Gillooly, and Michael Scott for very helpful suggestions about earlier versions of this paper.

<sup>1</sup> See, e.g., Vitale, *The End of Policing*; Vasilogambros, “If Police Aren’t Needed”; Okeowo, “How to Defund Police”; Kaba, *We Do This Till We Free Us*.

<sup>2</sup> E.g., Friedman, “Disaggregating the Policing Function”; Quattlebaum and Tyler, “Beyond the Law”; Marks *et. al.*, “Time for a New Vision”; Woods, “Traffic without the Police”.

<sup>3</sup> See, e.g., Fogelson, *Big City Police*, 106 ff.

<sup>4</sup> Bittner, *Aspects*.

<sup>5</sup> Sabel, “Real-Time Revolution in Routines”; Reason, *The Human Contribution*; Syed, *Black Box Thinking*.

<sup>6</sup> In his interesting argument for a “standpoint epistemology of repair”—the possibility that “breakdown, maintenance, and repair confer special epistemic advantage”, and that “repair sites and repair actors [might] claim special insight or knowledge”—Steven Jackson observes that this idea fits naturally with the worldview of American pragmatists like John Dewey, who has been a major inspiration for the analyses of post-bureaucratic organization that underlie the policing models discussed here. (See Jackson, “Rethinking Repair”, pp. 229-30; cf. Simon, “Institutional Configuration of Deweyan Democracy”; Sabel, “Dewey, Democracy, and Democratic Experimentalism”.) When a system functions smoothly, Jackson observes, its operations “sink below the level of conscious reflection”, but when it encounters a problem that “resists, obstructs, or frustrates action,” it “calls attention to itself (precisely because we must now work to figure out and overcome barriers in our no-longer seamless world)”; this newfound self-consciousness about previously routinized practices helps us see possibilities we did not see before (Jackson, “Rethinking Repair”, 230; cf. Dewey, *Human Nature and Conduct*; Schön, *The*

---

*Reflective Practitioner*). Often, however, individuals and organizations resist acknowledging their failures (see Argyris, “Teaching Smart People How to Learn”). Outside actors like the police, who are systematically exposed to those failures, may have a distinctive role in forcing us to confront them.

<sup>7</sup> On problem-oriented policing, see Goldstein, *Problem-Oriented Policing*; Scott, “Shifting and Sharing”. On learning-oriented reviews, see Doyle, “Learning about Error”; Thacher, “Learning Model”.

<sup>8</sup> Dorf and Sabel, “Constitution of Democratic Experimentalism”, 327-32; Doyle, “Learning about Error”; Hollway, Lee, and Smoot, “Root Cause Analysis”; Thacher, “Learning Model”.

<sup>9</sup> Davis, *Are Prisons Obsolete?* 108.

<sup>10</sup> Schenwar and Law, *Prisons by any Other Name*.

<sup>11</sup> See, e.g., Brewer and Grabosky, “Unraveling of Public Security”.

<sup>12</sup> “Given the melancholy appreciation of the fact that the total abolition of force is not attainable, the closest approximation to the ideal is to limit it as a special and exclusive trust;” Bittner, *Aspects*, 131. Obviously the empirical reality of policing in many contexts has dramatically failed to realize this aspiration, or even seriously tried to pursue it. Bittner offered his conception of the police mandate not as an empirical description but as a normative ideal (albeit one grounded in a detailed understanding of policing practice); in his own words, it represents his attempt at “setting forth as unambiguously as possible the terms on which the police must be judged in general and in all the particulars of their practices” (*Ibid.*, 90).

<sup>13</sup> “The fundamental maxim of the methodical exercise of coercion by the police is that, just as society as a whole attempted to restrict the legitimate use of force by creating a special institution, so, in turn, resorting to it in police practice must be restricted to an unavoidable minimum . . . Policemen must acquire the attitude of physicians who take pride in employing all available means to avoid surgery, and who, when surgery is unavoidable, take pride in making the smallest possible incision”; Bittner, *Aspects*, 191-2; cf. *Ibid.* 257-258, 262. Both critics and followers of Bittner frequently neglect this normative component of his analysis (e.g. Siegel, *Violence Work*, 9-10). For example, John Kleinig criticizes Bittner’s analysis of police as specialists in the use of coercive intervention, worrying that it “perpetuates one of the features of police work that many people find most problematic, the tendency of police to

---

resolve issues by means of force and threat” (Kleinig, *The Ethics of Policing*, 27). But Bittner repeatedly insisted that cavalier use of coercive force was poor craftsmanship and an abdication of the police mission (as in the passage just quoted).

<sup>14</sup> *Ibid.* 89-91.

<sup>15</sup> *E.g.*, Kleinig, *Ethics of Policing*, 27-9 (arguing that police act as social peacekeepers); Ericson and Haggerty, *Policing the Risk Society* (arguing that police act as information brokers). Kleinig, for example, advocates a social peacekeeping model “grounded in the recognition that there are many things that may and do disturb the peace or tranquility of a community, not just crime, but disaster, non-criminal social conflict, the movement of people, and even large gatherings,” and he maintains that “the role of the police is to ensure or restore peaceful order” in the face of these disruptions (*Ibid.* 28); he prefers this view of the police role to Bittner’s partly on the grounds that “we should not confuse their role with means that are available to them in their performance of that role” (*Ibid.* 27). But many people and institutions other than the police obviously help to preserve the peace and tranquility of the community in this sense (*e.g.*, disaster relief agencies, schools, architects, urban planners). *Contra* the “confusion” that Kleinig worries about, we cannot fully understand the distinctive role that police should play in the work of preserving peace and tranquility without considering the distinctive means that are available to them. The argument of this paper implies that the specific *kinds* of social peacekeeping and risk management work appropriate to the police is that which flows from their work as custodians of institutional breakdown.

<sup>16</sup> President’s Commission, *Task Force Report: The Police*, 14; *cf.* President’s Commission, *Task Force Report: Drunkenness*.

<sup>17</sup> Nimmer, *Two Million Unnecessary Arrests*.

<sup>18</sup> Aaronson, Dienes, and Musheno, *Decriminalization*, 179; *cf.* Daggett and Rolde, “Decriminalization of Drunkenness”; Nimmer, *Two Million Unnecessary Arrests*.

<sup>19</sup> Aaronson, Dienes, and Musheno, *Decriminalization*; Daggett and Rolde, “Decriminalization of Drunkenness”.

<sup>20</sup> Bittner, *Aspects*, 123.

---

<sup>21</sup> *Ibid.* 249.

<sup>22</sup> *Ibid.* 127. Bittner clearly believed that such “exigencies” arose in all domains of social life, not just social work and medicine: “The control over compliance with normative expectations is a diffuse social function most of which is embedded in the everyday network of interpersonal transactions. Within this network even the lowliest member of his community has the capacity to create conditions that will in effect compel others to live up to standards. Such powers are, however, always limited. Among the limitations, the most important is that we cannot compel compliance, even when it is recognizably due.” The unique role of the police is to attend to situations in which these limits have apparently been reached; see Bittner, *Aspects*, 180.

<sup>23</sup> As emphasized by Meehan, “Egon Bittner”.

<sup>24</sup> Of course, police have no authority to intervene in an emergency unless the law grants it to them, but that does not mean their work involves “enforcing the law” in any straightforward sense. In everyday police work, legal standards play a subordinate role to intuitive practical judgments about whether a concrete situation requires a coercive resolution (see Bittner, *Aspects*, pp. 87, 131, 245). Although this interpretation of police work raises obvious concerns about the rule of law, Bittner suggested that it was consistent with a respectable view within legal philosophy at the time he wrote—one that viewed the law not as “a system of rules informing people what they must not do, and providing sanctions for violations” (a view he associated with Jerome Hall) but as “a system of rules limiting the powers of the institutions of the polity” (a view he associated with Norberto Bobbio) (*Ibid.*, 87). Since Bittner wrote, improvements in police training and legal oversight may have strengthened the law’s role in guiding and constraining police decisions, but discretion remains profoundly important in police work (see, e.g. Engel *et. al.*, *Deconstructing the Power to Arrest*; Moskos, *Cop in The Hood*, ch. 6; Kelling, “Broken Windows” and *Police Discretion*).

<sup>25</sup> Bittner, *Aspects*, 262.

<sup>26</sup> *Ibid.*, 43-7, 174 ff.

---

<sup>27</sup> *Ibid.*, 64-81. More recent studies of police work have found that the basic pattern that Bittner described still holds the years since he conducted his fieldwork; e.g., Wood, Watson, and Fulambarker, “Gray Zone of Police Work”; Morabito, “Horizons of Context”; Teplin and Pruett, “Police as Streetcorner Psychiatrist”.

<sup>28</sup> E.g., Vitale, *End of Policing* 2017; Los Angeles City Council, “Ad Hoc Committee on Police Reform Report Relative to Developing an Unarmed Model of Crisis Response,” June 24, 2020, File No. 20-0769.

<sup>29</sup> E.g., Friedman, “Disaggregating the Policing Function”.

<sup>30</sup> E.g., Vitale, “The Answer to Police Violence”; Hamaji *et. al. Freedom to Thrive*; Quattlebaum and Tyler, “Beyond the Law”, 1029-31.

<sup>31</sup> E.g. Vitale, *End of Policing* tk; Quattlebaum and Tyler, “Beyond the Law”, 1027 ff.; Friedman, “Disaggregating the Police Function”, 988-90; Madyun, “Oakland Considers Policing Model”.

<sup>32</sup> Quattlebaum and Tyler, “Beyond the Law”, 1027, 1029.

<sup>33</sup> *Ibid.* 1029.

<sup>34</sup> For a brief analysis of that type focused on the “drunkenness” problem in the wake of the disappointing experiences of the 1960s and early 1970s, see Goldstein, *Policing a Free Society*, 81.

<sup>35</sup> Bittner, *Aspects*, 78.

<sup>36</sup> E.g. Scott and Clarke, *Problem-Oriented Policing*; Doyle, “Learning about Error”; Doyle, “A ‘Safety Model’ Perspective”.

<sup>37</sup> Bittner, *Aspects*, 14.

<sup>38</sup> In this respect, the police officer resembles the worker on the classic Toyota production line—the paradigmatic example of post-bureaucratic organization—who pulls an “Andon cord” to signify that the organization’s usual routines have encountered unexpected trouble (see Liker, *The Toyota Way*, 129-32; Simon, “Institutional Configuration of Deweyan Democracy”, 16-18).



---

<sup>39</sup> Zidar, Shafer, and Eck, “Reframing an Obvious Police Problem”.

<sup>40</sup> *Ibid.* 320.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.* 324-6.

<sup>43</sup> Author’s calculations from Kaplan, *Uniform Crime Reporting*.

<sup>44</sup> For a qualified defense of such programs, see Rappaport, “Criminal Justice, Inc.”.

<sup>45</sup> See the debates recorded in City Council Minutes, Portland, Oregon, May 24 & June 6, 2001.

<sup>46</sup> PARC, “The Portland Police Bureau”, 58-9.

<sup>47</sup> Indeed, police throughout the U.S. and in other countries have found that understaffing and poor security have been a pervasive problem in for-profit psychiatric hospitals and residential facilities; e.g., Cordner *People with Mental Illness*, 9; Martin, “The Croft Unit”.

<sup>48</sup> PARC, “The Portland Police Bureau”, 59.

<sup>49</sup> Portland Police Bureau Policy 850.25, Police Response to Mental Health Facilities.

<sup>50</sup> Radcliffe, *The Unwanted*, 33.

<sup>51</sup> Bernstein, “Portland Police Find Discharged Patient”.

<sup>52</sup> Dorf and Sabel, “Constitution of Democratic Experimentalism”, 327-32; Sabel and Simon, “Duty of Responsible Administration”, 186 ff.; Doyle, “Learning about Error”; Hollway, Lee, and Smoot, “Root Cause Analysis”; Thacher, “Learning Model”.

<sup>53</sup> Goldstein, *Problem-Oriented Policing*, 38-40.

---

<sup>54</sup> Some police abolitionists similarly stress the cumulative character of the individually modest interventions they often propose (see, e.g. Schenwar and Law, *Prison by Any Other Name*, 228-9). This perspective reflects Dewey's analysis of social change as a process of continual improvement that can ultimately lead to radical transformation, despite the individually modest steps that comprise it.

<sup>55</sup> Eck, "Status of Collaborative Problem-Solving".

<sup>56</sup> For examples of this community-driven approach, see, e.g. Critical Resistance, *People First!*; Audre Lorde Project, "Safe Party Toolkit".

<sup>57</sup> Scott, "Shifting and Sharing", 405.

<sup>58</sup> Argyris, "Teaching Smart People How to Learn".

<sup>59</sup> Cf. Jackson, "Rethinking Repair".

<sup>60</sup> Scott, "Effective Policing through Regulatory Control"; Mazerolle and Ransley, *Third Party Policing*.

<sup>61</sup> Thacher, "How Law Shapes Policing".

<sup>62</sup> Jones and Newburn, *Plural Policing*; Stenning and Shearing, "Shifting Boundaries".

<sup>63</sup> Jones and Newburn, "Transformation of Policing", 139-42.

<sup>64</sup> The most significant discussion appears in Scott, "Shifting and Sharing".

<sup>65</sup> E.g. Schmeltzer, "Former Loveland Police Officers".

<sup>66</sup> Desmond and Valdez, "Unpolicing the Urban Poor"; Thacher, "Rise of Criminal Background Screening".

<sup>67</sup> I discuss this concern in Thacher, "Community Policing without the Police?"

<sup>68</sup> This essentially utilitarian calculus underlies most of the criminological literature about problem-oriented policing and related ideas: Everything else being equal, it makes sense for police to impose new duties to prevent crime and emergencies on a different institution if that institution can prevent crime more effectively and efficiently than the

---

police can—with less investment of resources and, especially, less use of coercive authority (see, *e.g.*, Scott, “Shifting and Sharing”, 367-70; Scott, “Effective Policing through Regulatory Control”, 102; but see von Hirsch, Garland, and Wakefield, *Ethical and Social Perspectives*).

<sup>69</sup> For one example, see Liebow, *Tell Them Who I Am*, ch. 4.

<sup>70</sup> Cf. Walzer, *Spheres of Justice*.

<sup>71</sup> Dorf and Sabel, “Constitution of Democratic Experimentalism”, 327-32; Thacher, “Learning Model”.

<sup>72</sup> Dewey, *Public and Its Problems*, 123-5.

<sup>73</sup> Dewey, *Human Nature and Conduct*.

<sup>74</sup> Dewey, *Public and Its Problems*, 76-83, 208-10, and *passim*.

<sup>75</sup> Sabel, “Real-Time Revolution”, 140-1.

<sup>76</sup> Sabel, “Dewey, Democracy, and Democratic Experimentalism”; Simon, “Institutional Configuration”.

<sup>77</sup> As William Simon aptly explains, this commitment reflects Dewey’s concern that politics tends to become “too organized around abstract propositions” that have become untethered from “the concrete interests that they originally responded to”; see Simon, “Institutional Configuration”, 28; cf. Dewey, *Public and Its Problems*, 131 ff. As increasingly complex societies generate increasingly complex and technical problems, debate about “general political principles” becomes increasingly irrelevant (Dewey, *Public and Its Problems* 133); effective democratic oversight needs to be integrated into the ongoing project of restructuring organizational routines as they encounter trouble at the point of application (*e.g.* Sabel, “Dewey, Democracy, and Democratic Experimentalism”).

<sup>78</sup> Dewey, *Public and Its Problems*, ch. 4.

<sup>79</sup> *E.g.* Hammer and Madensen, “P.I.V.O.T.”; Goldstein, *Policing a Free Society*, ch. 6; Goldstein, *Problem-Oriented Policing*, 40-1, 144-5.

<sup>80</sup> *e.g.* City of Tucson, “Report”; cf. Doyle, “A ‘Safety Model’ Perspective”, 125-33.

---

<sup>81</sup> That approach provides a potentially useful answer to the broader question of how democratic societies should govern the complex network of public and private institutions involved in the work of policing today (as analyzed, *e.g.*, in Loader, “Plural Policing and Democratic Governance”; Lister and Jones, “Plural Policing”; Stenning and Shearing, “Governing Plural Policing”). The ebbs and flows of shifting responsibility for policing—between public and private institutions, between primary and secondary forms of social control, and so on—take shape through an accumulation of many small decisions that may not always be visible to the licensing bodies and regulatory institutions that typically have primary responsibility for governing policing systems. Those decisions involve subtle but important conflicts between the imperatives of policing and the imperatives of other social institutions, such as those of landlords, social service providers, and private businesses mentioned above. As a residual institution, the public police are systematically exposed to the nature and consequences of these myriad, complex, and low-visibility decisions. That expertise gives them a unique role to play in an adequate system for governing the shifting division of policing labor, providing that their insights can be harnessed to appropriately democratic decision-making structures.

<sup>82</sup> See, *e.g.*, Dewey, *Public and Its Problems*; Simon, “Institutional Configuration”.