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THESIS

THE LEGITIMATION OF THE POLICE: A PRACTITIONER'S FRAMEWORK

by

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September 2023

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THE LEGITIMATION OF THE POLICE: A PRACTITIONER'S FRAMEWORK

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ABSTRACT

Law enforcement is enduring a legitimacy crisis—public confidence in the police has reached historic lows, and calls to disempower the police have gained widespread support. Legitimacy is fundamental for institutional success, especially for law enforcement, and the police are essential for a well-functioning society. This thesis conducts a thorough conceptual analysis of classical and contemporary literature on legitimacy and its application to law enforcement. It critically evaluates the prevailing theory that it can be significantly earned through procedural justice practices. Four essential elements of a framework for achieving police legitimacy are identified: (1) an operational definition of legitimacy; (2) the continual assertion of the function of the police in society; (3) the intentional engagement of distinct social groups and superior institutions; and (4) the implementation of strategies to either conform to social values and norms or to influence them. The framework is then applied to real-world cases where police legitimacy has been challenged. These tests validate its conceptual and operational utility. Amid ongoing scrutiny and shifting perspectives on law enforcement, this research offers practitioners the means to pursue the legitimation of the police.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACLU	American Civil Liberties Union
DHHU	Deaf and Hard of Hearing Liaison Unit
DOJ	Department of Justice
FPD	Ferguson Police Department
LAPD	Los Angeles Police Department
MPD	Metropolitan Police Department, Washington, DC
PSNI	Police Service of Northern Ireland
RUC	Royal Ulster Constabulary
SIT	Social Identity Theory

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EXECUTIVE SUMMARY

Legitimacy is vital for any institution to fulfill its mission and achieve its goals. For the police, whose mission is essential to a well-functioning society, legitimacy is of primary importance. This fact is underscored in the 2015 report of the President’s Task Force on 21st Century Policing that declares “Building Trust and Legitimacy” as the first pillar of law enforcement.¹ The report’s recommendations have become dogmatic and have been widely adopted by American police departments, especially by progressive urban agencies. Foremost of those recommendations is the implementation of procedural justice practices, which are promised to garner legitimacy.² However, as the national dialogue on the role of the police in society has intensified in recent years, public confidence in the police has reached historic lows, and calls to disempower the police have gained widespread support. Interestingly, many jurisdictions that have broadly adopted reforms such as procedural justice practices have seen significant challenges to their legitimacy, facing defunding, hiring freezes, and legislative restrictions to their authority. The continued delegitimization of progressive departments indicates that law enforcement’s prevailing understanding of legitimacy and the methods of building and maintaining it is incomplete.

This thesis seeks to answer how law enforcement practitioners should conceptualize and operationalize legitimacy to facilitate the legitimation of the police. To that end, it conducts a conceptual analysis of established and emerging literature on the topic. A thorough review of the leading works in political philosophy and the social sciences reveals a history of the concept of legitimacy that is complex and nuanced. This thesis then analyzes the function of the police in society, proposing that to legitimize an institution successfully and sustainably, its role must be clearly defined. Finally, the work of the most prominent scholar on procedural justice theory is reviewed, as is the growing body of research that indicates that theory is inadequate to the task of legitimizing law

¹ President’s Task Force on 21st Century Policing, *Final Report*, NCJ Number 248928 (Washington, DC: Department of Justice, Office of Community Oriented Policing Services, 2015), 1, 9, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

² President’s Task Force on 21st Century Policing, *Final Report*, 11–12.

enforcement. This comprehensive analysis is synthesized into four elements that form a framework for the legitimation of the police.

First, an adequate definition of the concept of legitimacy is foundational, and the research suggests that it must incorporate several aspects. It must be both empirical and normative, describing what legitimacy is and what it should be.³ This thesis proposes that these considerations should be sequential—practitioners should ask whether social groups believe their agencies to be legitimate, and if groups do not, they should then ask why. The formulation must also capture the conditional and defeasible nature of the concept, indicating that it must be earned and can be lost.⁴ The police practitioner’s definition of legitimacy can therefore be stated as follows:

An institution is legitimate to the degree to which an audience perceives it as having the authority and right to dictate the audience’s behavior and to the degree to which an audience perceives it as being congruent with the audience’s values and norms.

Second, the research underscores the importance of understanding and asserting the role of law enforcement as the state’s mechanism of non-negotiable coercion during legitimation efforts.⁵ Practitioners must be able to competently and confidently explain the necessity and desirability of this function in society. The need for an institution empowered with the state’s monopoly on the use of force makes many people uncomfortable, and it is a topic often avoided in favor of focusing on law enforcement’s ancillary activities. However, an incorrect understanding of the police function invariably results in further delegitimation as community expectations are misaligned with the realities of the profession.

³ David Beetham, *The Legitimation of Power* (New York: Palgrave, 1991), 1–25.

⁴ Anthony Bottoms and Justice Tankebe, “Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice,” *Journal of Criminal Law and Criminology* 102, no. 1 (Winter 2012): 125, <https://scholarlycommons.law.northwestern.edu/jclc/vol102/iss1/4>.

⁵ Egon Bittner, *The Functions of the Police in Modern Society*, Public Health Service Publication No. 2059 (Chevy Chase, MD: National Institute of Mental Health, 1970), 39, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/functions-police-modern-society>.

Third, given the significant effects of narratives and social identity revealed in the research, engaging distinct social groups is an essential element of the framework. Social groups arise from the self-identification and self-categorization of individuals based on certain characteristics they share with others.⁶ They are powerful motivators of individual behavior, as members align their actions with values and norms that will earn in-group prestige. It is also vital that practitioners engage with superior institutions, such as legislatures, that have the power to materially affect agencies' power and resources. These sovereign bodies are involved in legitimizing dialogue with the community's social groups as well and are influenced by special interest groups and other institutions. To earn and retain the legitimacy of their agencies, police practitioners must consistently engage both with relevant social groups and their superior institutions.

Fourth, building on the research of narratives and social identity, practitioners must implement strategies that engage at the collective level. Legitimacy beliefs are formed based on perceptions of whether law enforcement agencies are congruous with the values and norms of social groups.⁷ They must see the police as part of their in-group, or at least not as part of an oppositional out-group. To tackle legitimacy deficits, practitioners must either conform to groups' values and norms or influence them to align with the function of the police. Such engagement is particularly challenging in times of social change, and practitioners must remain aware of the cultural environment and participate in the formation of narratives.⁸

Having developed the framework for legitimation, this thesis applies it to real-world cases where police legitimacy was challenged and departments either successfully navigated the challenge or were unsuccessful and faced delegitimation. These tests confirm

⁶ John C. Turner and Penelope J. Oakes, "The Significance of the Social Identity Concept for Social Psychology with Reference to Individualism, Interactionism and Social Influence," *British Journal of Social Psychology* 25, no. 3 (September 1986): 240–46, <https://doi.org/10.1111/j.2044-8309.1986.tb00732.x>; Henri Tajfel and John C. Turner, "The Social Identity Theory of Intergroup Behavior," in *Psychology of Intergroup Relations*, ed. William J. Austin and Stephen Worchel (Nelson-Hall: Chicago, 1986), 15–16.

⁷ Beetham, *The Legitimation of Power*, 11.

⁸ Mark C. Suchman, "Managing Legitimacy: Strategic and Institutional Approaches," *Academy of Management Review* 20, no. 3 (July 1995): 595, <https://doi.org/10.2307/258788>.

the framework's utility, providing a foundation for understanding and applying legitimacy concepts to actual incidents and circumstances. They also highlighted specific themes: the importance of intentional and continuous engagement, the pragmatic power of either conforming to values and norms or influencing them to achieve congruity, and the significance of consistently asserting the function of the police during engagement efforts.

Law enforcement is enduring an era of heightened scrutiny and evolving social perspectives on policing. In recent years, the profession has experienced a legitimacy crisis as the prevalent procedural justice theory has fallen short in the face of concerted efforts to disempower the police. This thesis conducts a detailed analysis of legitimacy's multi-dimensional nature and synthesizes scholarship on the social dynamics contributing to its formation. It then presents a framework for practitioners to use to assert the function of the police, conform to compatible community values, influence incompatible social norms, and achieve the legitimation of the police.

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Finally, thank you to my parents, who in so many ways made me the man I am today: Mom, your Southern Mississippi farm girl common sense, wisdom, wit, and grit continue to guide my daily course and are an anchor of sanity in a world of confusion. Dad, you are the model of integrity, hard work, humility, confidence, and righteousness, that I still aspire to and that appears so rare in today's age.

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I. INTRODUCTION

Legitimacy is a concept that is often invoked but rarely truly understood. This statement is particularly true when applied to the police. For even in the realms of political science and sociology that birthed the concept, there is much disagreement about the definition of the term and its application to the state and institutions.¹ Ascribing legitimacy to law enforcement only obscures the term further, as it requires consideration of the function of the police in society and the propriety of actions the police may take to acquire authority.² Here, the average citizen begins to feel a certain discomfort, preferring not to think too deeply about law enforcement’s role in society—why it exists—and hesitating to accede that law enforcement should engage in the accumulation of authority.³ This thesis seeks to mitigate the misunderstanding of legitimacy as applied to the police and ease apprehension when considering its relation to the function of the police. Above all, it seeks to provide practitioners with a framework for the legitimation of the police.

A. PROBLEM STATEMENT

In 2015, the President’s Task Force on 21st Century Policing established “Building Trust and Legitimacy” as the first pillar and foundational principle of law enforcement.⁴ Its final report correlates the level of legitimacy police agencies enjoy with specific actions police agencies take to promote or undermine their legitimacy.⁵ Since the report’s publication in 2015, the national dialogue on the role and responsibilities of the police has intensified. Measures of public confidence in the police have reached historic lows, and

¹ See Section II.A.

² This thesis will use the terms “police” and “law enforcement” interchangeably and without distinction for simplicity and readability.

³ See the discussion on the “taint” of policing in Sections II.B.1. and IV.B.

⁴ President’s Task Force on 21st Century Policing, *Final Report*, NCJ Number 248928 (Washington, DC: Department of Justice, Office of Community Oriented Policing Services, 2015), 1, 9, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁵ President’s Task Force on 21st Century Policing, *Final Report*, 1–18.

calls to defund, if not outright abolish, the police have gained widespread support.⁶ As police organizations have increasingly faced a legitimacy crisis, the Final Report's recommended actions to build trust and nurture legitimacy have become dogmatic. Adopting procedural justice as a guiding principle to change police culture and increase community trust and legitimacy is its foremost recommendation.⁷ This formulation of "procedural justice in, legitimacy out" is now the consensus view among law enforcement practitioners and most academics working in the field of criminal justice.⁸ According to the Task Force, by "treating people with dignity and respect," allowing them to have "voice," "being neutral and transparent in decision making," and "conveying trustworthy motives," agencies will build legitimacy.⁹ American police professionals currently consider procedural justice practices as the primary means of establishing public trust and confidence.

Procedural justice efforts following the Task Force report's recommendations have been substantially implemented by police departments nationwide. Despite these endeavors, the legitimacy crisis remains unabated and has even intensified. Surprisingly, many of the jurisdictions that have seen the most significant challenges to their legitimacy are those that have widely enacted procedurally just practices. Washington, DC, for example, has a long history of police reform. As early as the 1960s, it initiated community

⁶ Tommy Beer, "Poll: U.S. Confidence in Police Plummets to All-Time Low," *Forbes*, August 12, 2020, <https://www.forbes.com/sites/tommybeer/2020/08/12/poll-us-confidence-in-police-plummets-to-all-time-low/>. For information on calls to defund or abolish the police, see the "curated collection of links" maintained by The Marshall Project "Police Abolition," Marshall Project, last modified September 19, 2022, <https://www.themarshallproject.org/records/3382-police-abolition>.

⁷ President's Task Force on 21st Century Policing, *Final Report*, 11–12. Procedural justice is defined as the fair manner in which interactions between the police and the public should occur rather than the outcome of those interactions.

⁸ This current consensus view originates with the research of Tom Tyler over the last two decades. Succinctly stated, his work holds that "[l]egitimacy is based primarily upon the fairness of the manner in which legal authorities exercise their authority, i.e., procedural justice." Tom R. Tyler, Jonathan Jackson, and Ben Bradford, "Procedural Justice and Cooperation," in *Encyclopedia of Criminology and Criminal Justice*, ed. Gerben Bruinsma and David Weisburd (New York: Springer, 2014), 4011.

⁹ President's Task Force on 21st Century Policing, *Final Report*, 10.

policing efforts that continue to this day.¹⁰ In 1999, the DC police department voluntarily requested Department of Justice oversight of its use-of-force policies and practices and entered into a memorandum of agreement to achieve reform.¹¹ In 2016, DC passed wide-ranging legislation that implemented public health approaches to violence prevention, mandated procedural justice training for all officers, and strengthened civilian oversight of the police.¹² Nevertheless, in the aftermath of George Floyd’s murder in Minneapolis in 2020, the DC Council quickly moved to cut the police department’s budget and passed sweeping legislation perceived to delegitimize the police.¹³ DC’s chief of police at the time commented that the council had “completely abandoned” the department.¹⁴ Similar actions followed in progressive cities with histories of reform across the nation.¹⁵ The recent experiences of these departments call into question whether procedural justice efforts undertaken by individual departments sufficiently build legitimacy.

The need for police legitimacy reaches beyond effective law enforcement; it is also central to the broader homeland security mission. Breakdowns in public trust directly threaten domestic order, stability, and resilience. Weaknesses in social cohesion magnify a community’s vulnerability to internal and external threats across the spectrum of security

¹⁰ “Community Policing in the Nation’s Capital: The Pilot District Project, 1968–1973,” National Building Museum, accessed February 5, 2023, <https://www.nbm.org/exhibition/pilot-district/>.

¹¹ “Case: DOJ Investigation of the Washington, DC, Metropolitan Police Department,” Civil Rights Clearinghouse, accessed February 5, 2023, <https://clearinghouse.net/case/1026/>.

¹² “NEAR Act—Safer Stronger DC,” Government of the District of Columbia, accessed February 5, 2023, <https://saferstronger.dc.gov/page/near-act-safer-stronger-dc>.

¹³ Fenit Nirappil and Peter Hermann, “DC Activists and Lawmakers Confront Challenges of ‘Defund Police’ Movement,” *Washington Post*, June 25, 2020, https://www.washingtonpost.com/local/dc-politics/dc-police-cuts/2020/06/25/dacff0e2-b6f2-11ea-a510-55bf26485c93_story.html; “Council Unanimously Passes Emergency Police and Justice Reform Measure,” Council of the District of Columbia, June 10, 2020, <https://dccouncil.gov/council-unanimously-passes-emergency-police-and-justice-reform-measure/>.

¹⁴ Paul Wagner, “DC Police Chief Tells Officers the City Council Has ‘Completely Abandoned’ Them,” FOX 5, June 13, 2020, <https://www.fox5dc.com/news/dc-police-chief-tells-officers-the-city-council-has-completely-abandoned-them>.

¹⁵ For a description of Seattle, Washington, see Christopher R. Bagby, “Beyond Reform: Better Policing Through Systems Thinking” (master’s thesis, Naval Postgraduate School, 2021), <https://calhoun.nps.edu/handle/10945/67098>.

concerns.¹⁶ When law enforcement agencies lose legitimacy, it compromises the public cooperation and vigilance necessary for robust prevention and emergency response. Not only because the ability of agencies to directly contribute to homeland security through crime prevention, intelligence gathering, and information sharing is diminished, but also because perceptions of police illegitimacy are likely to extend to the government as a whole.¹⁷ Law enforcement organizations are representative of the state's coercive power, and beliefs that the police lack the rightful authority to dictate behavior will apply to the state as well.¹⁸ A loss of police legitimacy is, therefore, a security liability, and conceptualizing and operationalizing effective legitimation strategies is vital to strengthening the homeland security project.

At a minimum, the continued delegitimization of progressive departments suggests that the prevailing understanding of the concept of legitimacy and the methods to build and maintain it is incomplete.¹⁹ Beliefs about the legitimacy of an institution develop as part of larger social narratives and due to a wide variety of factors aside from individual interactions with the institution.²⁰ Preconceived notions of legitimacy are likely to color individuals' perceptions of police encounters far more than procedurally just police encounters affect individuals' notions of legitimacy. Establishing community trust and law enforcement authority requires an understanding of the dynamics that form beliefs and

¹⁶ See, e.g., World Economic Forum, *The Global Risks Report 2022* (Geneva, Switzerland: World Economic Forum, 2022), 16–17, https://www3.weforum.org/docs/WEF_The_Global_Risks_Report_2022.pdf.

¹⁷ Jose Docobo, "Community Policing as the Primary Prevention Strategy for Homeland Security at the Local Law Enforcement Level," *Homeland Security Affairs* 1, no. 4 (June 2005), <https://www.hsaj.org/articles/183>.

¹⁸ Anthony E. Bottoms and Justice Tankebe, "Police Legitimacy and the Authority of the State," in *Criminal Law and the Authority of the State*, ed. Antje du Bois-Pedain, Magnus Ulväng, and Petter Asp (Oxford, UK: Hart Publishing, 2017), <https://dx.doi.org/10.17863/CAM.7952>.

¹⁹ Anthony Bottoms and Justice Tankebe, "Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice," *Journal of Criminal Law and Criminology* 102, no. 1 (Winter 2012): 123, <https://scholarlycommons.law.northwestern.edu/jclc/vol102/iss1/4>.

²⁰ Kwan-Lamar Blount-Hill, "Exploring a Social Identity Theory of Shared Narrative: Insights from Resident Stories of Police Contact in Newark, New Jersey, and Cleveland, Ohio," *Criminal Justice and Behavior* 48, no. 1 (November 2020), <https://dx.doi.org/10.1177/0093854820969751>; Robert E. Worden and Sarah J. McLean, *Mirage of Police Reform: Procedural Justice and Police Legitimacy* (Oakland, CA: University of California Press, 2017), <https://doi.org/10.1525/luminos.30>.

perceptions and an ability to engage at that formative level. To that end, this thesis will attempt to construct a framework that will guide law enforcement practitioners in the legitimation of the police.

B. RESEARCH QUESTION

How should law enforcement practitioners conceptualize and operationalize legitimacy in order to facilitate the legitimation of the police?

C. RESEARCH DESIGN

This thesis asked how law enforcement practitioners should understand legitimacy as a concept—its history, its nuance, and its relation to the function of the police in society. It also asked how practitioners can use that understanding to actively enhance perceptions of rightful authority in their communities. The predominant doctrine promoting procedural justice practices as sufficient to earn police legitimacy has been increasingly challenged by experience and the relevant literature. The formulation of legitimacy is complex; legitimation efforts likely must be as well. Through conceptual analysis of established and emerging literature, this thesis sought a formulation that captured those complexities but remained pragmatic.

The thesis began with a survey of the extensive literature describing legitimacy and legitimation in political philosophy and the social sciences. It reviewed the classical theorists and the works of modern thinkers such as Max Weber, David Beetham, and John Rawls. The thesis continued with an evaluation of the role of the police in society as put forth by Egon Bittner and considered the influential proposal of procedural justice theory as developed by Tom R. Tyler. Then, the growing body of contemporary research that expands the concept of police legitimation beyond its relationship to procedural justice practices was analyzed. Much of this scholarship focused on the superior importance of dialogue, social identity, and group narratives in legitimacy formation.

The analyzed literature was synthesized to form a framework for police legitimation. The thesis identified and conceptually developed four salient elements essential to such a formulation: defining legitimacy for the police practitioner, asserting the

function of the police, engaging distinct audiences, and implementing legitimation strategies. Those elements were combined to construct a comprehensive and functional framework for police practitioners. That model was tested by applying it to a variety of cases in which the authority of the police has been challenged. From the vantage of the framework for legitimation, agency responses to such challenges, their successes and failures, and lessons to be learned were considered. Through analysis of classical and contemporary literature, the formulation of a nuanced framework, and the application of that framework to challenging cases, this thesis constructed a meaningful tool for practitioners to use in the legitimation of the police.

II. LEGITIMACY AND POLICING

This chapter provides a critical analysis of the primary theories and academic debates in political philosophy and the social sciences regarding legitimacy. It begins with a discussion of the term's definition and describes the most prominent empirical and normative approaches. It then focuses on literature related to the role of the police in society and the legitimacy of the police as a social institution. This review of scholarly work on police legitimacy highlights the influential corpus of Tom R. Tyler that equates police legitimacy to procedural justice.²¹

A. DEFINING LEGITIMACY

Legitimacy is a concept that has been developed, elaborated, and contested by the greatest thinkers in political philosophy and the social sciences. Before considering what role legitimacy plays in policing, the evolution of the concept will be briefly reviewed. Unsurprisingly, given the body of work that has grown around the term over several centuries, a precise, agreed-upon definition of legitimacy is elusive. In its most basic formulation, as promulgated by Max Weber, legitimacy is the belief held by a subordinate population that an institution's orders are to be voluntarily obeyed.²² Subsequent writers have added various normative requirements to the definition concerning, among other things, the rightness of power-holding institutions' formation, the justness of their actions, and the congruence of their beliefs with those of their subordinates. This section reviews the development of the scholarly discourse on legitimacy through the works of its most prominent expositors. It begins with the foundational theories of Thomas Hobbes and John Locke, moves through Weber's basic empirical formulation, onto David Beetham's multi-dimensional synthesis, and concludes with Rawls' theory of political liberalism.

²¹ E.g., Tom R. Tyler, *Why People Obey the Law* (New Haven, CT: Yale University Press, 1990); Tom R. Tyler, "Procedural Justice, Legitimacy, and the Effective Rule of Law," *Crime and Justice* 30 (2003): 284, <https://dx.doi.org/10.1086/652233>.

²² Max Weber, *The Theory of Social and Economic Organization*, trans. A. M. Henderson and Talcott Parsons, (New York: Free Press, 1964), 326–28.

1. Foundational Concepts

Early formulations of the idea of political legitimacy did not refer to it as such but were implicit in the work of early Enlightenment philosophers. Writing in 17th century England, Thomas Hobbes and John Locke published influential theories on the social contract that had a significant impact on the development of political science. In *Leviathan*, Hobbes holds that the right to govern, the “Sovereign Power,” may arise by obtaining the agreement of the governed or by their conquest.²³ Both methods of securing power result in an enduring covenant under which persons are subject to a sovereign, whether a monarch or an assembly.²⁴ Having so bound themselves by their consent, subjects owe the sovereign “simple Obedience, in all things ... not repugnant to the Lawes of God.”²⁵ For Hobbes, the legitimacy of a government once established is nearly absolute. In his *Second Treatise on Government*, Locke takes a more moderate view.²⁶ He also holds the right to govern conferred by social contract—the consent of the people. However, he distinguishes that forced consent by conquest does not create an obligation to obey because that which is taken by force, whether property or promise, does not justly confer the right to it and maybe reclaimed at any time.²⁷ Locke also dissents from Hobbes in proposing that the right to govern may be lost when governments “act contrary to their trust.”²⁸ Legitimacy must be properly acquired and may be lost by misdeed.

Following Hobbes and Locke, the discourse on political legitimacy was further developed and refined through the 19th and early 20th centuries. In a work first published in 1920, the German sociologist Max Weber gave the most influential modern account of legitimacy. He conceptualized it not only in terms of social contract but also in relation to

²³ Thomas Hobbes, *Leviathan* (London, 1651; Project Gutenberg, 2002), chap. 17, <https://www.gutenberg.org/files/3207/3207-h/3207-h.htm>.

²⁴ Hobbes, *Leviathan*, chap. 20.

²⁵ Hobbes, *Leviathan*, chap. 31.

²⁶ John Locke, *Second Treatise of Government* (London, 1690; Project Gutenberg, 2003), <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>.

²⁷ Locke, *Second Treatise of Government*, chap. 16.

²⁸ Locke, *Second Treatise of Government*, chap. 19, sect. 221.

social systems of belief.²⁹ He describes legitimacy as a basis for dominion, that is, the tendency of compliance with given orders.³⁰ Weber places the belief in legitimacy alongside the less stable motives of self-interest, emotion, and values as a reason systems of authority perpetuate.³¹ He further classifies grounds for legitimacy into three “pure types”: 1. Rational, relying on the system’s legality; 2. Traditional, relying on sacred traditions; and 3. Charismatic, relying on the personality and accomplishments of an individual.³² Systems of authority should establish and cultivate these beliefs to ensure compliance and the system’s continuance.³³ In other words, they are self-legitimation tactics. Weber’s treatment of legitimacy has become the starting point for academic discussions of the topic. Some scholars find his formulation incomplete, however, particularly those who maintain descriptions of legitimacy should include normative dimensions.³⁴

A related concept in Weber’s work is his well-known definition of the political state as the social institution that maintains a monopoly on the legitimate use of force.³⁵ He makes several clarifying points related to this claim. First, violence is not the only compliance method states use, nor even the most common.³⁶ Usually, states rely on their subjects’ voluntary compliance with orders—whether due to “ulterior motives or genuine acceptance.”³⁷ Second, defining an institution requires examination not of its goals but of the methods available to it, and the use of force is the ultimate means by which a state may achieve its ends.³⁸ The defining characteristic of a state is that it may legitimately use force to pursue

²⁹ Weber, *The Theory of Social and Economic Organization*, 124–32.

³⁰ Weber, *The Theory of Social and Economic Organization*, 324.

³¹ Weber, *The Theory of Social and Economic Organization*, 325.

³² Weber, *The Theory of Social and Economic Organization*, 328.

³³ Weber, *The Theory of Social and Economic Organization*, 325.

³⁴ Most notably John Rawls and David Beetham, whose ideas are discussed in more detail in the next section.

³⁵ Weber, *The Theory of Social and Economic Organization*, 154.

³⁶ Weber, *The Theory of Social and Economic Organization*, 154.

³⁷ Weber, *The Theory of Social and Economic Organization*, 324.

³⁸ Weber, *The Theory of Social and Economic Organization*, 155.

its ends. Surprisingly, Weber does not explicitly link the state's monopoly on violence to his discussion of state legitimacy.³⁹ He describes both as means to ensure compliance with orders. As such, coercion by force would stand alongside legitimacy and the motives of self-interest, emotion, and values as mechanisms that perpetuate systems of authority. However, requiring that such force be legitimate in and of itself implies some interconnectedness that Weber leaves unexplored. Later writers, such as Anthony Bottoms and Justice Tankebe, have noted and further probed the "apparent paradox" of legitimacy being both an alternative to and an element of state violence.⁴⁰ As stated by Beetham, the state's distinct power to use force "both supremely stands in need of legitimation, yet is also uniquely able to breach all legitimacy."⁴¹

Hobbes and Locke's social contract theories, which consider the basis of states' right to govern, and Weber's articulation of systems of belief underlying authority offer a foundation for the understanding of legitimacy. Weber's theories are not without their critiques, particularly on the part of those who argue that it is vital that definitions of legitimacy incorporate normative dimensions. However, the foundational perspectives of Hobbes, Locke, and Weber provide crucial context and theoretical grounding when examining further interpretations and the divide between empirical and normative approaches.

2. Empirical and Normative Approaches

Scholars have vacillated in their analysis of legitimacy between descriptive and normative approaches or combinations thereof. Comparing the works of Hobbes and Locke to that of Weber, the formers' conceptualization is normative and the latter's purely

³⁹ Max Weber, "Politics as Vocation," in *Weber's Rationalism and Modern Society*, ed. and trans. Tony Waters and Dagmar Waters (New York: Palgrave Macmillan, 2015), 136–37. In "Politics as Vocation," a lecture given in 1919, Weber moved seamlessly from the definition of a state as an institution supported by legitimate violence to the need for (voluntary) submission to state coercion. He then gave the same three legitimacy principles later listed in *The Theory of Social and Economic Organization* as intrinsic justifications for state rule.

⁴⁰ Bottoms and Tankebe, "Beyond Procedural Justice," 134.

⁴¹ David Beetham, *The Legitimation of Power* (New York: Palgrave, 1991), 40.

descriptive.⁴² Weber's approach is empirical; he describes legitimacy as he observes it operating in the world to explain social phenomena. In a Weberian sense, to say that an institution is legitimate is to say that it actually achieves voluntary compliance with its orders based on established belief in one of the legitimacy types. Weber does not evaluate whether the institution *should* be legitimate nor whether its commands *should* be obeyed based on objective standards. This lack of evaluation differs significantly from Hobbes and Locke, who describe how governments and their subjects should behave and provide normative justifications for coercive rule and opposition thereto.

Addressing Weber's purely descriptive approach, English political sociologist David Beetham sought to invigorate the discussion on legitimacy by synthesizing empirical and normative theories. Much of his work provides a detailed examination and critique of Weber's writings on the subject. Beetham finds the purely empirical Weberian approach wholly unworkable and proposes bridging the empirical/normative divide by recognizing the "multi-dimensional" character of legitimacy.⁴³ To that end, he provides a succinct definition of legitimate power:

1. it conforms to established rules,
2. the rules can be justified by reference to beliefs shared by both dominant and subordinate, and
3. there is evidence of consent by the subordinate to the particular power relation.⁴⁴

Beetham argues that this formulation provides a flexible and accurate mechanism for assessing the legitimacy of dominant powers. He acknowledges that beliefs vary within a society and change over time, resulting in an ebb and flow of legitimacy. First, however, power must be legally acquired and legally exercised in accordance with "rules of power"; if

⁴² See, e.g., Wilfried Hinch, "Legitimacy and Justice: A Conceptual and Functional Clarification," in *Political Legitimation without Morality?*, ed. Jörg Kühnelt (Berlin/Heidelberg: Springer, 2008), <https://link.springer.com/book/10.1007/978-1-4020-8576-5>; Stanford Encyclopedia of Philosophy, "Political Legitimacy," Stanford University, last modified April 24, 2017, <https://plato.stanford.edu/entries/legitimacy/>.

⁴³ Beetham, *The Legitimation of Power*, 15.

⁴⁴ Beetham, *The Legitimation of Power*, 16.

not, it is illegitimate.⁴⁵ This concept harkens to the normative theories of Hobbes and Locke. Second, these rules must be justifiable by beliefs shared with those the dominant seeks to subordinate. Though this question is similar to Weber’s empirical inquiry, it differs sharply on a fine point—it asks not simply whether people believe a power is legitimate but evaluates the degree to which the rules that establish the power are consistent with people’s beliefs. If incongruent, Beetham notes that the power-holder will suffer some degree of “legitimacy deficit.”⁴⁶ Finally, to retain its legitimacy, a dominant power must receive the overt consent of representative portions of its subordinates through such acts as voting, swearing allegiance, or ceremony. Such public actions legitimate power, and a lack thereof leads to “delegitimation.”⁴⁷ Beetham concludes that societies benefit when systems of power are legitimate because such power arrangements promote social order, stability, and effectiveness.⁴⁸ In his approach to legitimacy, Beetham is both descriptive and normative—the power-holder must *actually* be seen as such, and it *should* maintain accord with its subjects’ beliefs and seek their consent.

In contrast to Beetham’s attempt to synthesize empirical and normative approaches, the influential American political philosopher John Rawls returned to a primarily normative framing of legitimacy with his work *Political Liberalism*. He states the liberal principle of legitimacy as the “exercise of political power ... in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason.”⁴⁹ In this definition, a constitution, meaning the fundamental rules and principles governing the composition and actions of the state, is of principal importance. This constitution, in turn, must align with the values and beliefs of “reasonable citizens.”⁵⁰ Consequently, government actions are

⁴⁵ Beetham, *The Legitimation of Power*, 16.

⁴⁶ Beetham, *The Legitimation of Power*, 11, 17–18.

⁴⁷ Beetham, *The Legitimation of Power*, 18–19.

⁴⁸ Beetham, *The Legitimation of Power*, 33.

⁴⁹ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 137.

⁵⁰ Rawls, *Political Liberalism*, 393.

legitimate when they are consistent with constitutional rules and democratic principles.⁵¹ Rawls' theory of political liberalism gives rise to a potential inconsistency between legitimacy and justice. In the theory's framing, constitutionality alone endows legitimacy, and though the system of governance may be consistent with the populace's values and beliefs, individual laws may be democratically enacted that are unjust. Rawls acknowledges this outcome as a distinct possibility, but he argues that a democratic institution that produces unjust outcomes will (eventually) undermine its own legitimacy.⁵² He also puts forth that government actions must be "sufficiently just in view of the circumstances and social conditions" and that "[l]aws cannot be too unjust if they are to be legitimate."⁵³ So, according to Rawls, it is not only that the perpetuation of injustices will render an institution illegitimate but also that the degree of injustice will render an institutional act illegitimate.

In reviewing the broad strokes of the academic treatment of the subject legitimacy, one finds general agreement on the general concepts. However, scholars have differed in delineating the subject's precise contours. They all agree that legitimacy is an integral characteristic that a state should cultivate. Scholars diverge in distinguishing whether this characteristic is merely descriptive, as Weber suggested, or whether it also has normative qualities, as proposed by Hobbes, Locke, Beetham, and Rawls. All also agree that legitimacy concerns a population's voluntary compliance with a state's commands. They differ in the degree to which they consider factors beyond such compliance. Some believe the circumstances of a state's creation determine its legitimacy, others believe the justness of a state's commands imperative, while yet others hold the congruity of a population's beliefs with those of the state is essential. These nuances provide a rich foundation for the consideration of legitimacy in policing.

⁵¹ Rawls, *Political Liberalism*, 393.

⁵² Rawls, *Political Liberalism*, 427–29.

⁵³ Rawls, *Political Liberalism*, 429.

B. POLICE LEGITIMACY

Much has been written on the application of legitimacy to law enforcement. This section focuses on the work of two influential scholars—Egon Bittner and Thomas R. Tyler. The first set out a seminal treatise on the role of law enforcement in American society, which is a cornerstone for any consideration of police legitimacy. The latter is the author of a body of work that articulates the key formulation of police legitimacy as a function of procedural justice practices. Tyler proposes that legitimacy is primarily earned when individuals feel they are treated fairly by police officers rather than through police agencies’ effectiveness or the outcomes of police encounters.⁵⁴ Tyler’s conceptualization has become the consensus view in American law enforcement, and its consideration is one of the primary objectives of this thesis.

1. The Role of the Police

Before turning to the application of legitimacy theories to the institution of policing, this section reviews the role of the police in society. Much like the examinations of legitimacy, academic work on the police role can be divided into empirical and normative camps. The former concerns itself with what policing *is*, and the latter with what policing *should be*. In his foundational work, *The Functions of the Police in Modern Society*, Bittner makes a compelling case that though normative aspirations merit attention, they so cloud the picture of police work that they should be abandoned when seeking to understand the definitional role of the police in society.⁵⁵ He argues that as a starting point for such inquiry, “instead of attempting to divine the role of the police from programmatic idealizations, we should seek to discern this role by looking to those reality conditions and practical circumstances to which the formulas presumably apply.”⁵⁶ In other words, do not start by espousing high-level,

⁵⁴ See, e.g., Tyler, *Why People Obey the Law*, 104–12; Jason Sunshine and Tom R. Tyler, “The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing,” *Law & Society Review* 37, no. 3 (September 2003): 535, <https://dx.doi.org/10.1111/1540-5893.3703002>.

⁵⁵ Egon Bittner, *The Functions of the Police in Modern Society*, Public Health Service Publication No. 2059 (Chevy Chase, MD: National Institute of Mental Health, 1970), 1–6, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/functions-police-modern-society>.

⁵⁶ Bittner, *The Functions of the Police in Modern Society*, 4–5.

abstract ideals but focus instead on the real-world experiences and challenges that define policing day-to-day. Though the profession has undoubtedly made significant progress in the last half-century, much of Bittner's 1970 publication still resonates.

Bittner's elucidation of the functions of the police in society concludes that, at its core, it is the capacity to use force that defines the institution. As he puts in an oft-quoted passage, "*the role of the police is best understood as a mechanism for the distribution of non-negotiably coercive force employed in accordance with the dictates of an intuitive grasp of situational exigencies.*"⁵⁷ Bittner arrives at his definition of police work by observing its day-to-day realities, that is to say, empirically. Officers are called upon to handle a wide variety of tasks and to solve a wide variety of problems, only some directly concerning "law enforcement" issues.⁵⁸ Whether it is resolving family disputes, criminal complaints, or assisting social workers, "police intervention means making use of the capacity and authority to overpower resistance to an attempted solution in the native habitat of the problem."⁵⁹ Society empowers the police to resolve matters "*that-ought-not-to-be-happening-and-about-which-someone-had-better-do-some-thing-now!*"⁶⁰ To fulfill its mission, officers must have recourse to non-negotiable coercion; Bittner concludes that this is their defining characteristic.

Bittner does not cast the centrality of coercion to policing in an entirely negative light. Rather, he finds that it is a necessity in society, particularly in urban environments where diverse social groups come into close contact but where there are few social controls to regulate deviant behavior.⁶¹ Yet, he is also fully candid about the many improprieties and injustices associated with police violence. As an example of such misconduct, he describes the use of "curbstone justice"—using force to punish wrongdoing or to "teach someone a lesson" under pretense of making an arrest.⁶² Another problematic aspect of police violence

⁵⁷ Bittner, *The Functions of the Police in Modern Society*, 46 (emphasis in original).

⁵⁸ Bittner, *The Functions of the Police in Modern Society*, 38–44.

⁵⁹ Bittner, *The Functions of the Police in Modern Society*, 40.

⁶⁰ Egon Bittner, *Aspects of Police Work* (Boston: Northeastern University Press, 1990), 249 (emphasis in original).

⁶¹ Bittner, *The Functions of the Police in Modern Society*, 8, 10, 15, 120.

⁶² See, e.g., Bittner, *The Functions of the Police in Modern Society*, 104, 122.

that he acknowledges is that it is often directed at minorities and marginalized populations.⁶³ Bittner cites historical, social, and structural reasons for differential treatment of minorities, the poor, and youth.⁶⁴ However, he maintains that structural characteristics and popular conceptions are independent of the institution's ideal role in society.⁶⁵ To define the function of the police, it is essential to examine the institution's distinct contribution from a perspective of social necessity. That singular competence is the use of state-sanctioned force. For anyone society entitles to hold that power, Bittner is unequivocal that they must be an "informed, deliberating, and technically efficient professional who knows that he must operate within the limits set by a moral and legal trust" and that violations of that trust "can never be defended."⁶⁶

Nevertheless, so bluntly defining the police as "nothing else than a mechanism for the distribution of situationally justified force" is discomforting to many, including many police practitioners.⁶⁷ Bittner describes society's perception of the police as "tainted" by the nature of their work.⁶⁸ Beyond deeply rooted justifications for that view among historically oppressed populations, even those who believe they are served and protected by the institution are uneasy with the realities of police work.⁶⁹ This unease arises from a "mixture of fear and fascination" but also a certain contempt, which may find its origin in the traditional social status of officers, the attribution of individual misconduct to the entire profession, or the fact that officers operate in the underbelly of society alongside its most ugly, depraved, and willfully avoided aspects.⁷⁰ As Bittner summarizes it,

The taint that attaches to police work refers to the fact that policemen are viewed as the fire it takes to fight fire, that they in the natural course of their

⁶³ Bittner, *The Functions of the Police in Modern Society*, 10–12.

⁶⁴ Bittner, *The Functions of the Police in Modern Society*, 10–12.

⁶⁵ Bittner, *The Functions of the Police in Modern Society*, 6, 13–14.

⁶⁶ Bittner, *The Functions of the Police in Modern Society*, 121–22.

⁶⁷ Bittner, *The Functions of the Police in Modern Society*, 39.

⁶⁸ Bittner, *The Functions of the Police in Modern Society*, 6.

⁶⁹ Bittner, *The Functions of the Police in Modern Society*, 7.

⁷⁰ Bittner, *The Functions of the Police in Modern Society*, 7.

duties inflict harm, albeit deserved, and that their very existence attests that the nobler aspirations of mankind do not contain the means necessary to insure survival. But even as those necessities are accepted, those who accept them seem to prefer to have no part in acting upon them, and they enjoy the more than slightly perverse pleasure of looking down on the police who take the responsibility of doing the job.⁷¹

Much of that perception persists despite the professionalization that has occurred in the decades since Bittner's description. No matter how skilled and trained officers are, on close examination, policing lays bare society's ills and amplifies its sins. This concept of inherent taint has important implications for considerations of police legitimacy.

An analysis of Bittner's writing presents a final point of interest. Namely, that compelling parallels arise when comparing his work to that of Weber, both in their definitional derivation and in their examination of legitimacy functions. Bittner's definition of the role of the police as society's mechanism for distributing justified force aligns with Weber's definition of the state as the institution that maintains a monopoly on the use of legitimate force.⁷² Bittner even qualifies his definition in a manner similar to Weber. Though the use of force may be definitional to the role of policing, most police work "has nothing to do with force."⁷³ It is likely officers themselves do not identify as society's mechanism for non-negotiable coercion; however, its specter is always in the background of their work.⁷⁴ Though a small part of their duties, using force is the task society assigns solely to the police; it is their "unique competence."⁷⁵ Nevertheless, most of their functions do not and should not require force because "a tissue of trust routinely produces compliance and makes policing possible."⁷⁶ In other words, they rely on legitimacy. Here, the parallels between Bittner and

⁷¹ Bittner, *The Functions of the Police in Modern Society*, 8.

⁷² Jean-Paul Brodeur, "An Encounter with Egon Bittner," *Crime, Law, and Social Change* 48, no. 3–5 (December 2007): 110, 113, 118–19, <https://doi.org/10.1007/s10611-007-9084-2>. Bittner always denied that Weber's formulation influenced his own and maintained that his conclusions were based on empirical observations and deductions.

⁷³ Brodeur, "An Encounter with Egon Bittner," 113.

⁷⁴ Brodeur, "An Encounter with Egon Bittner," 112.

⁷⁵ Brodeur, "An Encounter with Egon Bittner," 113.

⁷⁶ Brodeur, "An Encounter with Egon Bittner," 108.

Weber are of particular interest and provide a link between centuries of academic consideration of legitimacy and policing. The ability to use force defines both the state and policing, but neither can rely solely on coercion to accomplish their goals; they must depend on legitimacy to ensure general compliance with their commands.

In summary, Bittner's work offers a valuable perspective on the intrinsic role of force in policing and the necessity of legitimacy for those who would exercise this force. His emphasis on empirical observation over normative idealizations provides a pragmatic lens through which to understand the complexities and challenges of police work. The parallels between Bittner's analysis and Weber's theories further underscore the relevance of these insights in the broader discourse on legitimacy. This analysis of Bittner's work illuminates the foundational function of the police as the state's mechanism of non-negotiable coercion. Police practitioners should remain ever aware of this defining characteristic as they seek to legitimate their agencies.

2. Procedural Justice

The corpus of Tom R. Tyler has had a profound effect on contemporary American law enforcement's conceptualization of legitimacy. His work influenced the President's Task Force on 21st Century Policing to declare "Building Trust & Legitimacy" as the first pillar of policing and to state, "the public confers legitimacy only on those they believe are acting in procedurally just ways."⁷⁷ A basic definition of procedural justice is the fair treatment by authorities of those subject to their decisions. Tyler argues that people will feel they have been treated in a procedurally just way when they are able to influence the decision—that is, they are given voice—and when they perceive the authority as neutral, respectful, and motivated by fairness.⁷⁸ For more than three decades, Tyler has explicitly and seemingly exclusively linked police legitimacy to procedural justice practices. The publication of *Why People Obey the Law* in 1990 firmly established that link, which has been persistently reinforced by his and

⁷⁷ President's Task Force on 21st Century Policing, *Final Report*, 10.

⁷⁸ Tyler, *Why People Obey the Law*, 163–64.

others' research since.⁷⁹ A brief review of his work is essential to an analysis of law enforcement legitimacy.

To begin, Tyler defines legitimacy as “the belief that authorities, institutions, and social arrangements are appropriate, proper, and just” and, further, as the belief that “the decisions made and rules enacted by others are in some way right or proper and ought to be followed.”⁸⁰ He empirically links that belief to whether or not individuals obey promulgated laws, which he proposes as a necessary condition of a well-functioning state.⁸¹ Tyler goes on to examine the basis of legitimizing beliefs and factors that promote or undermine them. The starting point of this examination is a rejection of the then-prevalent perspective of instrumentalism.⁸² In criminology, an instrumental approach would posit that as rational actors, citizens choose to obey or disobey the law based on the potential cost or benefit of doing so—they act in their self-interest.⁸³ Tyler advocates a normative approach—citizens obey or disobey the law based on their feeling that the law is just and their feeling “that the authority enforcing the law has the right to dictate behavior.”⁸⁴ His studies conclude that personal morality and legitimacy beliefs strongly influence whether individuals comply with legal authorities and that these influences are far more potent than mere cost-benefit analysis.⁸⁵ Tyler’s research discredits purely instrumental approaches to the establishment of legitimacy and advances the importance of normative considerations.

Applying his conclusion that compliance invoking legitimacy beliefs are grounded in perceptions of procedural justice, Tyler analyzes the effects that interactions with police and

⁷⁹ Tyler, *Why People Obey the Law*. See also, Lorraine Mazerolle et al., “Legitimacy in Policing: A Systematic Review,” *The Campbell Collection Library of Systematic Reviews* 9 (Oslo, Norway: The Campbell Collaboration, 2013), <https://doi.org/10.4073/csr.2013.1>.

⁸⁰ Tom R. Tyler, “Psychological Perspectives on Legitimacy and Legitimation,” *Annual Review of Psychology* 57 (January 2006): 376, <https://doi.org/10.1146/annurev.psych.57.102904.190038>.

⁸¹ Tyler, *Why People Obey the Law*, 22–23, 64.

⁸² Tyler, *Why People Obey the Law*, chap. 1.

⁸³ See, e.g., Gary S. Becker, “Crime and Punishment: An Economic Approach,” *The Journal of Political Economy* 76, no. 2 (Mar.–Apr. 1968): 169–217, <https://doi.org/10.1086/259394>.

⁸⁴ Tyler, *Why People Obey the Law*, 3–4.

⁸⁵ Tyler, *Why People Obey the Law*, 64–68.

courts have on feelings that those institutions should be obeyed. In that inquiry, he finds evidence that the manner in which police officers interact with individuals has more impact on impressions of fairness than the result of the interaction.⁸⁶ In other words, when a person perceives a legal authority as acting in a procedurally just way, that person is more likely to perceive the authority as legitimate, and this effect persists even when legal outcomes are unfavorable to the subject.⁸⁷ Tyler also examines which criteria individuals consider in judging whether or not procedures are fair. He again finds that normative valuations outweigh instrumental ones. Procedures are perceived as fair based on individuals' assessment that they are given voice, that they are treated ethically, and that the decision maker is impartial.⁸⁸ Rather than being purely determined by the outcome of police encounters, individuals' impressions of police legitimacy are strongly influenced by whether they are treated in a manner they perceive as procedurally just.

Tyler continues to publish prolifically on legitimacy and procedural justice, and his work will be referenced throughout this thesis. Although scholars have refined and expanded on the formulation proposed in *Why People Obey the Law*, the general proposition remains the same. Tyler states the fundamental principle of what he now terms the "process-based model of regulation" thus: "people's willingness to accept the constraints of the law and legal authorities is strongly linked to their evaluations of the procedural justice of the police and the courts."⁸⁹ Consequently, when the police act in procedurally just ways, they build legitimacy; conversely, when they do not, they lose legitimacy.⁹⁰ This formulation has become the consensus view among American law enforcement practitioners. However, a more recent and growing body of scholarly work has questioned the sufficiency of the process-based model.

⁸⁶ Tyler, *Why People Obey the Law*, chap. 8.

⁸⁷ Tyler, *Why People Obey the Law*, chap. 8.

⁸⁸ Tyler, *Why People Obey the Law*, 137–38. Voice is defined as individuals' perception that they are heard and their views are considered. Ethical treatment is defined as individuals' perception that they are treated politely, and their rights are respected. Impartiality is defined as the perception that decision-makers are neutral, honest, and try to be fair. See also, Tom R. Tyler, "What is Procedural Justice? Criteria Used by Citizens to Assess the Fairness of Legal Procedures," *Law & Society Review* 22, no. 1 (1988): 103–36, <https://doi.org/10.2307/3053563>.

⁸⁹ Tyler, "Procedural Justice, Legitimacy, and the Effective Rule of Law," 283–84.

⁹⁰ Tyler, "Procedural Justice, Legitimacy, and the Effective Rule of Law," 287.

The next chapter examines prominent works that warn of an overreliance on procedural justice to build legitimacy. An evaluation of those critiques will occupy a significant portion of this thesis.

This chapter has provided an analytical foundation for the consideration of the concept of legitimacy. It briefly considered the perspectives of Hobbes and Locke before more deeply exploring the writings of Weber, Beetham, and Rawls. A persistent theme in the examined works is the divide between empirical approaches to the definition of legitimacy and those approaches that incorporate normative elements. All agree, however, that at a minimum legitimacy has to do with a population's belief that an institution has the right to issue orders that ought to be obeyed. Taking a first step towards applying these concepts to policing, this chapter turned to Bittner's explication of the role of the police in society. His primary assertion is that the police are the state's mechanism of non-negotiable coercion. However, that role comes with great responsibility and an integral need for legitimacy. Finally, this chapter reviewed the most prominent contemporary voice on police legitimation by looking to Tyler's body of work. Tyler's key contention is that police agencies earn legitimacy when they employ procedural justice practices—when subjects with whom they interact feel they are treated fairly. The remainder of this thesis will build on these foundational concepts as it formulates a framework for the legitimation of the police.

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III. CRITIQUING PROCEDURAL JUSTICE THEORY

In order to establish their agencies' effectiveness, it is crucial that police practitioners have a comprehensive and nuanced understanding of the concept of legitimacy that surpasses procedural justice theory. To that end, this chapter examines five recent academic works that develop the concept and expand its scope considerably. All provide some degree of critique to an approach that relies exclusively on procedural justice to legitimate law enforcement institutions. First, Anthony Bottoms and Justice Tankebe question the narrow focus on procedural justice in criminal justice research, advocating for a more refined, dialogic understanding of legitimacy. Next, both Robert E. Worden and Sarah J. McLean's empirical research and Kwan-Lamar Blount-Hill's "shared narrative" theory challenge the efficacy of procedural justice in establishing police legitimacy, suggesting that citizens' perceptions of justice are primarily subjective and are significantly shaped by pre-existing attitudes and social narratives. Richard Martin and Ben Bradford distinguish micro-level interactions and meso-level communications, highlighting the impact of broader social processes and group dynamics on the formation of police legitimacy. Finally, Tim Newburn argues that the inherently confrontational nature of police work and the subjectivity of procedural justice make consistent positive perceptions unachievable. The authors highlighted in this chapter present expansive ideas that provide the elements of a multi-faceted framework for police legitimation that will be developed in subsequent chapters.

A. BEYOND PROCEDURAL JUSTICE

In their seminal work, Bottoms and Tankebe assert that criminal justice research has focused too narrowly on procedural justice and has underappreciated the "rich tradition of theoretical discussions of legitimacy within the social sciences."⁹¹ They suggest that attempts to cultivate legitimacy are limited by the prevalent one-dimensional understanding that it is earned primarily, if not solely, through procedural justice

⁹¹ Bottoms and Tankebe, "Beyond Procedural Justice," 123.

practices.⁹² The authors delve deeply into existing theories and contribute their own critical and nuanced perspectives. This section will examine three notable elements of their writing. First, it analyzes their definition of legitimacy for use in the sphere of criminal justice and their argument for incorporating a normative dimension. Second, it discusses their assertion that the approach to legitimacy in criminal justice must be dialogic. Finally, it reviews their consideration of the need for preemptive consent in the cultivation of legitimacy.

Bottoms and Tankebe acknowledge the catalyzing role Taylor's research has had on the study and understanding of the concept of police legitimacy. However, they find his empirical, "Weberian" definition of the concept insufficient.⁹³ They argue that the definition should incorporate normative elements—asking not only whether an authority holds power but also whether the authority is "*justified in claiming the right to hold power*."⁹⁴ In the opinion of Bottoms and Tankebe, an expression by Jean-Marc Coicaud captures the necessary normative quality more effectively: "Legitimacy is the recognition of the right to govern. In this regard, it tries to offer a solution to a fundamental political problem, which consists in justifying simultaneously political power and obedience."⁹⁵ They find that this phrasing embraces the relational nature of legitimacy, involving those with power and "those expected to obey," and that it implies that legitimacy is "necessarily *conditional* and *defeasible*."⁹⁶ Their conclusion that authority must be properly earned in accordance with prescribed rules and that it can be lost echoes Locke and the writings of Beetham and Rawls.

⁹² Bottoms and Tankebe, "Beyond Procedural Justice," 168–70.

⁹³ Bottoms and Tankebe, "Beyond Procedural Justice," Section III. Ironically, though one of Tyler's primary arguments is for a normative conceptualization of how legitimacy is earned, in contrast to instrumental approaches, his *definition* of legitimacy is decidedly non-normative.

⁹⁴ Bottoms and Tankebe, "Beyond Procedural Justice," 124 (emphasis in original).

⁹⁵ Jean-Marc Coicaud, *Legitimacy and Politics*, trans. David Ames Curtis (Cambridge, UK: Cambridge University Press, 2002), 10, quoted in Bottoms and Tankebe, "Beyond Procedural Justice," 125.

⁹⁶ Bottoms and Tankebe, "Beyond Procedural Justice," 125 (emphasis in original).

Of fundamental importance to Bottoms and Tankebe is the principle that legitimacy is dialogically constructed, involving power-holders' claims and their audiences' responses.⁹⁷ This continuous negotiation of assertion and acquiescence has several relevant features. First, referring back to Weber, Bottoms and Tankebe observe that institutions “*claim to be legitimate*” and must *cultivate* legitimacy.⁹⁸ In other words, the authority of power-holders is not a given and static fact; rather, it is an aspiration that must be continuously acquired. Second, the authors note that in their legitimation efforts, authorities commonly engage with multiple audiences who “may have significantly different priorities.”⁹⁹ The power-holder must therefore consider multiple, potentially conflicting perspectives. Bottoms and Tankebe reference the work of David Smith to provide two final features of dialectic construction. They quote Smith's argument that “the causes or explanations of legitimacy may not be the same at the individual and collective levels.”¹⁰⁰ So that even within a discrete audience, there will be a spectrum of views about the legitimacy of an institution held by individual members of the group. They then cite Smith's contention that individual beliefs about legitimacy are likely formed prior to particular interactions with law enforcement.¹⁰¹ Those beliefs are apt to shape the course of police encounters and how they are interpreted, rather than encounters shaping beliefs about police legitimacy. In sum, Bottoms and Tankebe observe that institutions must cultivate legitimacy, that in doing so, they must interact with multiple audiences, that individuals may hold views of legitimacy that differ from the collective, and that these views influence individual interactions rather than vice versa. From these emphases, the authors conclude that legitimacy is constructed through power-holders' continuous

⁹⁷ Bottoms and Tankebe, “Beyond Procedural Justice,” 119–20.

⁹⁸ Bottoms and Tankebe, “Beyond Procedural Justice,” 128–29 (emphasis in original).

⁹⁹ Bottoms and Tankebe, “Beyond Procedural Justice,” 122–23. The authors are referencing research done in the prison context here, but the theoretical proposition is equally valid in policing.

¹⁰⁰ David J. Smith, “The Foundations of Legitimacy,” in *Legitimacy and Criminal Justice: International Perspectives*, ed. Tom R. Tyler (New York: Russel Sage Foundation, 2007), 32, quoted in Bottoms and Tankebe, “Beyond Procedural Justice,” 145–46.

¹⁰¹ Bottoms and Tankebe, “Beyond Procedural Justice,” 146.

discourse with various audiences and is thus “always *dialogic* and *relational*.”¹⁰² Overall, these observations highlight the complexity of police legitimacy and the need for a nuanced understanding of how it is cultivated and maintained.

The last observation drawn from Bottoms and Tankebe’s work is the “apparent paradox” of the state’s monopoly on violence and its effect on the police.¹⁰³ The right to legitimately use force defines the state, but actually using force delegitimizes the state. As the institution sanctioned to exercise force, the police are caught in that paradox. The authors look to the writings of Coicaud, Weber, Beetham, Hannah Arendt, Joseph Raz, and others to work through this quandary, which they frame as a question of consent.¹⁰⁴ Law enforcement authority is legitimate as long as it is consented to. As stated by Arendt, once “force is used, authority itself has failed.”¹⁰⁵ In answer to this dilemma, Bottoms and Tankebe suggest two remedies (though they do not so explicitly state them). First, they urge “that force be used sparingly and minimally” by the police.¹⁰⁶ Second, they advocate obtaining *preemptive* consent from citizens who may be subject to police authority.¹⁰⁷ Consent is located “within the ongoing flow of social relationships, including relationships with authorities.”¹⁰⁸ Thus, it is socially constructed, and the authors imply that it, too, is dialogic and relational, built through interactions that cultivate legitimating cognitive consent.¹⁰⁹ In the political sphere, preemptive consent is obtained through conduct such as signing contracts, swearing oaths, and voting, which Beetham describes as “evidence of consent.”¹¹⁰ Unfortunately, Bottoms and Tankebe do not give examples of actions that

¹⁰² Bottoms and Tankebe, “Beyond Procedural Justice,” 129 (emphasis in original).

¹⁰³ Bottoms and Tankebe, “Beyond Procedural Justice,” 134.

¹⁰⁴ Bottoms and Tankebe, “Beyond Procedural Justice,” 134–37.

¹⁰⁵ Bottoms and Tankebe, “Beyond Procedural Justice,” 134.

¹⁰⁶ Bottoms and Tankebe, “Beyond Procedural Justice,” 134.

¹⁰⁷ Bottoms and Tankebe, “Beyond Procedural Justice,” 135.

¹⁰⁸ Bottoms and Tankebe, “Beyond Procedural Justice,” 135.

¹⁰⁹ Bottoms and Tankebe, “Beyond Procedural Justice,” 135–36.

¹¹⁰ Beetham, *The Legitimation of Power*, 12, quoted in Bottoms and Tankebe, “Beyond Procedural Justice,” 136.

would garner legitimacy for law enforcement. The exploration of such examples, which police practitioners can implement in their engagement with their communities, will be a component of the last chapter of this thesis.

In conclusion, Bottoms and Tankebe's nuanced exploration of police legitimacy provides a critical perspective on the complexities of earning and preserving the "recognition of the right to govern."¹¹¹ The authors insist on a definition of legitimacy that incorporates normative dimensions, asking not only whether an institution is legitimate but whether it should be.¹¹² This distinction is critical to capturing the concept's "*conditional* and *defeasible*" nature.¹¹³ Their strongest emphasis is on the dialogic construction of legitimacy. It arises out of interactions and dialogue between law enforcement and the communities they serve. Police agencies must engage in efforts to cultivate legitimacy, and in doing so, they must interact with multiple audiences. Practitioners must, however, bear in mind that these audiences are diverse and varied, not only in relation to each other but also within themselves. Finally, Bottoms and Tankebe examine the paradoxical role of the police in relation to the state's monopoly on legitimate force and the delegitimizing effect of state-sanctioned violence. They recommend that use of force by law enforcement be limited and minimal and that preemptive consent be sought from the citizens potentially subject to police authority. These concepts have reverberated through subsequent academic work on the subject, some of which will be reviewed in the following sections of this chapter, and they provide the initial elements of a framework for the legitimization of the police.

B. MIRAGE OF POLICE REFORM

The effectiveness of procedural justice in achieving police legitimacy is further scrutinized in this incisive empirical study by Worden and McLean.¹¹⁴ As a point of

¹¹¹ Coicaud, *Legitimacy and Politics*, 10.

¹¹² Bottoms and Tankebe, "Beyond Procedural Justice," 124.

¹¹³ Bottoms and Tankebe, "Beyond Procedural Justice," 125 (emphasis in original).

¹¹⁴ Worden and McLean, *Mirage of Police Reform*.

departure, the authors acknowledge the importance of legitimacy to the success of police institutions and recognize that it can be gained and lost.¹¹⁵ However, they argue that officers' performance, particularly within individual encounters, has only limited effect on institutions' stock of legitimacy; rather, that stock is "to a significant extent shaped by forces beyond the control of the police."¹¹⁶ Crucially, Worden and McLean's study reveals only very moderate correlation between the level of procedural justice officers demonstrate in citizen interactions and the level of procedural justice citizens perceive.¹¹⁷ Perceptions are much more influenced by *whether* officers exercise authority rather than *how* they exercise it.¹¹⁸ The authors arrive at this conclusion because, unlike others researching the topic, they do not rely on citizen surveys to measure the degree of officers' procedural justice practices. Rather, they conduct direct observations of the video and audio of encounters, which they supplement with interviews that gauge citizens' perceptions.¹¹⁹ They are thus able to empirically establish the incongruity between officers' performances and citizens' subjective assessments of those performances.¹²⁰ Having demonstrated that procedurally just practices and the perceptions thereof are "different phenomena," the authors seek to explain this discrepancy.¹²¹ To that end, they make two additional important findings: the preeminence of prior beliefs and the influence of negativity bias.

First, in a manner similar to David Smith, Worden and McLean observe that "citizens' subjective experiences are shaped by their prior attitudes much more than their

¹¹⁵ Worden and McLean, *Mirage of Police Reform*, 6. Worden and McLean use the National Research Council's definition of legitimacy: "Legitimacy is the property that a rule or an authority has when others feel obligated to voluntarily defer to that rule or authority. In other words, a legitimate authority is one that is regarded by people as entitled to have its decisions and rules accepted and followed by others." National Research Council, *Fairness and Effectiveness in Policing: The Evidence* (Washington, DC: The National Academic Press, 2004), 297, <https://doi.org/10.17226/10419>.

¹¹⁶ Worden and McLean, *Mirage of Police Reform*, 6–7.

¹¹⁷ Worden and McLean, *Mirage of Police Reform*, 12. Surprisingly, even when citizens are treated in a procedurally unjust manner, they often give law enforcement officers high ratings.

¹¹⁸ Worden and McLean, *Mirage of Police Reform*, 12.

¹¹⁹ Worden and McLean, *Mirage of Police Reform*, 101–48.

¹²⁰ Worden and McLean, *Mirage of Police Reform*, 185.

¹²¹ Worden and McLean, *Mirage of Police Reform*, 184.

experiences shape their subsequent attitudes.”¹²² These attitudes, in turn, are formed by “broad social factors” that shape individuals’ opinions of government and the police.¹²³ The authors propose that the effect of prior attitudes may be more pronounced in those populations whose initial view of the police is negative, such as historically oppressed minority groups.¹²⁴ Existing perceptions of discrimination and negative media coverage provide “accessible ‘scripts’ that are likely to guide interpretations of ambiguous events.”¹²⁵ In sum, individuals’ social identity trumps objective evaluations of officer behavior in the formation of perceptions of procedural justice. In a second and related observation, Worden and McLean assert that the asymmetrical impact of negative over positive experiences amplifies the misaligned perceptions of procedural justice. “Negativity bias” puts law enforcement in a “no-win situation,” where positive efforts have little impact, but perceived negative actions have outsized effects.¹²⁶ Work by Wesley G. Skogan, for example, shows that an experience with the police perceived as bad can have fourteen times the impact of an experience perceived as good.¹²⁷ The two principles discussed in this paragraph, that preexisting social beliefs impact perceptions of officer behavior far more than the reality of their behavior and that behavior perceived as unjust has far more significant social impact than behavior perceived as just, further undercut the notion that legitimacy can be effectively earned through procedural justice practices.

To conclude, the research by Worden and McLean examined in this section casts doubt on the efficacy of procedural justice as a means to enhance police legitimacy. The authors provide compelling evidence of disparity between citizens’ perceptions of

¹²² Worden and McLean, *Mirage of Police Reform*, 46, 185.

¹²³ Worden and McLean, *Mirage of Police Reform*, 42.

¹²⁴ Worden and McLean, *Mirage of Police Reform*, 47.

¹²⁵ Jon Hurwitz and Mark Peffley, “Explaining the Great Racial Divide: Perceptions of Fairness in the U.S. Criminal Justice System,” *Journal of Politics* 67, no. 3 (July 2005): 767, <https://doi.org/10.1111/j.1468-2508.2005.00338.x>, quoted in Worden and McLean, *Mirage of Police Reform*, 47.

¹²⁶ Worden and McLean, *Mirage of Police Reform*, 47–48; Wesley G. Skogan, “Asymmetry in the Impact of Encounters with Police,” *Policing & Society: An International Journal of Research and Policy* 16, no. 2 (June 2006): 106–07, <https://doi.org/10.1080/10439460600662098>, quoted in Worden and McLean, *Mirage of Police Reform*, 48.

¹²⁷ Skogan, “Asymmetry in the Impact of Encounters with Police,” 99.

procedural justice during police encounters and officers' actual conduct. To account for this disparity, they contend that individuals' preexisting social beliefs regarding legitimacy have a much more profound effect on police encounters than vice versa. They also contend that encounters perceived as negative have a much more profound impact on legitimacy beliefs than those perceived as positive. These findings underscore the need for the police practitioner to have a more nuanced understanding of police legitimacy and to avoid oversimplifying the problem of legitimation as a question of procedural justice.

C. EXPLORING A SOCIAL IDENTITY THEORY OF SHARED NARRATIVE

With this paper, Kwan-Lamar Blount-Hill adds further refinement to the dialogue on police legitimation.¹²⁸ He advocates a “shared narrative” theory to explain the relationships of individuals and groups with the police, a concept in line with Worden and McLeans' social “attitudes.” The author relies on Lois Presser's definition of narrative as “a temporally ordered statement concerning events experienced by and/or actions of one or more protagonists.”¹²⁹ Blount-Hill's primary proposition is that personally constructed narratives and stories of self are “central to how we perceive our world.”¹³⁰ Such self-narratives, in turn, are grounded in shared master narratives of the social groups with which individuals identify.¹³¹ He arrives at these conclusions from qualitative interviews with individuals involved in the criminal justice system.¹³² Linking his observations to the work of Henri Tajfel concerning Social Identity Theory (SIT), he asserts that individuals' membership in social groups is the most significant determinant of their identity.¹³³ Individuals will favor members of their own social group (the in-group) over members of

¹²⁸ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 810–27.

¹²⁹ Lois Presser, “The Narratives of Offenders,” *Theoretical Criminology* 13, no. 2 (May 2009): 178, <https://doi.org/10.1177/1362480609102878>, quoted in Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 811.

¹³⁰ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 810.

¹³¹ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 811.

¹³² Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 811.

¹³³ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 811–12.

groups with whom they do not identify (the out-group).¹³⁴ Self-narratives guide individuals' actions in conformity with the priorities of individuals' in-group.¹³⁵ The author argues that these forces of social identity have a far more significant effect on beliefs about police legitimacy than procedural justice procedures can ever hope to achieve.

Addressing the formation of beliefs about police legitimacy, Blount-Hill proposes that they arise “in response to an overarching narrative constructed over time,” in stark contrast to procedural justice models, which “describe processes shaped by series of distinct encounters.”¹³⁶ He frames the interaction between narratives and legitimacy claims in terms of Bottoms and Tankebe's dialogic approach.¹³⁷ Legitimacy is gained or lost through an ongoing dialogue, with individuals responding to institutions' claims and institutions responding to individuals' actions. Incorporating SIT, Blount-Hill claims that it is of crucial importance whether individuals see legitimacy-claiming institutions as part of their social in-group or as an oppositional out-group.¹³⁸ He points out that procedural justice theory assumes individuals are of the same social group as the institution asserting authority over them and that they will value the institution's social acceptance.¹³⁹ This assumption means that, as a means of legitimation, procedural justice alone will fail to account for those social groups that see the police as an out-group.¹⁴⁰ Exacerbating this shortcoming is the prevalence of antagonistic master narratives in minority communities—for example, that police officers are racist.¹⁴¹ Such an “oppositional master narrative lend [s] easy explanation for even innocuous police encounters.”¹⁴² In order to effectively legitimate their institutions to social groups that see law enforcement as an out-group,

¹³⁴ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 812.

¹³⁵ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 811.

¹³⁶ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 812.

¹³⁷ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 811–12.

¹³⁸ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 813.

¹³⁹ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 813.

¹⁴⁰ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 813.

¹⁴¹ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 822.

¹⁴² Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 821–23.

Blount-Hill insists that the police must “deliberately engage” in attempts to change the narrative.¹⁴³ In sum, from a narrative perspective that takes SIT into account, procedural justice theory falls short as a legitimation strategy. It does not consider social groups that see the police as an out-group and fails to counter antagonistic master narratives that provide “ready templates” for misinterpreting police encounters.¹⁴⁴

Blount-Hill’s shared narrative theory offers a fresh and intuitive distillation of the issues of police legitimation. His perspective builds upon the foundational work of scholars like Tajfel, Worden, McLean, Bottoms, and Tankebe to formulate a compelling argument about the influence of narratives and social identity on perceptions of police legitimacy. It also highlights the limitations of procedural justice theory for social groups that see the police as an out-group, particularly when antagonistic master narratives are prevalent. Blount-Hill’s emphasis on the need for law enforcement agencies to deliberately engage in narrative change underscores the importance of a dialogic approach. His observations on the social dynamics that animate individuals provide additional critical elements for the development of a framework for the legitimation of the police.

D. THE ANATOMY OF POLICE LEGITIMACY

Building on the work done by Bottoms and Tankebe, Richard Martin and Ben Bradford provide another layer of nuance to the concept of police legitimacy.¹⁴⁵ While supportive of the dialogic model, they question at which level of a police organization legitimacy forming dialogue actually occurs and who is actually party to that dialogue. They argue that practitioners must look beyond individual officer interactions and engage in communication efforts at the institutional level. Practitioners should also include elites and other power-holders in the discourse. However, the authors point to a more significant challenge: the effect of factors beyond the control of law enforcement on individuals’

¹⁴³ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 823.

¹⁴⁴ Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 822.

¹⁴⁵ Richard Martin and Ben Bradford, “The Anatomy of Police Legitimacy: Dialogue, Power and Procedural Justice,” *Theoretical Criminology* 25, no. 4 (November 2021): 559–77, <https://doi.org/10.1177/1362480619890605>.

beliefs about the police. They assert that social determinates and social identity exert a much stronger influence on legitimacy beliefs than individual police actions can contest. This section will examine these claims in detail in order to identify essential lessons for the legitimation of the police.

Martin and Bradford propose a distinction between the “micro-level” interactions officers have with individual citizens and the “meso-level” communications police organizations have with the public, such as “the corporate voice of senior officers or public relations teams.”¹⁴⁶ Describing examples of exchanges the police have during street-level encounters with individuals, Martin and Bradford point out that it is unlikely “that foundational questions of authority will be consciously articulated” and ask what in those encounters “amounts to a substantive, discursive ‘claim’ to legitimacy?”¹⁴⁷ Regarding micro-level interactions, they conclude that “[t]he notion of dialogue may thus be ill-suited to the empirical reality of mundane police work and, therefore, the majority of situations in which legitimacy is at stake.”¹⁴⁸ They are more optimistic about meso-level communications. Particularly the dissemination of “storylines” that ideologically influence those “pulling the levers of power and capable of effecting reform.”¹⁴⁹ Messaging at the organizational level through public relations and platforms such as social media can highlight “higher-order principles at stake in arguments” and “the police function and its relationship to other public and private actors.”¹⁵⁰ In sum, in order to effectively legitimate law enforcement institutions, it is essential to move beyond micro-level interactions and to engage in coordinated meso-level communications at the corporate level.

Just as they question the level within a police organization that should be engaged in legitimation, Martin and Bradford question whether it is solely the public that is party to

¹⁴⁶ Martin and Bradford, “The Anatomy of Police Legitimacy,” 563–67.

¹⁴⁷ Martin and Bradford, “The Anatomy of Police Legitimacy,” 564.

¹⁴⁸ Martin and Bradford, “The Anatomy of Police Legitimacy,” 565.

¹⁴⁹ Martin and Bradford, “The Anatomy of Police Legitimacy,” 565.

¹⁵⁰ Carolyn Côté-Lussier “Narratives of Legitimacy: Police Expansionism and the Contest Over Policing,” *Policing and Society* 23, no. 2 (2013): 184, <https://doi.org/10.1080/10439463.2012.671820>; Martin and Bradford, “The Anatomy of Police Legitimacy,” 566.

the discourse about police legitimacy. Police organizations are in relationships with other power-holders, whether private, governmental, or political, such as “powerful actors and elites, ... oversight bodies, the media, and professional organizations.”¹⁵¹ There is evidence that the attitudes and dispositions of elites and other organizations can significantly influence the public.¹⁵² An accurate dialogic model must account for these interdependencies in police organizations’ legitimacy formation. However, the authors describe another, more significant challenge to the model: “public assessments are often based on perceptions and understandings which extend far beyond the behaviour of police officers and organizations.”¹⁵³ They provide two reasons public assessments tend to be disconnected from law enforcement efforts. Both reasons are very much in line with Blount-Hill’s SIT observations. First, legitimacy is more strongly influenced by social forces than by police actions. Second, legitimacy is strongly influenced by group identity, and the police often position themselves as an out-group.

Examining the first point, Martin and Bradford assert that police legitimacy is “a by-product of other social processes, which bear little relation to the willed or even coincidental outcomes of police activity.”¹⁵⁴ For example, living in a marginalized neighborhood that receives few social services is likely to influence perceptions of law enforcement to a far greater degree than any possible police endeavors. National and international influences on local legitimacy compound this effect, as they are likely far beyond the control of local actors.¹⁵⁵ These influences could include prominent police-involved incidents occurring in other jurisdictions or cultural understandings of the police imported by immigrant communities.¹⁵⁶ In their second point, the authors argue that social identity dynamics are likely to have more influence on legitimacy assessments than

¹⁵¹ Martin and Bradford, “The Anatomy of Police Legitimacy,” 567 (parentheticals omitted).

¹⁵² Martin and Bradford, “The Anatomy of Police Legitimacy,” 569.

¹⁵³ Martin and Bradford, “The Anatomy of Police Legitimacy,” 570.

¹⁵⁴ Martin and Bradford, “The Anatomy of Police Legitimacy,” 570.

¹⁵⁵ Martin and Bradford, “The Anatomy of Police Legitimacy,” 570.

¹⁵⁶ Martin and Bradford, “The Anatomy of Police Legitimacy,” 570–71.

“anything the police say or do.”¹⁵⁷ Individuals will likely see the police as legitimate if they are seen as part of the same social in-group and not if they are seen as an out-group. Such identity issues can explain both the resilience of support for the police in certain communities and the resistance to valid and legal policing practices in others.¹⁵⁸ Martin and Bradford argue that “police can place *themselves* into in- or outgroup categories” depending on the group norms they embrace, though the police are often unaware of this dynamic.¹⁵⁹

To conclude, Martin and Bradford’s explication of police legitimation theory confirms that it is a complex construct that extends beyond individual officer interactions. Practitioners must acknowledge the importance of institutional communication and the impact of power-holders such as governmental bodies, the media, and professional organizations in shaping the public perception of law enforcement. Above those factors, practitioners must consider the powerful influence of social determinates and social identity that may counter legitimation efforts. Martin and Bradford underscore the importance of communication strategies at the institutional level, engagement with a diverse range of stakeholders, and recognition of broader social dynamics. These insights make valuable contributions to a more comprehensive and realistic understanding of police legitimacy.

E. THE INEVITABLE FALLIBILITY OF POLICING

In the last article analyzed in this chapter, Tim Newburn argues that given “the inherent complexity of policing and the inevitability of error within it,” it is dangerous to ascribe too much legitimating potential to procedural justice practices.¹⁶⁰ He asserts that the role of the police and the work that they do is not well understood in society and that any evaluation of their performance must necessarily begin with an inquiry into their actual

¹⁵⁷ Martin and Bradford, “The Anatomy of Police Legitimacy,” 571–72.

¹⁵⁸ Martin and Bradford, “The Anatomy of Police Legitimacy,” 571–72.

¹⁵⁹ Martin and Bradford, “The Anatomy of Police Legitimacy,” 571 (emphasis in original).

¹⁶⁰ Tim Newburn, “The Inevitable Fallibility of Policing,” *Comparative Policing Review* 32, no. 3 (May 2022): 434, <https://doi.org/10.1080/10439463.2022.2037557>.

and intended functions.¹⁶¹ Even then, however, the nature of their role and their work invariably renders their actions in individual encounters subject to criticism and second-guessing.¹⁶² Finally, he makes the point that the social problems advocates seek to address through procedural justice and police reform are structural and not resolvable at the level of individual interactions.¹⁶³ Rather, such reform and restructuring must be undertaken at the social and collective levels. Newburn's open-eyed and pragmatic evaluation of law enforcement and procedural justice efforts builds on the work of Bittner, Tyler, and the previous authors examined in this chapter and offers the final elements of a framework for the legitimation of the police.

The central argument advanced by Newburn is that individual interactions between police officers and citizens are by their very nature often antagonistic and confrontational, so that failures of perceived procedural justice are unavoidable. Building to this conclusion, Newburn makes the excellent point that in the face of questions about reform and calls for abolition, it is crucial to explicitly articulate the public's expectations of what police work should be.¹⁶⁴ When contemplating police reform or the legitimacy of the police, considering the role of police in society is a rational first step but one that is often skipped in scholarship and advocacy. The need for such consideration is underscored by the fact that the work the police are actually called upon to do is commonly misunderstood by the public and even at odds with their conception of reality.¹⁶⁵ Police work often involves the imposition of non-negotiable coercive force in volatile conditions, where "being perceived to behave fairly is ... a far from easy outcome for police officers to achieve."¹⁶⁶ Rather, during contentious encounters, both individual officers and civilians consider their own

¹⁶¹ Newburn, "The Inevitable Fallibility of Policing," 438–41.

¹⁶² Newburn, "The Inevitable Fallibility of Policing," 441–44.

¹⁶³ Newburn, "The Inevitable Fallibility of Policing," 446.

¹⁶⁴ Newburn, "The Inevitable Fallibility of Policing," 434.

¹⁶⁵ Newburn, "The Inevitable Fallibility of Policing," 439.

¹⁶⁶ See Bittner, Section II.B.1. Newburn, "The Inevitable Fallibility of Policing," 436, 440.

identities, interpret each other's, and actively construct the significance of the interaction, influenced by a myriad of pre-existing beliefs, assumptions, and social affections.¹⁶⁷

Given the subjective nature of procedural justice perceptions, Newburn warns against the “tendency within the police reform world to see procedural justice as a potential solution to an ever-widening set of policing challenges.”¹⁶⁸ Rather, the nature of police work renders misperceptions of officers' actions and motivations inevitable. He points to eight characteristics that color officers' interactions with the public and challenge consistent positive perceptions of procedural justice:

1. officers must often take decisive action based on *limited information*;
2. officers must *anticipate the future* to judge “probable behaviour”;
3. the nature of policing heightens officers' *suspicion and cynicism*;
4. officers' actions often require *celerity of decision-making*;
5. officers operate in an environment of competing or overriding organizational priorities;
6. officers' relationship with the public requires them to be both *servants and masters*;
7. citizens are reluctant performers in interactions with officers;
8. *the fluidity of public attitudes* renders most any action officers take subject to criticism.¹⁶⁹

Regarding the last point, Newburn observes that any interaction officers have with citizens may be perceived and interpreted in ways that are significantly distinct and even conflicting.¹⁷⁰ This finding is consistent with the work of Worden and McLean and Blount-Hill, which characterizes perceptions of procedural justice as fundamentally subjective. He also quotes James Q. Wilson's astute assessment of policing's inherent dilemma, that the “absence of agreed-upon standards for how the police should behave makes it hard for the patrol man, in his opinion, to do his job properly; the presence of

¹⁶⁷ Newburn, “The Inevitable Fallibility of Policing,” 437–41.

¹⁶⁸ Newburn, “The Inevitable Fallibility of Policing,” 437.

¹⁶⁹ Newburn, “The Inevitable Fallibility of Policing,” 441–44.

¹⁷⁰ Newburn, “The Inevitable Fallibility of Policing,” 444.

many procedural rules makes it easy to penalize him for doing it, in somebody's opinion, improperly.”¹⁷¹

Newburn concludes that as policing's principal reform agenda, procedural justice practices are being asked to “bear a greater burden than they can manage” and are “failing to treat policing with the nuance, complexity and, crucially, breadth and contextualization that it requires.”¹⁷² Underlying the unrealistic notion that procedural justice practices can remedy policing's perceived shortcomings is an elementary misunderstanding of what police work actually is.¹⁷³ That misunderstanding is compounded by the misplaced expectation that police reform redress society's structural problems. Newburn contends that “micro-level police reform cannot be the solution to macro-level structural problems.”¹⁷⁴ He frames the failure to consider police legitimacy at the “social or collective level” as part of a larger academic trend that has turned away from social contexts and instead focuses more narrowly only on individuals and their singular choices.¹⁷⁵ While he ends his article on a rather pessimistic note that reflects its title, he does make clear that positively influencing police legitimacy must occur at a social level far above that of individual interactions.¹⁷⁶ Law enforcement leadership must attempt to legitimate their agencies at the meso- and macro-levels by interacting with social groups, leaders, and their sovereigns. Newburn's articulation of the widespread misconception of the nature of police work and the challenges inherent in police-citizen encounters that necessitate engaging at higher social levels provide the final elements of a framework for the legitimization of the police.

¹⁷¹ James Q. Wilson, *Varieties of Police Behavior: The Management of Law and Order in Eight Communities* (Cambridge, MA: Harvard University Press, 1978), 75, https://www.google.com/books/edition/_/yzIXXFDkotgC.

¹⁷² Newburn, “The Inevitable Fallibility of Policing,” 445.

¹⁷³ Newburn, “The Inevitable Fallibility of Policing,” 445.

¹⁷⁴ Newburn, “The Inevitable Fallibility of Policing,” 446.

¹⁷⁵ Newburn, “The Inevitable Fallibility of Policing,” 446. This focus, in contrast to considerations about “society, history, and power,” is described as the “thinning” or “death of the social.”

¹⁷⁶ Newburn, “The Inevitable Fallibility of Policing,” 447.

F. CONCLUSION

The examination of these prominent works reveals the complexities inherent in establishing and maintaining police legitimacy. While foundational, procedural justice theory alone provides an incomplete and oversimplified understanding of the requisites of legitimation. Rather, as demonstrated by the authors in this chapter, it is dialogically constructed through ongoing communications between law enforcement institutions and diverse audiences at multiple levels. Individuals' perceptions are profoundly shaped by social identity, group narratives, and prevailing social forces far beyond the conduct of individual officers. Moreover, the misunderstood and confrontational nature of police work renders perceived injustice in individual encounters almost inevitable. Thus, a comprehensive framework for legitimating the police must begin with a clear statement of law enforcement's core functions, must account for the necessity of engaging varied stakeholders through institutional messaging, and must incorporate the need to participate in the shaping of public narratives. Only through nuanced understanding and multifaceted efforts can law enforcement agencies earn public trust and establish their authority. The following chapters will build upon the theories and insights covered here to develop pragmatic recommendations for police practitioners seeking to legitimize their institutions.

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IV. A FRAMEWORK FOR THE LEGITIMATION OF THE POLICE

Analysis of the preceding works on the foundations of legitimacy, the function of the police, and the derivation of police legitimacy can be synthesized into four salient points. These points will provide police practitioners with a systematic approach to understanding, interpreting, and applying the concept of legitimacy in their institutional context. First, the concept is complex and multi-dimensional. It has both empirical and normative qualities. Police practitioners should therefore be clear about the definition of legitimacy on which they rely when discussing and operationalizing the concept. Second, legitimation efforts that avoid or obfuscate the core functions of an institution are ineffective and may be counterproductive. Police practitioners should therefore be forthright in asserting the role of the police in society. Third, power-holders have multiple audiences—individuals, institutions, and social groups—who construct their legitimacy beliefs dialogically. Police practitioners should therefore be cognizant of their audiences when engaging in legitimation efforts. Finally, legitimacy is mutable and perishable. Police practitioners should therefore continually align their institutions with relevant social values and guard against norms that are incongruent with their core functions. These four elements are explored in detail in this chapter, and together they form a framework that practitioners can apply to the legitimation of the police.

A. DEFINING LEGITIMACY FOR THE POLICE PRACTITIONER

In order to competently discuss legitimacy issues and effectively engage in legitimation efforts, the police practitioner must have a solid understanding of the concept's definition. As made evident in the preceding critical analysis of the extant literature on the topic, legitimacy is complex and multi-dimensional and has been defined by prominent scholars with some variation. The most notable point of differentiation is whether its definition should include a normative element. Weber's classic formulation does not; it is strictly descriptive. He holds that the foundation of authority and obedience is an

audience's belief—that belief validates the authority or order or it does not.¹⁷⁷ Weber categorizes the reasons for such belief as rational, traditional, or charismatic, conceding that, in reality, underlying reasons are varied and complex.¹⁷⁸ Whether an audience *should* ascribe belief to an authority based on some value judgment is not evaluated by Weber. In contrast, Beetham strenuously objects to the utility and even the morality of a definition that does not include normative elements. His formulation comprises three necessary elements, which have been summarized as “rules, beliefs, and consent.”¹⁷⁹ All three are required to establish legitimacy. To be legitimate, an institution must conform to certain rules; these must be grounded in shared beliefs and supported by acts of consent.

Tyler returns to a purely descriptive definition of legitimacy, even though he grounds his analysis of the question “why people obey the law” in a normative perspective.¹⁸⁰ He does not, however, ask whether people *should* obey the law or, by extension, why they *should* regard the police as legitimate. Rather, his explication takes for granted that obedience to legal authorities is necessary to an effective functional society.¹⁸¹ He simply asks whether the law is obeyed “because one feels that the authority enforcing the law has the right to dictate behavior.”¹⁸² Again, objection to his normative-free handling is close at hand with Bottoms and Tankebe writing that a definition of legitimacy should include an evaluation of “whether a power-holder is *justified in claiming the right to hold power*.”¹⁸³ They commend Coicaud's definition: “Legitimacy is the recognition of the right to govern. In this regard, it tries to offer a solution to a fundamental political problem, which consists in justifying simultaneously political power and obedience.”¹⁸⁴

¹⁷⁷ Weber, *The Theory of Social and Economic Organization*, 124–32, 326–28, 382.

¹⁷⁸ Weber, *The Theory of Social and Economic Organization*, 328, 382

¹⁷⁹ Diarmaid Harkin, “Police Legitimacy, Ideology and Qualitative Methods: A Critique of Procedural Justice Theory,” *Criminology & Criminal Justice* 15, no. 5 (April 2015): 600, <https://doi.org/10.1177/1748895815580397>.

¹⁸⁰ Tyler, *Why People Obey the Law*, 3.

¹⁸¹ Tyler, *Why People Obey the Law*, 19–20.

¹⁸² Tyler, *Why People Obey the Law*, 4.

¹⁸³ Bottoms and Tankebe, “Beyond Procedural Justice,” 124–25 (emphasis in original).

¹⁸⁴ Coicaud, *Legitimacy and Politics*, 10.

Bottoms and Tankebe prefer this formulation because it includes three features they hold essential. It “emphasizes the normative character of legitimacy,” it embraces the relational nature of legitimacy, involving those with power and “those expected to obey,” and it implies that legitimacy is “necessarily *conditional* or *defeasible*.”¹⁸⁵ It is conditional because it depends on a population’s inconstant belief that a power-holder’s authority is rightfully held. It is defeasible because a population may reject the legitimacy of a power-holder they believe unrighteous. In sum, Bottoms and Tankebe join with Beetham in advancing a normative definition, while Weber and Tyler propose purely empirical ones. This lack of consensus must be reconciled in a definition that is useful for practitioners.

This thesis proposes that the police practitioner’s definition of legitimacy ought to consider both empirical and normative dimensions; however, it should do so in a bifurcated and sequential manner while retaining the relational and mutable characteristics emphasized by Bottoms and Tankebe. On first approach, the evaluation of a police institution’s legitimacy must be purely descriptive—how legitimate is the institution in the eyes of a particular audience? In this first step, it is not within the practitioner’s prerogative to ask whether their institution *should* be legitimate. Normative considerations need to be set aside, and the desirability of institutional legitimacy must be taken as a given. If the practitioner harbors doubts or misgivings about the role of the police in society and whether the institution merits legitimacy, those considerations ought to be personally resolved prior to engaging in legitimation efforts on behalf of the institution. Dispensing with the normative aspect and incorporating the dynamics of power-holder and subordinate and of gain and loss, the first part of the police practitioner’s definition of legitimacy can be stated as follows:

An institution is legitimate to the degree to which an audience perceives it as having the authority and right to dictate the audience’s behavior.

Having thus established the level of an institution’s legitimacy vis-à-vis a particular audience and taking the desirability thereof for granted, the police practitioner should next

¹⁸⁵ Bottoms and Tankebe, “Beyond Procedural Justice,” 125 (emphasis in original).

identify the reasons for any legitimacy deficit. This course of action necessitates a turn toward normative consideration. For while the practitioner must presume the merit of their institution, audiences are not so obliged. Rather, as noted by Bottoms and Tankebe, their beliefs are conditional and defeasible.¹⁸⁶ The practitioner ought to consider why the audience views the institution as illegitimate from the perspective of the audience. What in the constitution or conduct of the institution detracts from the audience's opinion that the institution *should* have the authority and right to dictate behavior?¹⁸⁷ Any lack of legitimacy is likely rooted in an incongruity between the audience's expectations and their perception of the institution.¹⁸⁸ On second approach to a working definition of legitimacy, the audience's evaluation of the police as consonant with community beliefs and values must be incorporated. The second part of the definition can therefore be stated thus:

An institution is legitimate to the degree to which an audience perceives it as being congruent with the audience's values and norms.

These two definitions of legitimacy may seem two sides of the same coin, and in a sense, they are; however, it is important to distinguish between whether an institution *should* be legitimate and whether it is perceived as being so. Understanding and addressing legitimacy in the context of policing requires balancing both empirical and normative considerations. These two facets, while closely intertwined, necessitate distinct approaches. An institution's actual level of legitimacy hinges on an audience's belief in the

¹⁸⁶ Bottoms and Tankebe, "Beyond Procedural Justice," 125.

¹⁸⁷ The term "constitution" here is used to capture both the circumstances of the institution's formation and its current composition. For example, the New York Police Department was established in 1845, growing out of several hundred years of citizen patrols, military oversight, and constabularies, and was modeled on the Metropolitan Police of London. *The History of the New York City Police Department* (New York: Police Department, City of New York, 1993), <https://www.ojp.gov/pdffiles1/Digitization/145539NCJRS.pdf>. Its "constitution" would consist of both those formational facts and its current organizational and demographic composition.

¹⁸⁸ The concept of "congruity" to characterize the legitimacy of an idea, product, or institution in relation to a particular population builds on work done in the fields of psychology and institutional theory. This concept is examined in detail in Section D.1. of this chapter. See, Mark C. Suchman, "Managing Legitimacy: Strategic and Institutional Approaches," *Academy of Management Review* 20, no. 3 (July 1995): 571–610, <https://doi.org/10.2307/258788>.

institution's authority.¹⁸⁹ On the other hand, an audience's belief that an institution should have authority involves normative judgments about the alignment of the institution's constitution and conduct with community values. To effectively legitimate their institution, the police practitioner must first determine the degree of its legitimacy and then act to remedy any delegitimizing incongruities between audience expectations and their perceptions. As discussed further below, such remedy can be achieved in two ways—by shifting an audience's expectations or by changing the audience's perception of the institution. The police practitioner must identify the most suitable response and act accordingly. This course of action will involve an ongoing engagement with the audience, adjusting to the dynamics of power-holder and subordinate, and navigating the ever-evolving beliefs and values of the community.

B. ASSERTING THE ROLE OF THE POLICE

The second element of the framework for the legitimation of the police builds on the works of Egon Bittner and Tim Newburn, who insist that the function of the police in society be understood and transparently discussed.¹⁹⁰ Establishing the purpose and mission, the unique competence, and the defining characteristic of an institution is a vital preliminary step in any attempt to establish its legitimacy. Police practitioners face three unique challenges in communicating law enforcement's core function. The first is that there is an innate social resistance to considering the nature and underlying necessity of policing. The second is that law enforcement officials are themselves inclined to share this social discomfort. The final challenge is the tendency to dilute and obfuscate policing's core functions in favor of more palatable ancillary activities that may actually contribute to institutional delegitimation. These challenges must be faced squarely and candidly in order

¹⁸⁹ A representative example of this is given in Section V.B.2.(2). When police pursuits were severely restricted in Washington State in 2021, it was widely reported that an increased number of vehicles simply failed to stop when officers attempted to pull them over. E.g., Austin Jenkins, "See Ya! Washington Police Say Drivers Aren't Stopping for Them; Cite Pursuit Restrictions," OPB, May 30, 2022, <https://www.opb.org/article/2022/05/27/washington-police-say-drivers-arent-stopping-for-them-cite-pursuit-restrictions>. The officer's power to stop cars was no longer perceived as legitimate by those drivers. Empirically, the police had less legitimacy. The restrictions have since been relaxed.

¹⁹⁰ Bittner, *The Functions of the Police in Modern Society*, 6–14; Newburn, "The Inevitable Fallibility or Policing," 434. See the discussion on the "taint" of policing in Section II.B.1.

to lay the foundation for legitimation. When social expectations conflict with the essential role of law enforcement, efforts must be made to bring those expectations in line with the realities of the job.

In discussions about the function of the police in society, the first challenge police practitioners must overcome is the general reluctance on the part of the public, its various social groups, fellow institutions, and superiors to acknowledge the necessity of confronting crime with non-negotiable coercion.¹⁹¹ Society generally does not want to look too closely at or think too hard about the true nature of policing because it illuminates society's ills and is a reminder that "the nobler aspirations of mankind do not contain the means necessary to insure survival."¹⁹² The need for law enforcement is a reluctant admission that society's desire to abolish "all forms of violence from the fabric of its social relations" leaves it vulnerable to those who would take advantage of such predilection.¹⁹³ Policing is, at its core, "opposed to the ethos of the polity that authorizes it," and aside from incidents of controversy, scandal, or tragedy, audiences avoid the subject.¹⁹⁴ The police practitioner must, therefore, proactively engage in legitimation efforts prior to such negative occurrences and against the natural current of societal discourse.

The social discomfort with law enforcement is often reflected in the demeanor of police practitioners themselves. For though the use of force may, theoretically, be considered policing's unique competence and, therefore, its defining characteristic, it is equally valid that force should be used minimally and only as a last resort.¹⁹⁵ It is also true that in the reality of day-to-day police work, the use of force is rare, especially serious use

¹⁹¹ Bittner, *The Functions of the Police in Modern Society*, 6–9.

¹⁹² Bittner, *The Functions of the Police in Modern Society*, 8. See also, Newburn, "The Inevitable Fallibility of Policing," 439.

¹⁹³ Bittner, *The Functions of the Police in Modern Society*, 46; Newburn, "The Inevitable Fallibility of Policing," 434. See the discussion on the "taint" of policing in Section IV.B.

¹⁹⁴ Bittner, *The Functions of the Police in Modern Society*, 46.

¹⁹⁵ Brodeur, "An Encounter with Egon Bittner," 111–14.

of force.¹⁹⁶ Therefore, it is not surprising that law enforcement officers and officials would be reluctant to define themselves by their ability to use force, especially given the compounding effect of violence on the social stigma already attached to the profession.¹⁹⁷ Nevertheless, the threat of and potential for power is ever-present “in the background” of police work, and the risk of being subjected to violence or having to deploy it permeates police culture.¹⁹⁸ There is a persistent wariness among officers that “everybody wants to kill you,” which is far in excess of the actual dangers the job entails.¹⁹⁹ This feeling is likely related to the fact that unlike loggers, roofers, taxi drivers, and other professions cited as more dangerous than policing, officers exist to oppose those who wish to do society harm.²⁰⁰ Whether domestic violence abusers, carjackers, or active shooters, the police contemplate, train for, and seek out confrontations with violent offenders. The mindset such an objective engenders is not readily reflected in a bottom line of number of workplace

¹⁹⁶ Bittner, *The Functions of the Police in Modern Society*, 41; Brodeur, “An Encounter with Egon Bittner,” 111–12. As a rough estimate of the prevalence of the use of force in police encounters, of approximately 53.8 million police contacts in the U.S. in 2020, there were 7.6 million arrests (at least minimal force assumed) and 1,145 incidents resulting in a fatality (maximum force). That equates to approximately 14% of police encounters involving at least minimal force and 0.002% involving fatal force. Susannah N. Tapp and Elizabeth J. Davis, *Contacts Between Police and the Public, 2020*, NCJ Report No. 304527 (Washington, DC: Bureau of Justice Statistics, 2022), <https://bjs.ojp.gov/media/document/cbpp20.pdf>; OJJDP Statistical Briefing Book, “Estimated Number of Arrests by Offense and Race,” Office of Juvenile Justice and Delinquency Prevention, July 8, 2022, <https://www.ojjdp.gov/ojstatbb/crime/ucr.asp>; “Mapping Police Violence,” Campaign Zero, updated May 31, 2023, <https://mappingpoliceviolence.org/>.

¹⁹⁷ Brodeur, “An Encounter with Egon Bittner,” 112. For examples of recent articles describing the stigma and “taint” attached to police work, see Deepshikha Chatterjee and Ann Marie Ryan, “Is Policing Becoming a Tainted Profession? Media, Public Perceptions, and Implications,” *Journal of Organizational Behavior* 41, no. 7 (September 2020): 606–21, <https://doi.org/10.1002/job.2471>; Camilla De Camargo and Lilith A. Whiley, “There’s Always Got to be a Villain’: The Police as ‘Dirty’ Key Workers and the Effects on Occupational Prestige,” *Policing & Society* 32, no. 5 (May 2021): 646–63, <https://doi.org/10.1080/10439463.2021.1928124>.

¹⁹⁸ Brodeur, “An Encounter with Egon Bittner,” 112. See, e.g., Seth Stoughton, “Law Enforcement’s ‘Warrior’ Problem,” *Harvard Law Review* 128, no. 6 (April 2015): 225–34, <https://harvardlawreview.org/forum/vol-128/law-enforcements-warrior-problem/>; Katie Sponsler, “What the Police Academy Gets Wrong About Training Future Officers,” *Time*, February 6, 2023, <https://time.com/6253243/police-academy-training-future-officers-wrong/>.

¹⁹⁹ Rosa Brooks, “The Law Professor Who Trained with the DC Police,” interview by Isaac Chotiner, *New Yorker*, February 13, 2021, <https://www.newyorker.com/news/q-and-a/the-law-professor-who-trained-with-the-dc-police>; Danielle Kurtzleben, “Being a Police Officer is Dangerous. These Jobs are More Dangerous,” *Vox*, August 22, 2014, <https://www.vox.com/2014/8/22/6053627/being-a-police-officer-is-dangerous-these-jobs-are-more-dangerous>.

²⁰⁰ Kurtzleben, “Being a Police Officer is Dangerous.”

fatalities. A challenge for police practitioners is to articulate law enforcement's essential function as the state's mechanism for non-negotiable coercion, in an objective and dispassionate manner and from the perspective of a civilian audience, rather than reflecting the profession's subjective perspective that ascribes extreme caution to ward against low probability threats.

A final challenge for police practitioners communicating the core functions of the police to their communities, peers, and superiors is not to present their agencies in such a manner that the role they describe is incongruent with the actual work of the police. If, as discussed in this section, the defining function of law enforcement is to be the embodiment of the state's monopoly on the legitimate use of force, practitioners must avoid promoting images of the police that undermine their members' ability to fulfill that function. Illegitimacy accrues when an institution's actions are incongruent with an audience's expectations.²⁰¹ Legitimation attempts that highlight non-police functions and downplay the genuine role of the police may amplify incongruities between citizen expectations and the realities of police work, contributing to delegitimation. As discussed in the following sections, efforts to identify as part of social in-groups are an essential aspect of legitimation; however, such efforts should never be at the expense of obscuring policing's role in the group.

The incongruity between social expectations of the police and the realities of the job cannot be fixed only by changing the police and the job because many functions of the police are crucial and unavoidable. Focusing only on that side of the equation leads to expectations that are incompatible with the realities of policing and, thereon, to efforts to defund and abolish law enforcement. Such expectations are also incompatible with realities that citizens face every day that require a state actor authorized to intervene with non-negotiable coercion "in the native habitat of the problem."²⁰² Police practitioners must strive to minimize these incompatibilities and change citizens' expectations of the police by presenting their role and core function as compatible with social values and norms.

²⁰¹ See Section IV.D.1.

²⁰² Bittner, *The Functions of the Police in Modern Society*, 40.

Whenever practitioners interact with audiences to legitimate their institutions, the role of the police must be established at the outset and must be described objectively and transparently, without shame or obfuscation. Only thus will inaccurate and unrealistic expectations that delegitimize law enforcement be diminished.

C. ENGAGING DISTINCT AUDIENCES

Police practitioners engage with a diverse and varied range of groups and institutions in their legitimation efforts. Both classical and modern literature on legitimacy tends to disregard this fact and treat the audiences with whom power-holders interact as monolithic. It is important to acknowledge audience diversity, both to avoid complacency and to understand the mutable nature and dialogic formation of social values and norms that form legitimacy beliefs.²⁰³ This chapter examines three key categories of audiences that shape views of police legitimacy: individuals encountered in the course of daily duties, institutional actors outside of law enforcement, and the social groups that comprise communities. Of these, social groups and their self-identification processes emerge as the most influential in determining legitimacy beliefs. By understanding audience diversity and social identity dynamics, practitioners can pursue targeted strategies to align policing roles with community values and norms. This chapter provides an overview of relevant audiences and foundational concepts to inform the police practitioner in effective engagement across groups.

1. Individual Interactions

The first audience police practitioners must consider consists of those individuals with whom officers interact in their daily job performance. They are the citizens, victims, suspects, and arrestees that officers encounter in the course of their duties. These interactions are the most apparent manifestations of legitimacy, and they encompass the procedural justice dynamics described in the work of Tyler. However, as demonstrated by the authors subsequently analyzed in Chapter III, even these most basic police encounters

²⁰³ Suchman, “Managing Legitimacy,” 594.

contain a myriad of influences that shape their course and outcome. There are several aspects of individual interactions that practitioners should bear in mind. The first is that within any municipality, there are multiple social groups that align with demographic distinctions, ideological beliefs, economic status, and other sources of identity.²⁰⁴ These groups are not fixed, and the degree to which their members self-identify as such can vary considerably. However, individuals will regulate their behavior to be consistent with the values and norms—the narratives—of those groups with whom they most strongly identify.²⁰⁵ Self-esteem, for example, becomes conflated with social identity and dependent on positive in-group connotations and out-group comparisons.²⁰⁶ Social identity is a powerful force and will, in most all cases, trump any influence an officer's actions or demeanor may have on the course and outcome of an encounter. This is a crucial observation repeated by Bottoms and Tankebe, Worden and McLean, Blount-Hill, and Martin and Bradford.²⁰⁷ The preeminence of social identity has several important implications for the evaluation of police officers' individual interactions.

Individuals' social groups provide pre-existing and accessible “scripts” or “master narratives” by which the intentions and motivations of police officers can be interpreted.²⁰⁸ Such pre-interpretations invariably result in confirmation bias, where officers' behavior is perceived to confirm “existing beliefs, expectations, or a hypothesis in hand.”²⁰⁹ As shown

²⁰⁴ John C. Turner and Penelope J. Oakes, “The Significance of the Social Identity Concept for Social Psychology with Reference to Individualism, Interactionism and Social Influence,” *British Journal of Social Psychology* 25, no. 3 (September 1986): 240–42, <https://doi.org/10.1111/j.2044-8309.1986.tb00732.x>; Henri Tajfel and John C. Turner, “The Social Identity Theory of Intergroup Behavior,” in *Psychology of Intergroup Relations*, ed. William J. Austin and Stephen Worchel (Nelson-Hall: Chicago, 1986), 15–16.

²⁰⁵ Turner and Oakes, “The Significance of the Social Identity Concept for Social Psychology,” 242–46.

²⁰⁶ Tajfel and Turner, “The Social Identity Theory of Intergroup Behavior,” 16.

²⁰⁷ Bottoms and Tankebe, “Beyond Procedural Justice,” 146; Worden and McLean, *Mirage of Police Reform*, 184–85; Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 811; Martin and Bradford, “The Anatomy of Police Legitimacy,” 570.

²⁰⁸ Worden and McLean, *Mirage of Police Reform*, 47; Blount-Hill, “Exploring a Social Identity Theory of Shared Narrative,” 811.

²⁰⁹ Raymond S. Nickerson, “Confirmation Bias: A Ubiquitous Phenomenon in Many Guises,” *Review of General Psychology* 2, no. 2 (June 1998): 175, <https://doi.org/10.1037/1089-2680.2.2.175>.

by Worden and McLean, this is the case when officers act within the bounds of procedural justice but are seen to violate its precepts.²¹⁰ The reverse is also true; officers violating procedural justice may be seen as upholding it; however, any positive perceptions are annulled by another bias—negativity bias.²¹¹ Encounters with the police perceived as negative have an exponentially greater effect on perceptions of police legitimacy than those perceived as positive.²¹² Yet another factor compounding the difficulty officers have in consistently being seen as acting with procedural justice is the confrontational nature of police work and the inevitable antagonism inherent in incidents officers are called to intervene in. Officers must, as a matter of course, make consequential decisions quickly, with limited information, involving hostile parties, in an environment of shifting organizational priorities and public opinion.²¹³ Such decisions will always be vulnerable to subjective interpretation and later criticism, leading Newburn to declare the “Inevitable Fallibility of Policing.”²¹⁴ The police practitioner must realize that regardless of officers’ procedural justice practices, individuals identifying with particular social groups are primed to perceive interactions with law enforcement negatively and that these inevitable perceptions will have an outsized impact on police legitimacy.

It should be reiterated that this is not a suggestion that officers should not treat citizens in a procedurally just manner. If only because doing so is the right and ethical thing to do. It also leads to better outcomes for both the officer and citizen in many circumstances, and failing to treat people fairly and properly can cause significant legitimacy losses. The point made in this thesis is that procedural justice practices are not an effective way to earn legitimacy, being unable to compete with the much stronger forces of social identity. Here, it is also appropriate to briefly touch upon Bottoms and Tankebe’s

²¹⁰ Worden and McLean, *Mirage of Police Reform*, 12, 185.

²¹¹ Worden and McLean, *Mirage of Police Reform*, 12.

²¹² See discussion in Section III.B.

²¹³ Newburn, “The Inevitable Fallibility of Policing,” 441–44.

²¹⁴ Wilson, *Varieties of Police Behavior*, 75; Newburn, “The Inevitable Fallibility of Policing.” See discussion in Section III.E.

dialogic approach to the construction of legitimacy.²¹⁵ While the observations of later scholars have built upon this construction and moved away from framing its occurrence in individual interactions, it perseveres when applied to a larger context. As observed by Martin and Bradford, it is unlikely that legitimacy-forming dialogue occurs at the micro-level, involving only an officer and the individual with whom they are interacting. Rather, the legitimacy beliefs of individuals are formed through a dialogic process primarily involving themselves and the social groups with whom they identify. Legitimacy beliefs arise out of the manner in which individuals personally interpret and internalize the discourse between social groups and organizations at an institutional level. This dynamic is why Martin and Bradford and Newburn recommend engaging in the legitimation of the police at the “meso-” or “social or collective level.”²¹⁶

2. Institutional Interactions

The recommendations that legitimation efforts occur at a higher level touch upon the second audience police practitioners must consider and engage. This audience consists of the vast array of institutional actors outside the police organization, such as other government agencies, community organizations, political entities, special interest groups, business organizations, academic institutions, media outlets, unions, and religious institutions. In efforts to legitimate law enforcement, these actors may be supportive of the police, may compete with the police for power and resources, or may be ideologically opposed to the core functions of the police. Just as with individual interactions, institutional interactions can be framed dialogically. At the organizational level, institutional actors are in dialogue with each other and with the public as they mediate how they are perceived by social groups. These communications occur when executives and leadership release statements or public relations teams relay information, and social groups reply by providing support or opposition through such means as votes, purchases, or behavior.²¹⁷ From the

²¹⁵ Bottoms and Tankebe, “Beyond Procedural Justice,” 119–20.

²¹⁶ Martin and Bradford, “The Anatomy of Police Legitimacy,” 585; Newburn, “The Inevitable Fallibility of Policing,” 446.

²¹⁷ Martin and Bradford, “The Anatomy of Police Legitimacy,” 565, 585.

perspective of legitimation, the goal of such corporate communications is to influence social groups' perceptions that the institution aligns with the group's values and norms.²¹⁸ Institutional interactions can significantly impact legitimacy perceptions, for example, when unions support political candidates, advocacy organizations oppose policies, or news organizations run exposés. Police practitioners must maintain an awareness of their institutional peers and interact with them in a manner that enhances the legitimacy of law enforcement. As discussed in the first section of this chapter, as practitioners navigate these interactions, they must assert the role of the police in society with confidence and transparency.

A critical subset of institutions must be contemplated—those actors who are not peers to police organizations but their effective superiors. These elite individuals and groups are who Martin and Bradford describe as not mere members of an audience but those that “play an active, even determinative, role in the legitimation process.”²¹⁹ These actors can be defined by their ability to directly and materially affect the power and resources of a law enforcement organization and, therefore, its legitimacy through measures such as imposing discipline, appointing leadership, enacting legislation, or establishing the budget. Examples of such institutional actors are mayors, city councils, state and national governing bodies, and civilian oversight committees.²²⁰ Given their capacity to influence police institutions, it is of particular importance that police practitioners engage with these individuals and groups in their legitimation efforts. Again, the core function of the police must be asserted and promoted during these interactions. It is particularly perilous for police legitimacy when those with the power to regulate the role of the police misunderstand its core functions or have unrealistic expectations of its performance. Finally, in their interactions with institutional actors, police practitioners should bear in mind that the demeanor and behavior of these actors are oriented toward

²¹⁸ Martin and Bradford, “The Anatomy of Police Legitimacy,” 565–72.

²¹⁹ Martin and Bradford, “The Anatomy of Police Legitimacy,” 567.

²²⁰ Martin and Bradford, “The Anatomy of Police Legitimacy,” 567.

influencing the legitimacy perceptions of certain social groups.²²¹ These social groups structure society, provide the foundation of individual identities, and powerfully influence individual legitimacy perceptions; therefore, they are the practitioner's most significant audience.

3. Social Groups

The last audience to receive consideration in this framework for the legitimization of the police is the most significant—the various social groups that comprise and animate society.²²² It is the consistent conclusion of Bottoms and Tankebe, Worden and McLean, Blount-Hill, Martin and Bradford, and Newburn that social influences and individuals' social identity are the most powerful determinants of police legitimacy.²²³ Arguably, the most prominent attempt to explicate social categories and intergroup behaviors, as referenced repeatedly by the preceding authors, is Henri Tajfel and John C. Turner's body of work that constitutes Social Identity Theory (SIT). In a summary of the theory by these authors, they initially articulate a distinction between interpersonal and intergroup behaviors, describing these as two ends of a spectrum.²²⁴ On one end are those behaviors completely devoid of social influence, and on the other, those entirely motivated by social identity. Though neither is likely to exist in pure form, Tajfel and Turner hold that social

²²¹ In a democratic society, for example, political leaders will attempt to retain the approval of a majority of the voting public. Special interest groups will cater to those segments of the public that support their causes or ideological positions.

²²² There is another audience whose perception of police legitimacy bears heavily on the ability of law enforcement organizations to fulfill their mission. This audience consists of the employees of those organizations. Consideration of this internal audience is beyond the scope of this thesis; however, the acknowledgment of its importance has been gaining momentum in academia. Police practitioners would do well to investigate the effects of legitimacy perceptions among their own ranks as a corollary to the concepts covered here. See, President's Task Force on 21st Century Policing, *Final Report*, 14; Bottoms and Tankebe, "Beyond Procedural Justice," 149–54; Joseph A. Hamm et al., "(Re)Organizing Legitimacy Theory," *Legal and Criminal Psychology* 27, no. 2 (September 2022): 133–35, <https://doi.org/10.1111/lcrp.12199>.

²²³ Bottoms and Tankebe, "Beyond Procedural Justice," 146; Worden and McLean, *Mirage of Police Reform*, 184–85; Blount-Hill, "Exploring a Social Identity Theory of Shared Narrative," 811; Martin and Bradford, "The Anatomy of Police Legitimacy," 570.

²²⁴ Tajfel and Turner, "The Social Identity Theory of Intergroup Behavior," 8.

identity will always exert a strong influence on individual perceptions and behaviors.²²⁵ Their research reveals that even minimal affiliation with a social group powerfully motivates individuals to favorably align their beliefs and actions with that group and in opposition to perceived out-groups.²²⁶ This dynamic is discussed in more detail in the next section. Here, it is notable that the distinction between interpersonal and intergroup mirrors the contrast between the reliance on individual interactions to establish legitimacy and the reality that the interpretation of those interactions, and thus of police legitimacy, largely depends on individuals' social identity.

Of defining importance in delineating social groups is how individuals perceive their own identity so that groups are “a collection of individuals who perceive themselves to be members of the same social category, share some emotional involvement in this common definition of themselves, and achieve some degree of social consensus about the evaluation of their group and their membership in it.”²²⁷ These groups serve to systemize both the “social world” and individuals' place therein in a manner that is “relational and comparative.”²²⁸ The challenge for the police practitioner is to identify relevant social groups within communities, bearing in mind that these are self-defined yet collective categories.²²⁹ Social groups' beliefs concerning police legitimacy can again be described as dialogically constructed. They are the result of dialogue between members of a social group, other social groups, other institutions, and the police organization. One of the most critical factors in legitimating the police is whether the values and norms of the institution are seen as congruent with those of the social group.²³⁰ Given the primacy of social identity in determining legitimacy beliefs, police practitioners must promote the profession in a

²²⁵ Tajfel and Turner, “The Social Identity Theory of Intergroup Behavior,” 16.

²²⁶ Tajfel and Turner, “The Social Identity Theory of Intergroup Behavior,” 13–19.

²²⁷ Tajfel and Turner, “The Social Identity Theory of Intergroup Behavior,” 15; Turner and Oakes, “The Significance of the Social Identity Concept for Social Psychology.”

²²⁸ Tajfel and Turner, “The Social Identity Theory of Intergroup Behavior,” 15–16.

²²⁹ Some social groups will be more apparent than others, with ethnic groups and religious communities being commonly identifiable, while hobby groups or ideological proclivities may be less obvious.

²³⁰ See Section IV.D.1.

manner that is congruent with the values and norms of relevant social groups. Methods and strategies to that end will comprise the final element in a framework for the legitimation of the police.

D. IMPLEMENTING LEGITIMATION STRATEGIES

Having defined legitimacy for the police practitioner, having established the importance of asserting the core function of the police in society, and having identified the audiences with which practitioners must interact, the last element of a framework for legitimation is to examine the dynamics that establish the values, norms, and beliefs of social groups. As shown in the preceding sections, attempts to build legitimacy through individual interactions by relying on procedural justice practices, for example, are ineffective. Such attempts fall short when confronted with individuals' social identity—the most potent determinant of legitimacy beliefs. Rather, successful efforts to legitimate the police must occur at the social or collective level. The question for the police practitioner is how, realistically and pragmatically, to conduct such engagement. This section will explore two strategic concepts to that end. First, the constitution and conduct of an agency should be presented in a way that is perceived as congruent with the social group's values and norms, which may involve influencing narratives and portraying the police as a part of the social in-group. Second, practitioners should leverage group dynamics to build positive associations and guard against opponents seeking to delegitimize the police, which may involve collaborating with other institutions and preempting social change and extraneous forces. After their consideration here, in the next chapter these concepts will be applied to real-world examples of successful and unsuccessful attempts to legitimate law enforcement.

1. Congruity

Relating the congruity of power-holder and audience values to legitimacy is evocative of Beetham's definition that requires justification "by reference to beliefs shared

by both dominant and subordinate.”²³¹ He writes that legitimacy is grounded in “an assessment of the degree of congruence, or lack of it, between a given system of power and the beliefs, values and expectations that provide its justification.”²³² Another prominent definition of legitimacy by Mark Suchman describes it as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions.”²³³ “Congruity Theory” has been in development in the field of psychology for several decades and is related to SIT.²³⁴ The theory posits that in response to an assertion, a hearer will evaluate both the source and the content asserted and that any changes in evaluation will favor congruity with existing frames of reference.²³⁵ Considering the congruity of values, norms, and expectations as predictors of legitimacy has been influential in the fields of political science, consumer behavior, and technology legitimation.²³⁶ Suchman approaches the topic from an institutional theory perspective and is primarily focused on the introduction of new ideas that may be incongruent with existing norms. However, his recommendations on how institutions may achieve congruity and thereby legitimacy are profound and have proven influential. He makes three strategic recommendations for gaining legitimacy that

²³¹ Beetham, *The Legitimation of Power*, 15.

²³² Beetham, *The Legitimation of Power*, 11.

²³³ Suchman, “Managing Legitimacy,” 574.

²³⁴ See, Charles E. Osgood and Percy H. Tannenbaum, “The Principle of Congruity in the Prediction of Attitude Change,” *Psychology Review* 62, no. 1 (1955): 42–55, <https://doi.org/10.1037/h0048153>; Anthony G. Greenwald et al., “A Unified Theory of Implicit Attitudes, Stereotypes, Self-Esteem, and Self-Concept,” *Psychology Review* 109, no. 1 (2002): 3–25, <https://doi.org/10.1037/0033-295X.109.1.3>; Jenny Roth, Melanie C. Steffens, and Vivian L. Vignoles, “Group Membership, Group Change, and Intergroup Attitudes: A Recategorization Model Based on Cognitive Consistency Principles,” *Frontiers in Psychology* 9, no. 479 (April 2018), <https://doi.org/10.3389/fpsyg.2018.00479>.

²³⁵ Osgood and Tannenbaum, “The Principle of Congruity in the Prediction of Attitude Change.”

²³⁶ See, e.g., Tobias Lenz and Lora Anne Viola, “Legitimacy and Institutional Change in International Organisations: A Cognitive Approach,” *Review of International Studies* 43, no. 5 (June 2017): 939–61, <https://doi.org/10.1017/S0260210517000201>; M. Joseph Sirgy, Dong-Jin Lee, and Grace B. Yu, “Revisiting Self-Congruity Theory in Consumer Behaviour: Making Sense of the Research so Far,” in *Routledge International Handbook of Consumer Psychology*, ed. Cathrine V. Jansson-Boyd and Magdalena J. Zawisza (Routledge: London, 2016), 185–201, <https://doi.org/10.4324/9781315727448>; Christian Binz et al., “The Thorny Road to Technology Legitimation—Institutional Work for Potable Water Reuse in California,” *Technological Forecasting & Social Change* 103 (February 2016): 249–63, <https://dx.doi.org/10.1016/j.techfore.2015.10.005>.

a police practitioner should consider adapting to the law enforcement context. The first strategy is to *conform* to existing environments; the second is to *select* among environments; the third is to *manipulate* environments.²³⁷

To implement the first legitimation strategy, the practitioner should seek to fit the institution into existing “cognitive frames” and align it with “insiders.”²³⁸ This calibration requires adopting the viewpoint of those in the social group and asking what would make policing “look more desirable, proper, and appropriate” to them.²³⁹ Other methods of conforming are meeting social groups’ substantive needs, including them in the institution’s decision-making process, and capitalizing on favorable references from respected outsiders.²⁴⁰ Additionally, achieving articulable positive outcomes for a social group and adopting sympathetic symbols may signal conformity with their values and norms.²⁴¹ Finally, where rules, hierarchies, or professional standards exist in a social group, bringing the institution in line with those formalities can contribute to its legitimacy.²⁴² When conforming to groups’ existing values and norms proves difficult, practitioners may consider aspects of Suchman’s second strategy of environmental *selection*. For law enforcement, such consideration may apply when social norms explicitly oppose any form of coercion, as is the case, for example, with sovereign citizens or anarchists. Given that the community comprises multiple audiences, other audiences

²³⁷ Suchman, “Managing Legitimacy,” 586–93. He goes on to make strategic recommendations for maintaining legitimacy and repairing it in crisis. The methods for gaining legitimacy appear most applicable to the context of policing. As he states, maintenance strategies are less “active” than gain strategies, and repair strategies “resemble” gain strategies. There is, however, one maintenance strategy that will be referenced in the next section—“perceive change.” Suchman, “Managing Legitimacy,” 594, 597.

²³⁸ Suchman, “Managing Legitimacy,” 587.

²³⁹ Suchman, “Managing Legitimacy,” 587. Chapter V will more closely examine examples of the process of conforming to existing values and norms in a variety of circumstances.

²⁴⁰ Suchman, “Managing Legitimacy,” 587–88.

²⁴¹ Suchman, “Managing Legitimacy,” 588. As applied to the police, articulable positive outcomes could be the communication of crime reductions tied to a particular neighborhood associated with a social group or the closing of a prominent case that impacted a social group. Such communications should be framed in a manner that conveys congruity with the group’s values and norms. A potent example of adopting certain symbols to achieve legitimacy is the rebranding of the police force of Northern Ireland after the Troubles. That example is discussed in Section V.A.1.

²⁴² Suchman, “Managing Legitimacy,” 589.

should then be selected to engage with. There are additional selection strategies that are not practically or morally available to the police, such as moving to another jurisdiction, segregating their performance, or fragmenting social groups.²⁴³ Other recommended selection methods may be suitable, such as recruiting sympathetic members of an oppositional group who are credible but will not make demands that are incompatible with the core function of the police.²⁴⁴

Before examining Suchman's final strategy for gaining legitimacy, it is appropriate to note that several of his methods and the manner in which they are styled may seem, as he acknowledges, "callous or Machiavellian."²⁴⁵ He attributes this potential impression to his managerial perspective and avoidance of euphemism. The police practitioner must eschew even the appearance of such machinations and guard against insincerity and false motives in their efforts. There are lessons to be learned from the interdisciplinary examination of these managerial theories as applied to the legitimation of the police. However, the term *manipulation* and its inferences are inappropriate in the context of police relations with constituent social groups. The description of the strategy as *influencing* is more suitable.²⁴⁶ The need for the practitioner to influence social perceptions of the role of the police beyond mere conformity and the limited options of selection is apparent. When expectations are incompatible with the police function, influencing provides the means to pursue congruence nonetheless. The most common form of social influence is advertising, as the institution seeks to convince groups of the value the police function contributes to society.²⁴⁷ A less usual method of influencing social norms is establishing a reputation of sustained success, especially when widely proliferated.²⁴⁸ To that end, popularizing the successful execution of the police function

²⁴³ Suchman, "Managing Legitimacy," 589–91.

²⁴⁴ Suchman, "Managing Legitimacy," 589.

²⁴⁵ Suchman, "Managing Legitimacy," 586, note 3.

²⁴⁶ Suchman, "Managing Legitimacy," 591.

²⁴⁷ Suchman, "Managing Legitimacy," 591.

²⁴⁸ Suchman, "Managing Legitimacy," 592.

through continually articulated narratives can be particularly effective.²⁴⁹ The power of master narratives to influence identity and shape social norms echoes the work of Blount-Hill and his call to deliberately engage in narrative change.²⁵⁰ Police practitioners may benefit from strategies that seek to influence social values and norms by advertising the value of policing's role and by promulgating narratives of its success.

Congruity is an important concept in the legitimation of the police. The values, norms, and expectations of social groups must be aligned with the constitution and conduct of police agencies. This alignment can be achieved by changing the constitution or conduct of the police. However, where values and norms conflict with law enforcement's core function, practitioners must instead work to influence those values and norms. Suchman presents three strategies for gaining legitimacy by building congruity between ideas and social groups that can be adapted by the police practitioner. First, law enforcement should conform to existing values and norms to the extent possible. Police agencies can demonstrate alignment with social groups by meeting their substantive needs, including them in decision-making, and seeking respected references. Agencies can also highlight positive outcomes for social groups, use symbolism that resonates with them, and adjust their practices to conform to cultural formalities. However, in pursuing these strategies, the practitioner must continue to articulate the core role of police in society. When this reality renders conforming difficult or unachievable, the selection or influence strategies may be of use. Selection strategies for the police are limited but could consist of choosing certain groups to engage or recruiting less oppositional members of an antithetical group. Influence strategies are more promising, consisting of familiar methods such as advertising and incipient practices such as narrative building. The next section will consider how the alignment of social values and norms affects relations between groups as it examines in- and out-group dynamics in more detail.

²⁴⁹ Suchman, "Managing Legitimacy," 592–93. Here, *standardization* is also recommended; however, as the police function is unique, there no other organization that law enforcement can, or should, "remake in its own image."

²⁵⁰ See Section III.C.

2. Group Dynamics

As discussed in the preceding section of this chapter, the population a police agency serves will consist of multiple audiences—institutions and social groups that dialogically construct legitimacy beliefs about the agency. These groups, in turn, strongly influence individuals' beliefs and, thereby, their conduct in interactions with the police. This subsection explores the dynamics of inter- and intra-group behaviors that lead to value and norm formation and, thus, to legitimacy beliefs. First, it describes the concept of in- and out-group relationships. It then considers how the police practitioner should navigate the varied landscape of competing and, at times, oppositional social groups and institutions, with a particular focus on influencing those that have the power to materially affect police agencies. Finally, it suggests actions that the practitioner should take when majority groups begin to adopt minority group values that are incongruent with the role of the police in society. This last section of the chapter gives an overview of the group dynamics that underlie the legitimization of the police and offers recommendations for practitioners pursuing that end.

Social groups consist of formal or informal coalitions of individuals who collectively self-identify according to a common trait and share an emotional attachment to that identity.²⁵¹ Individuals are highly motivated to conform their actions to the values and norms of their in-group in order to maintain and increase their social status therein.²⁵² This self-typification requires individuals to constantly negotiate their alignment with the groups they identify with, because their positive self-concept becomes dependent on evaluating their position within their groups.²⁵³ An important intergroup dynamic is that evaluations of one's in-group require comparison to relevant out-groups.²⁵⁴ This is a competitive process with strong motivations to positively interpret one's in-group and thus

²⁵¹ Tajfel and Turner, "The Social Identity Theory of Intergroup Behavior," 15.

²⁵² Tajfel and Turner, "The Social Identity Theory of Intergroup Behavior," 16.

²⁵³ Tajfel and Turner, "The Social Identity Theory of Intergroup Behavior," 16.

²⁵⁴ Tajfel and Turner, "The Social Identity Theory of Intergroup Behavior," 16.

one's self.²⁵⁵ One of the primary findings of SIT is that even minimal identification with a social group will trigger individual preferences for those perceived to be in one's in-group and prejudice against those that are perceived to be in an out-group.²⁵⁶ One of the police practitioner's goals, therefore, must be to present and position their agencies in such a way that they are not perceived as an out-group by consequential social groups. This goal is a restatement of the charge to achieve congruity by the methods outlined in the preceding section—when possible, agencies should conform to the social values and norms of groups with whom they are attempting to gain legitimacy. When conforming proves difficult or impossible, they should consider selection or influence strategies.

The practitioner must, however, also bear in mind that communities are diverse, consisting of multiple social groups whose values, norms, goals, and expectations may conflict. This diversity is why the consideration of multiple audiences is crucial. When determining which groups to focus legitimation efforts on, police agencies must acknowledge that they cannot be all things to all people.²⁵⁷ The practitioner should apply the empirical definition of police legitimacy and determine which audiences perceive the institution as lacking the authority and right to dictate behavior. They should then weigh two factors. First, which social groups that believe the police to be illegitimate can most efficiently be swayed through conformity, selection, or influence? That is, where can the investment of efforts and resources earn the most legitimacy? Second, which social groups have the most direct or indirect influence on superior institutions that can materially affect the power and resources of the police agency? The first factor resembles a simple cost-benefit analysis; the second may give the impression of gamesmanship. However, failing to recognize and prepare for oppositional influences on sovereign power-holders can be costly for police organizations. Examples of such failures will be examined in the last chapter, but they have had significant negative impacts on police legitimacy in recent history. Law enforcement agencies often appear unprepared for such influences because

²⁵⁵ Tajfel and Turner, "The Social Identity Theory of Intergroup Behavior," 16.

²⁵⁶ Tajfel and Turner, "The Social Identity Theory of Intergroup Behavior," 13–15.

²⁵⁷ Suchman, "Managing Legitimacy," 585.

they originate with minority groups or special interest groups that are not otherwise visible or influential in the socio-political landscape. Therefore, it is crucial that practitioners maintain legitimacy with superior institutions and remain aware of oppositional groups seeking to delegitimize the police.

A final group dynamic that the police practitioner should be aware of is offered by Emina Subašić', Katherine J. Reynolds, and Turner. They describe how sovereign powers may be influenced by minority out-groups and the possibility of social groups adopting the values and norms of minority groups. Changes in the status quo power relationships between majority groups and disadvantaged minorities have traditionally been thought to occur when minority groups mount active challenges to the system.²⁵⁸ There is, however, a phenomenon where majority groups adopt the causes of minorities and where the resultant solidarity leads to the delegitimation of authority.²⁵⁹ When such a switch occurs, the relevant values of the minority group become in-group values of the majority, and the authority is cast as an out-group.²⁶⁰ Once again, framing these processes as dialogical is illustrative. Changes occur on a spectrum within social groups as they are in dialogue with each other, other social groups, and institutions.²⁶¹ It should be noted that the advancement of minorities' values in opposition to authorities has often served the cause of justice and that this process of establishing solidarity should be celebrated when and where minorities have been oppressed. Law enforcement has too often in its history been on the wrong side of that contestation. There is a higher path that the police practitioner should aspire to.

It is possible to accommodate changes in social values and norms that are more just and inclusive of minority groups. This accommodation is in line with the congruity strategy of conforming, inasmuch as those values and norms are compatible with the core functions of the police. To manage such social shifts, the practitioner must first and foremost stay

²⁵⁸ Emina Subašić', Katherine J. Reynolds, and John C. Turner, "The Political Solidarity Model of Social Change: Dynamics of Self-Categorization in Intergroup Power Relations," *Personality and Social Psychology Review* 12, no. 4 (June 2008): 330, <https://doi.org/10.1177/1088868308323223>.

²⁵⁹ Subašić', Reynolds, and Turner, "The Political Solidarity Model of Social Change," 331.

²⁶⁰ Subašić', Reynolds, and Turner, "The Political Solidarity Model of Social Change," 331.

²⁶¹ Subašić', Reynolds, and Turner, "The Political Solidarity Model of Social Change," 332.

aware of social movements that may inspire significant normative changes. Suchman describes this awareness as perceiving change, and he lists it as a strategy for maintaining legitimacy that involves “monitoring the cultural environment and assimilating elements of that environment into organizational decision processes.”²⁶² In the dialogic process and narrative formation that precedes and accompanies significant social change, there are opportunities for law enforcement to participate in the conversation.²⁶³ As ever, the role of the police and its necessity and benefit to society must be plainly communicated. The practitioner’s challenge is to convey it in a manner that “boosts a sense of shared identity” between majority and minority groups.²⁶⁴ Police institutions should validate the majority’s concerns and conform to the new solidarity paradigm to the extent possible while appealing to shared values.²⁶⁵ In line with congruity strategies, if it is not possible to conform, the practitioner must seek to influence the majority group to either disassociate from the minority or to strengthen its association with the police institution.²⁶⁶

The social values and norms that determine legitimacy beliefs are formed in the milieu of interactions and contestations between social groups and institutions. Police practitioners seeking legitimacy must remain aware of these dynamics and guard against influences that aim to delegitimize their agencies. They should seek to position their organizations as part of the in-group of consequential social groups. They should maintain good relations with superior institutions and counter special interests that work to undermine their legitimacy. Likewise, when aligned majority groups begin adopting minority values that are incongruent with the functions of the police, practitioners must intervene. Successfully navigating the ever-changing landscape of group interactions and competing influences requires vigilance and awareness. The police practitioner must observe the tides of social change, contemplate their impacts, and oppose changes that

²⁶² Suchman, “Managing Legitimacy,” 595.

²⁶³ Various examples of how police practitioners can and should engage with social groups and institutions to influence narratives in times of crisis and change are examined in Chapter V.

²⁶⁴ Subašić, Reynolds, and Turner, “The Political Solidarity Model of Social Change,” 332, 340.

²⁶⁵ Subašić, Reynolds, and Turner, “The Political Solidarity Model of Social Change,” 340.

²⁶⁶ Subašić, Reynolds, and Turner, “The Political Solidarity Model of Social Change,” 340.

would harm the legitimacy of their institution. Failures in this regard have perhaps been the greatest detriment to law enforcement in recent years, and the final chapter will give examples of where agencies fell short and saw their legitimacy washed away.

E. CONCLUSION

This chapter formulates a framework for the legitimation of the police. Its purpose is to assist the police practitioner in understanding the processes that contribute to legitimacy formation and to provide actionable strategies for its acquisition. First, it is vital that practitioners have a solid and workable definition of legitimacy. A sequential approach that first defines the term empirically, asking whether an agency is perceived as having the authority and right to dictate behavior, and then incorporates a normative definition, asking whether an agency is perceived as congruent with social values and norms, captures the necessary nuance and utility. Next, the importance of clearly asserting the function of the police is emphasized. As the state's mechanism of non-negotiable coercion, law enforcement institutions play a necessary and beneficial role in society; however, it is one that is often found unpalatable. As their true function is avoided and left unconsidered, social expectations may become incompatible with that function, hindering and eroding legitimacy. As a prerequisite to legitimation, the practitioner must objectively communicate policing's core role. The third element of the framework consists of considering the varied groups that comprise the audience of any power-holder. The communities that practitioners serve are constituted of diverse individuals, institutions, and social groups. Prevailing methods of legitimation focus primarily on individual interactions; however, identities grounded in social groups exert an exponentially larger influence on legitimacy beliefs. The practitioner must engage social groups at the collective level. To that end, the final element of the framework presents strategies that the practitioner may implement. Two interrelated concepts are proposed: police agencies must be perceived as congruent with social groups' values, norms, and expectations, and they must counter oppositional influences on superior institutions and majority groups.

These four elements of a framework for the legitimation of the police—defining the concept, asserting their function, considering multiple audiences, and implementing

influential strategies—provide the practitioner with a functional understanding of the social dynamics that lead to the loss and gain of perceived authority. However, equally important for police professionals is consistent moral conduct and the observation of ethical standards. The next chapter will review examples of the massive delegitimizing effects such shortcomings can have on law enforcement organizations. In this conclusion, it is appropriate to repeat certain admonitions shared in this chapter. First, the conclusion that procedural justice practices do not considerably contribute to police legitimacy must not be taken as an indication that such practices are inappropriate or unimportant. Treating everyone fairly and respectfully is ethical and can lead to better outcomes aside from legitimacy formation. Failures to do so contribute to delegitimation. Second, when employing congruity strategies, methods perceived as manipulative must be avoided. This danger arises when actions are perceived as deceptive or insincere. Police practitioners should attempt to influence social values and norms when appropriate but must take extraordinary care to always be transparent and forthright in their efforts. Finally, when certain beliefs of minority groups are incompatible with the core function of the police, their influence on majority groups should be countered. However, opposition to the negative casting of law enforcement's role should not be equated to outright aversion to minority groups' values and norms, particularly when minority groups have suffered oppression or injustice. The practitioner must conform to those values and norms that are right and just while also presenting an image of the police that is true to their role in society.

It is not suggested that understanding, evaluating, and applying this framework for legitimation is simple or easily done. Indeed, the first lesson for the practitioner is that the concept of legitimacy is nuanced, complex, and difficult. Hopefully, however, this chapter provides a point of departure and a plan forward for those responsible for attaining and maintaining the authority of police agencies. The next chapter will apply the framework to real-world incidents, institutions, and practices that have led to the legitimation or delegitimation of the police. These examples will provide substance and credibility to the theoretical conclusions reached thus far.

V. APPLYING THE FRAMEWORK FOR LEGITIMATION

The police practitioner equipped with the framework for legitimation—with a good understanding of the concept of legitimacy, aware of those audiences who consider the police illegitimate, and with a general idea that engagement should occur at the social-collective level—may still find it challenging to envision how such engagement actually happens. This chapter provides examples of incidents where legitimacy has been successfully gained and circumstances where it has been lost. To repeat the caution, these are not easy or straightforward endeavors. Indeed, one of the reasons the procedural justice theory for legitimation was developed and has become so dominant is likely the ease with which it can be understood and applied. Tyler, its progenitor, acknowledges that factors such as personal morality, socialization, and prior views are much more powerful influences on compliance with the law than individual experiences.²⁶⁷ His focus on procedural justice practices stems from his belief that, though far less influential, they are at least within the abilities of law enforcement to achieve. Influencing prior beliefs, on the other hand, he finds “beyond the control” of legal authorities who are also “helpless” to affect morality.²⁶⁸ This thesis contends that police practitioners can and must do the difficult work of engaging in the realm of beliefs and morality. Employing the framework for legitimation will aid them in this endeavor.

The application of the framework can be broken down into three steps. First, particular social groups that do not sufficiently believe the institution to be legitimate should be identified. This step requires both consideration of the social identity of multiple audiences and the use of the empirical definition of legitimacy to determine the degree to which they believe the police have the authority and right to dictate behavior.²⁶⁹ The second step is to use the normative definition of legitimacy to determine why the social

²⁶⁷ Tyler, *Why People Obey the Law*, 64–68, 106–08.

²⁶⁸ Tyler, *Why People Obey the Law*, 67, 108.

²⁶⁹ See Sections IV.A. and C.

group believes the police to be illegitimate.²⁷⁰ That is, where is the institution's perceived constitution or conduct incongruent with the group's beliefs and values? The final step is to legitimize the institution in the eyes of the social group.²⁷¹ That is, to remedy the incongruities by changing either the constitution or conduct of the institution or by influencing the beliefs and values of the social group. In the last step it is crucial to simultaneously assert the core function of the police clearly and confidently.²⁷² Changes and influences must be achieved without jeopardizing law enforcement's role in society and without creating significant incongruity with other social groups' beliefs and expectations. The first step in applying the framework, the identification of relevant social groups, should be straightforward. It is the subsequent steps of identifying sources of incongruity and determining how to resolve them that are particularly challenging. To organize thinking about sources of discontent and strategies to address them, it is helpful to once more return to Beetham's formulation of legitimacy. His multi-dimensional framing incorporates the essential elements that must be supported by rules and beliefs.²⁷³ This chapter proceeds according to these elements.

The first element identified by Beetham as a requisite for legitimacy is that an institution's power must be acquired according to established rules, which must be justified by the audience's shared beliefs.²⁷⁴ This requirement indicates the necessity that the *constitution* of an institution be perceived as aligned with the values and norms of relevant social groups. A second requisite element is that power be exercised according to established rules justified by shared beliefs.²⁷⁵ This requirement indicates the necessity that the *conduct* of an institution be perceived as aligned with the values and norms of relevant social groups. The final element Beetham invokes is of a different nature than the others in that it requires expressions of support for the institutions' power by an

²⁷⁰ See Section IV.A.

²⁷¹ See Section IV.D.

²⁷² See Section IV.B.

²⁷³ Beetham, *The Legitimation of Power*, 16.

²⁷⁴ Beetham, *The Legitimation of Power*, 16–17.

²⁷⁵ Beetham, *The Legitimation of Power*, 16–17.

audience.²⁷⁶ This requirement indicates that social groups should be encouraged to take actions that express *consent* to the authority of the institution. Beetham's elements of constitution, conduct, and consent structure the following sections that evaluate the relations of specific incidents and circumstances to legitimacy. The examination of these examples seeks to assimilate all of the theories and methods explored in this thesis and provide an overview of actions practitioners can take in the legitimation of the police. Some of the cases that will be evaluated are prominent and familiar. Their handling in this thesis is not intended to be a comprehensive review of all aspects of their occurrence but to provide a perspective on the dynamics of legitimacy.

A. INCONGRUITIES OF CONSTITUTION

An institution's constitution, in relation to its legitimacy, incorporates two related concepts. The first is an evaluation of whether it acquired its position of power according to rules that are aligned with the values and norms of relevant social groups. This is an assessment of the circumstances of the institution's creation—its origin story. The second concept is an evaluation of whether an institution's composition is congruous with the values and norms of the relevant social groups. This is an assessment of its makeup, membership, and organization. These assessments by social groups influence their beliefs about the legitimacy of an institution. In the context of policing, perceptions of how an agency was created and is currently composed shape beliefs about its rightful authority. The examples that follow evaluate instances where police agencies conform to the values and norms of social groups as well as circumstances where agencies cannot conform but must instead influence those values and norms. First, this section examines cases where police departments recreated their origin stories to conform to the communities they serve. It then considers a circumstance where agencies cannot conform to a narrative. Next, the section examines a case that exemplifies the consequences of an agency failing to be representative of the community it serves. Finally, it reviews an example of successful engagement with a community that cannot be represented in policing. The goal is to

²⁷⁶ Beetham, *The Legitimation of Power*, 18–19.

identify practices that police practitioners can employ to decrease incongruities between their agencies and the communities they serve while asserting and upholding the core functions of the police.

1. Origin Stories

In the late 1960s, tensions between Catholic nationalists and the Protestant establishment in Northern Ireland boiled over, leading to outbreaks of violence across the region.²⁷⁷ Over the next three decades, a time known as the Troubles, sectarian conflict gripped the land, leading to thousands of deaths and tens of thousands of injuries due to terrorist attacks, paramilitary actions, and retaliatory strikes.²⁷⁸ Participating in, and some would say exacerbating, the animosity was the state's police force, the Royal Ulster Constabulary (RUC), which itself suffered hundreds of casualties.²⁷⁹ When the conflict ended with the signing of a peace agreement, the need to reform the RUC and form an agency that could effectively police the populations of both parties to the dispute was apparent.²⁸⁰ Much work was done to reform the mission, organization, training, and oversight of Northern Ireland's police.²⁸¹ However, perhaps the most impactful change was the wholesale symbolic recreation of the agency. The name, uniform, and emblems of the RUC were all abandoned in favor of the newly created Police Service of Northern Ireland (PSNI).²⁸²

This example of reform is an extreme illustration of an institution conforming to the values and norms of a social group to achieve legitimacy. The social group in question was Northern Ireland's Catholic population that had resisted English rule. There is no doubt

²⁷⁷ John Charles Murray, "Born of the Troubles: Lessons in Trust and Legitimacy from the Police Service of Northern Ireland," (master's thesis, Naval Postgraduate School, 2017), 7, <https://hdl.handle.net/10945/56771>.

²⁷⁸ Seamus Kelters, "Violence in the Troubles," BBC, February 2013, https://web.archive.org/web/20130605010515/http://www.bbc.co.uk/history/topics/troubles_violence.

²⁷⁹ Kelters, "Violence in the Troubles."

²⁸⁰ Murray, "Born of the Troubles," 9.

²⁸¹ Murray, "Born of the Troubles," 9–11.

²⁸² Murray, "Born of the Troubles," 10–11.

that population believed the RUC to be illegitimate. The incongruity between the two was inherent, and there is little chance the RUC could have effectively influenced the Catholic population to change their perception of the police institution. The RUC's origin story and its accompanying narratives were incompatible with an institution that would serve Catholic interests as well as Protestant. A clean break and new origin story were needed to allow the formation of new narratives about the department. As stated by the historian Annette Gordon-Reed,

Origin stories matter, for individuals, groups of people, and for nations. They inform our sense of self; telling us what kind of people we believe we are, what kind of nation we believe we live in. They usually carry, at least, a hope that where we started might hold the key to where we are in the present.²⁸³

The origin of the RUC was by its very name imperial and, as perceived by nationalists, that of a subjugating force.²⁸⁴ The PSNI's origin was that of compromise between combatants and a desire for peace. The abandonment of the divisive symbols of sectarian conflict in favor of a new name and appearance opened the door to legitimation in a community previously in absolute opposition.

In 2020, protests erupted in cities across the United States in response to the murder of George Floyd by a police officer.²⁸⁵ Long-held grievances with the treatment of Black citizens by the police flared into riots in many urban areas, resulting in arson, looting, and clashes with law enforcement. An exception was the city of Camden, New Jersey, where officers joined a march protesting Floyd's killing.²⁸⁶ In the following weeks, as news outlets and pundits digested the national events, Camden received considerable attention—not least because the city had disbanded its police force in 2013 and reformed it as a county

²⁸³ Annette Gordon-Reed, *On Juneteenth* (New York: Liveright Publishing Corporation, 2021), 58.

²⁸⁴ Murray, "Born of the Troubles," 10.

²⁸⁵ The circumstances surrounding the murder of George Floyd and its aftermath will be discussed in more detail in Section V.B.1. dealing with individual conduct.

²⁸⁶ Phaedra Trethan, "As Chaos Engulfed Philadelphia, Peace Reign'd Across the River in Camden," *Courier Post*, June 1, 2020, <https://www.courierpostonline.com/story/news/local/south-jersey/2020/06/01/chaos-engulfed-philadelphia-peace-reigned-across-river-camden-george-floyd-riots-protest-unrest/5310378002/>.

police department.²⁸⁷ The old agency had been mired in corruption, its cost was untenable, and the city was beset by crime.²⁸⁸ In the years following the reconstitution, crime decreased precipitously, the new agency adopted updated use of force standards, and President Obama praised it for its community policing efforts.²⁸⁹ Reporters asked if this was the model for reforming or even abolishing the police.²⁹⁰ The answers they found were mixed. Rather than abolishing the police, Camden's reformation actually increased the number of officers patrolling the city.²⁹¹ The positive results Camden achieved did not occur immediately. There were several setbacks for the new department, with a rise in excessive force complaints and a significant increase in enforcement actions seen as petty and unjust.²⁹² Some criticism of the police persisted as well, with questions about the new agency's sincerity and the representativeness of its makeup.²⁹³ What was not commented on in the many stories published on the reformation of the Camden police department is that it undoubtedly provided the opportunity to begin a new narrative.

²⁸⁷ See, e.g., Scottie Andrew, "This City Disbanded Its Police Department 7 Years Ago. Here's What Happened Next," CNN, June 9, 2020, <https://www.cnn.com/2020/06/09/us/disband-police-camden-new-jersey-trnd/index.html>; Creede Newton, "Is Camden NJ a Model for Change in US Police Forces? Yes and No," Aljazeera, June 10, 2020, <https://www.aljazeera.com/news/2020/6/10/is-camden-nj-a-model-for-change-in-us-police-forces-yes-and-no>; Katherine Landergan, "The City That Really Did Abolish the Police," Politico, June 12, 2020, <https://www.politico.com/news/magazine/2020/06/12/camden-policing-reforms-313750>; Stephen Danley, "Camden Police Reboot Is Being Misused in the Debate Over Police Reform," *Washington Post*, June 16, 2020, <https://www.washingtonpost.com/outlook/2020/06/16/camden-nj-police-reboot-is-being-misused-debate-over-police-reform/>; Brenda Breslauer et al., "Camden, N.J. Disbanded Its Police Force. Here's What Happened Next," NBC News, June 22, 2020, <https://www.nbcnews.com/news/us-news/new-jersey-city-disbanded-its-police-force-here-s-what-n1231677>.

²⁸⁸ Andrew, "This City Disbanded Its Police Department 7 Years Ago." Representative of the corruption, in 2013, Camden agreed to pay \$3.5 million in damages to 88 people who had been arrested and served time in prison after officers planted drugs on them. ACLU of New Jersey, "Camden Agrees to Pay \$3.5M to Victims of Police Corruption," ACLU, January 10, 2013, <https://www.aclu.org/press-releases/camden-agrees-pay-35m-victims-police-corruption>.

²⁸⁹ Andrew, "This City Disbanded Its Police Department 7 Years Ago"; Trethan, "As Chaos Engulfed Philadelphia, Peace Reign'd Across the River in Camden." "

²⁹⁰ Newton, "Is Camden NJ a Model for Change in US Police Forces?"; Landergan, "The City That Really Did Abolish the Police."

²⁹¹ Danley, "Camden Police Reboot Is Being Misused in the Debate Over Police Reform."

²⁹² Danley, "Camden Police Reboot Is Being Misused in the Debate Over Police Reform"; Breslauer et al., "Camden, N.J. Disbanded Its Police Force."

²⁹³ Danley, "Camden Police Reboot Is Being Misused in the Debate Over Police Reform."

The social group that consisted of the majority-minority population of Camden had certain beliefs about the former city department that were most likely incongruent with the group's values and norms. That department's corruption was well documented, and it was unable to maintain safety and order.²⁹⁴ Though residents resisted the loss of local control as the county took charge of policing the city, though the county police had some stumbles out of the gate, and though certain challenges to police authority persisted, it appears that the new city department conformed to the majority social group and came to enjoy an admirable level of legitimacy.²⁹⁵ The example of Camden is, again, a somewhat extreme illustration of an agency conforming to social values and norms to increase the perception of congruity. However, the opportunity that new origin stories present is instructive, and police practitioners can take advantage of less pronounced clean breaks with prior history to change narratives. Common examples of such opportunities are promoting new leadership or disbanding certain units within an organization. In those instances, practitioners should be intentional in capitalizing on characteristics of new leaders aligned with social groups' values and on aspects of abolished units that were misaligned with group norms. In the examples of Northern Ireland and Camden, police departments changed to conform more closely to the beliefs of the communities they served, or at least their changes provided the opportunity to establish new narratives about the departments that conformed to social beliefs. The next example illustrates circumstances where practitioners should seek to influence values and norms rather than conforming to them.

In the 17th century, America's southern colonies developed a prosperous economy dependent on the agricultural success of plantations, which in turn relied on cheap slave labor.²⁹⁶ To maintain this arrangement, an inhumane system of permanently enslaving

²⁹⁴ Andrew, "This City Disbanded Its Police Department 7 Years Ago."

²⁹⁵ Trethan, "As Chaos Engulfed Philadelphia, Peace Reigned Across the River in Camden"; Andrew, "This City Disbanded Its Police Department 7 Years Ago."

²⁹⁶ Greg Timmons, "How Slavery Became the Economic Engine of the South," History, last modified July 25, 2023, <https://www.history.com/news/slavery-profitable-southern-economy>; Ben Brucato, "Policing Race and Racing Police: The Origin of US Police in Slave Patrols," *Social Justice* 47, no. 3–4 (2020): 121, <https://www.jstor.org/stable/27094596>.

those of African descent was instituted that persisted through the end of the Civil War.²⁹⁷ In many Southern colonies, the proportion of Black slave populations began to rival and exceed those of White populations.²⁹⁸ To maintain slave subjugation, deter revolts, and catch runaways, Slave Patrols were created.²⁹⁹ Their organization differed in each jurisdiction, but they were commonly conscripted from the local militia for specialized patrol duties.³⁰⁰ These Slave Patrols were the first American law enforcement bodies, and they formed the origin of modern-day policing in this country.³⁰¹ The ethos of subjugation and control of Black people permeates police culture and all police institutions to this day.³⁰² Therefore, the police must be abolished.³⁰³

The preceding narrative has become prevalent in discussions about police reform, though the recommended outcome is not always as extreme as abolition. It is a narrative that targets a particular social group, Black Americans, and is promoted by special interest groups aiming to delegitimize the police. It carries strong in-group/out-group imagery and seeks to intensify perceptions of incongruity between the values and norms of Black communities and law enforcement. All but the last three sentences of the preceding paragraph are undoubtedly true. Slavery is a heinous part of American history that should be acknowledged and atoned for. Slave patrols did exist, and they are an odious part of the

²⁹⁷ Brucato, “Policing Race and Racing Police,” 122–26.

²⁹⁸ Philip L. Reichel, “Southern Slave Patrols as a Transitional Police Type,” *American Journal of Police* 7, no. 51 (1988): 56–57, <https://www.academia.edu/1272446>.

²⁹⁹ Reichel, “Southern Slave Patrols as a Transitional Police Type”; “The Origins of American Policing,” NAACP, accessed August 26, 2023, <https://naacp.org/find-resources/history-explained/origins-modern-day-policing>.

³⁰⁰ Reichel, “Southern Slave Patrols as a Transitional Police Type” 59–62.

³⁰¹ Brucato, “Policing Race and Racing Police,” 1, 126–28; NAACP, “The Origins of American Policing.”

³⁰² Jill Lepore, “The Invention of the Police,” *New Yorker*, July 13, 2020, <https://www.newyorker.com/magazine/2020/07/20/the-invention-of-the-police>; Brucato, “Policing Race and Racing Police”; NAACP, “The Origins of American Policing.”

³⁰³ Mariame Kaba, “Yes, We Mean Literally Abolish the Police,” *New York Times*, June 12, 2020, <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

history of American policing, which should also be acknowledged.³⁰⁴ However, to argue that their existence forms the core of today's police culture, or even exerts a significant influence on it, seems a guilt-by-association fallacy at best. Articles on this topic generally do acknowledge another narrative—the importance that the formalization of the police in London in the mid-19th century had on the establishment of American agencies.³⁰⁵ Nevertheless, many seek to equate the influence of the two narratives—slave patrols and English formalization—or to inflate the former over the latter.³⁰⁶ This thesis aims to conceptualize how to both acknowledge painful histories and legitimize the police.

Practitioners are best served by formulating an origin story for their own agency. The sins committed against Black communities must be acknowledged without qualification. If that directly impacts the origin story of an agency, it may be necessary to disband and reform it in the vein of Northern Ireland. However, most all police departments have very different stories to tell about their origin.³⁰⁷ The narrative that implies they are all derived from slave patrols should be opposed and countered with competing narratives of creation. In that telling, the police practitioner should seek opportunities to highlight facets of their agency's history that are congruous with the values and norms of the social groups in the communities they serve. To give a brief example, at the outset of the Civil War, President Abraham Lincoln became personally concerned with maintaining safety and order in Washington, DC.³⁰⁸ The city was on the frontlines of the North-South divide and had been inundated with federal employees, soldiers, and the disreputable elements

³⁰⁴ As, for example, the National Law Enforcement Officers Memorial Fund does. National Law Enforcement Officers Memorial Fund, "Slave Patrols: An Early Form of American Policing," accessed August 26, 2023, <https://nleomf.org/slave-patrols-an-early-form-of-american-policing/>.

³⁰⁵ Connie Hassett Walker, "How You Start is How You Finish? The Slave Patrol and Jim Crow Origins of Policing," *Human Rights Magazine* 46, no. 2 (January 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/how-you-start-is-how-you-finish/; Lepore, "The Invention of the Police."

³⁰⁶ Walker, "How You Start is How You Finish?"; Lepore, "The Invention of the Police."

³⁰⁷ Jonah Goldberg, "The Problem with Claiming That Policing Evolved from Slave Patrols," *Dispatch*, June 19, 2020, <https://thedispatch.com/article/the-problem-with-claiming-that-policing/>.

³⁰⁸ Metropolitan Police Department, "Brief History of the MPDC," accessed August 26, 2023, <https://mpdc.dc.gov/page/brief-history-mpdc>; MPDC History, "What Was before the Metropolitan Police Department," accessed August 26, 2023, <https://mpdc-history.com/>.

that attend army camps.³⁰⁹ In 1861, at the behest of the President, Congress established the Metropolitan Police Department.³¹⁰ Shortly thereafter, President Lincoln dispatched an emissary to New York City to become acquainted with the functions of the New York Police Service, itself modeled on the progressive Metropolitan Police of London, which provided the foundation for the Metropolitan Police of Washington, DC.³¹¹ This is an origin story that every member of the DC police department should know and be prepared to share in order to influence the values and norms of the social groups they serve with a counter-narrative to the characterization that their department's creation was primarily related to slave patrols.

The examples in this section illustrate that police practitioners must be intentional in establishing origin stories that align with the values and norms of the communities they serve. In some cases, when the incongruity is stark and narratives seem irredeemable, practitioners may need to conform to values and norms by reconstituting their agencies and starting anew, as was done in Northern Ireland and Camden. To a lesser degree, the benefits of such a fresh start may be harnessed when new leadership is installed or when problematic police units are disbanded. However, even without drastic measures, police leaders can critically examine their department's history and current culture, acknowledge past harms, and put forward origin stories that conform to social groups' values and norms. Presenting congruous origin stories may require influencing existing narratives by emphasizing positive turning points and actions that exemplify community partnership. While painful histories should not be ignored, new chapters can be written. By shaping narratives around their founding stories and principles, practitioners can contribute to the legitimization of the police.

³⁰⁹ Metropolitan Police Department, "Brief History of the MPDC."

³¹⁰ Metropolitan Police Department, "Brief History of the MPDC"; MPDC History, "What Was before the Metropolitan Police Department."

³¹¹ Metropolitan Police Department, "Brief History of the MPDC"; MPDC History, "What Was before the Metropolitan Police Department."

2. Agency Composition

In 2014, a police officer shot and killed Michael Brown, a young Black man, in Ferguson, Missouri. The exact circumstances leading up to the incident were initially unclear; however, Brown was unarmed, and a narrative quickly spread that he had his hands up in surrender when he was shot.³¹² Over the following days, protests over Brown's death in Ferguson turned to rioting, vandalization, arson, and looting.³¹³ The incident also invigorated the national debate about policing and race relations, and it prompted a detailed Department of Justice (DOJ) investigation of Ferguson's criminal justice system.³¹⁴ The DOJ eventually invalidated the initial reports that Brown had been surrendering when shot and found that he had assaulted the officer and attempted to disarm him.³¹⁵ However, the DOJ's comprehensive report examining the practices of the Ferguson Police Department (FPD) was scathing, outlining a multitude of reasons residents of the city had developed a deep distrust of law enforcement.³¹⁶ Of interest to this thesis are those reasons for the lack of police legitimacy that underlay both the actions of Brown and the subsequent uprising of the community. The DOJ report identified constitutional violations, racial bias, misconduct, lack of engagement, and lack of diversity as driving the mistrust Ferguson's residents had of the police.³¹⁷ The last two points touch on the element of the agency's composition. The FPD's makeup lacked diversity—it did not reflect the community it

³¹² Jonathan Capehart, "'Hands Up, Don't Shoot' Was Built on a Lie," *Washington Post*, March 16, 2015, <https://www.washingtonpost.com/blogs/post-partisan/wp/2015/03/16/lesson-learned-from-the-shooting-of-michael-brown/>.

³¹³ "Looting Erupts After Vigil for Slain Missouri Teen Michael Brown," NBC News, last modified August 11, 2014, <http://www.nbcnews.com/storyline/michael-brown-shooting/looting-erupts-after-vigil-slain-missouri-teen-michael-brown-n177426>.

³¹⁴ Capehart, "'Hands Up, Don't Shoot' Was Built on a Lie"; Department of Justice, *Investigation of the Ferguson Police Department* (Washington, DC: Department of Justice, Civil Rights Division, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf.

³¹⁵ Department of Justice, *Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson* (Washington, DC: Department of Justice, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf.

³¹⁶ Department of Justice, *Investigation of the Ferguson Police Department*.

³¹⁷ Department of Justice, *Investigation of the Ferguson Police Department*.

served, and it lacked engagement—depriving it of opportunity to conform to the community’s values or influence its norms. These shortcomings resulted in an incongruity that likely contributed to the shooting and certainly influenced the aftermath.

The DOJ report documents that only four of FPD’s fifty-four officers were Black, whereas the community they served was two-thirds Black.³¹⁸ Notably, it highlights that the investigators “heard repeated complaints about FPD’s lack of racial diversity from members of the Ferguson community.”³¹⁹ However, the report qualifies its finding that a lack of diversity undermines trust by specifying that increasing diversity is not guaranteed to increase trust.³²⁰ Rather, such increases must be accompanied by reforms and cultural change.³²¹ Looking at the wider landscape of inquiries into the effects of diversity, some studies recommend enhancing the diversity of police departments after finding that minority officers are less likely to use force or arrest persons of color.³²² Other research has found little evidence that race impacts officers’ individual interactions with the public.³²³ This thesis suggests that the issue of diversity can be viewed as a matter of social identity and in-group/out-group dynamics. Social groups are more likely to perceive a police department as congruous with their values and norms when that department includes members of their group. It is the reflection of the relevant social group within the institution that contributes to legitimacy, rather than diversity affecting the outcome of individual interactions, consistent with findings on the limited impact of procedural justice efforts. The police practitioner seeking legitimation should, therefore, pursue forming a department

³¹⁸ Department of Justice, *Investigation of the Ferguson Police Department*, 88.

³¹⁹ Department of Justice, *Investigation of the Ferguson Police Department*, 88.

³²⁰ Department of Justice, *Investigation of the Ferguson Police Department*, 88.

³²¹ Department of Justice, *Investigation of the Ferguson Police Department*, 88.

³²² Bocar A. Ba et al., “The Role of Officer Race and Gender in Police-Civilian Interactions in Chicago,” *Science* 317, no. 6530 (February 2021): 696–702, <https://doi.org/10.1126/science.abd8694>; John Kelly et al., “How Much Do Police Officers Mirror the Communities They Serve? ABC News Looked at the Data,” ABC News, May 20, 2021, <https://abcnews.go.com/US/police-officers-mirror-communities-serve-abc-news-looked/story?id=77536865>.

³²³ National Research Council, *Fairness and Effectiveness in Policing: The Evidence*, ed. Wesley Skogan and Kathleen Frydl (Washington, DC: The National Academies Press, 2004), 148–50, <https://doi.org/10.17226/10419>; Jen Field, “Does Diversifying Police Forces Reduce Tensions?,” Stateline, August 16, 2016, <https://stateline.org/2016/08/22/does-diversifying-police-forces-reduce-tensions/>.

whose demographic makeup reflects the makeup of the community it serves. Of course, this is already the practice of many departments, and despite best efforts to recruit a diverse workforce that reflects local populations, it remains a challenge.³²⁴ This challenge is multifaceted—fewer minority candidates apply to be officers, and demographic changes are outpacing agencies’ ability to adapt their workforce.³²⁵ When attempts to conform an agency to the demographics of their communities prove difficult or impossible, the practitioner should engage and influence relevant social groups. In this engagement, it must be conveyed that the group’s demographic, though under- or unrepresented in the department, is valued and that its norms are understood and appreciated.

The engagement of the Metropolitan Police Department (MPD) of Washington, DC, with the city’s Deaf community provides an example of influence where conforming through recruitment is not a possibility. Due to the presence of Gallaudet University, the world’s only liberal arts college for deaf people, DC has one of the largest and most active Deaf populations in the United States.³²⁶ Many in this community view “big D” Deaf culture as their primary social identity and view their condition not as a disability but as a linguistic difference.³²⁷ Given the size of the population, in excess of 20,000, including many college-age individuals, it is a social group that MPD interacts with regularly.³²⁸ However, being deaf does exclude individuals from serving as police officers, so that the Deaf community has no direct representation in the ranks of MPD. To remedy this deficit,

³²⁴ Dan Keating and Kevin Uhrmacher, “In Urban Areas, Police Are Consistently Much Whiter than the People They Serve,” *Washington Post*, June 4, 2020, <https://www.washingtonpost.com/nation/2020/06/04/urban-areas-police-are-consistently-much-whiter-than-people-they-serve/>.

³²⁵ U.S. Department of Justice and Equal Employment Opportunity Commission, *Advancing Diversity in Law Enforcement* (Washington, DC: Department of Justice, Civil Rights Division, 2016), <https://www.eeoc.gov/advancing-diversity-law-enforcement>; Kelly et al., “How Much Do Police Officers Mirror the Communities They Serve?”; Keating and Uhrmacher, “In Urban Areas, Police Are Consistently Much Whiter than the People They Serve.”

³²⁶ “Gallaudet at a Glance,” Gallaudet University, accessed August 26, 2023, <https://gallaudet.edu/about/glance/>; Code of the District of Columbia, Chapter 24A American Sign Language, § 38–2431 Findings, <https://code.dccouncil.gov/us/dc/council/code/sections/38-2431.html>.

³²⁷ Donald F. Moores, “Partners in Progress: The 21st International Congress on Education of the Deaf and the Repudiation of the 1880 Congress of Milan,” *American Annals of the Deaf* 155, no. 3 (Summer 2010), 309–10, <https://doi.org/10.1353/aad.2010.0016>.

³²⁸ Code of the District of Columbia, Chapter 24A, § 38–2431.

in 2002, MPD established the Deaf and Hard of Hearing Liaison Unit (DHHU), which is staffed by two officers fluent in American Sign Language and well acquainted with Deaf culture.³²⁹ In the intervening decades, DHHU has proven an invaluable link to the Deaf community, facilitating communication for its members and providing education for MPD officers about its unique culture.³³⁰ The unit has demonstrated that the department aligns with the expectations of the social group, thereby affecting the group's beliefs about police legitimacy. Even though it is not possible to conform to the Deaf community by accepting them into law enforcement, their perception of the institution's congruity with their values and norms can be influenced by dedicating a unit to represent their interests.

The composition of a police department and engagement with the communities it serves are pivotal for legitimacy. Police practitioners should make every effort to recruit and retain a diverse workforce that conforms to local demographics. When full representation is not feasible, dedicated and sustained outreach to unrepresented social groups provides an opportunity to demonstrate that their values and norms are understood and respected. Through building relationships and establishing formal liaisons, influence can potentially compensate for an inability to fully conform. While diversifying ranks is ideal, engagement is imperative. By bridging divides and forming connections to key social groups, police departments can enhance their legitimacy. In these efforts, it is, once again, crucial that practitioners are sincere and remain transparent regarding the function of the police in society. The congruence between agencies and communities is advanced by both resemblance and understanding.

B. INCONGRUITIES OF CONDUCT

The conduct ascribed to an institution is the most visible and prominent source of delegitimation. In recent years, officers' conduct perceived as incongruous with the values

³²⁹ Metropolitan Police Department, *About the Deaf and Hard of Hearing Liaison Unit* (Washington, DC: Metropolitan Police Department, 2014), <https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/DHHU%20Brochure%202014.pdf>.

³³⁰ See, e.g., Mike Carter-Conneen, "Special MPD Unit Helps Build Trust in DC's Deaf Community," ABC7 News, October 10, 2016, <https://wjla.com/news/local/special-mpd-unit-helps-build-trust-in-dcs-deaf-community>.

and norms of the community has become a lightning rod issue, undermining agencies and the profession as a whole. The incongruity associated with the conduct of individual officers can arise in two ways. First are instances where their actions are clearly inappropriate and inconsistent with ethical standards and the law. In those cases, police practitioners must take swift action to publicly conform to community values by denouncing the offenders. The second incongruity occurs when officers' actions are legal and in keeping with proper procedure but are perceived as violations of a social groups' norms. In such cases, the police practitioner must again act urgently to identify and address the cause of the disparity. It is possible that groups have other grievances with an agency that color their perception of the incident. It could be that they do not have a sufficient understanding of necessary law enforcement practices and procedures. Social groups may also be under the influence of other groups or institutions that are in outright opposition to the function of the police in society. In order to align the perception or the values and norms of a group to the role of the police and the realities of the job it entails, police practitioners must themselves exert influence. Such influence is extremely difficult to apply after a controversial incident has occurred, and the importance of doing the work of building congruity, and thereby legitimacy, prior to high-profile incidents will be highlighted in this section.

In the years following the social unrest of 2020, the institutional conduct of police agencies, that is their methods and operations, has been widely scrutinized, questioned, and regulated. Social groups, and by extension local to national governing institutions, continue to consider which actions police officers may appropriately take while fulfilling the function of law enforcement. In order to maintain and build legitimacy, practitioners must, when possible, conform their institutions to the social values and norms dictating permissible conduct. However, if the prescribed conduct precludes or interferes with the role of the police in society, the practitioner must oppose limits on allowable actions and attempt to influence the values and norms motivating such limitations. This opposition must occur at the social-collective level and ideally prior to the implementation of restrictive regulations or legislation. Once rules are established that mandate police conduct that prevents officers from effectively and confidentially fulfilling their function in society,

the practitioner no longer has the option of non-compliance. The resultant contradiction in expectations—that the police succeed as the state’s mechanism of non-negotiable coercion while abiding by regulations that restrict their ability to coerce—inevitably results in failure. Either law enforcement officers will fail in their role, or they will violate rules of conduct, resulting in further incongruity and delegitimation. When placed in such a predicament, the police practitioner must continue to engage with social groups and sovereign institutions to influence their values and norms in order to amend laws limiting necessary police conduct. It is far better that deliberate engagement that asserts the role and requisite conduct of the police occurs before the implementation of restrictive regulations.

The remainder of this section examines instances and circumstances where the conduct ascribed to an agency was incongruous with the values and norms of a social group. First, it looks at instances of individual conduct requiring police agencies to either conform to social expectations or to influence such expectations to align with conduct. Next, it considers times when institutional conduct had to conform to social values, as well as times when police agencies had to oppose and influence social norms that were incompatible with the function of the police. Applying the framework for police legitimation to these examples provides insight into the group dynamics that form legitimacy beliefs and the strategies that practitioners can use to navigate challenges to their agencies’ authority while upholding the core role of the police profession.

1. Individual Conduct

Examples of individual misconduct by police officers loom large in the collective awareness, particularly those conspicuous cases of unjustified and excessive force, such as the beating of Rodney King or the murder of George Floyd. At the outset, it is important to note that this thesis does not present a playbook on organizational crisis response; rather, it seeks to understand how police conduct, which may precipitate crises, is perceived by social groups and influences legitimacy beliefs. In atrocious cases where officers’ violations are clearly and unquestionably illegal or unethical, practitioners must take immediate steps to publicly denounce the actions. Social groups will see the severe misconduct as incongruous with their values and norms, and unless they also perceive it as

incongruous with the agency's values and norms, they will quickly deem the police as an incompatible out-group. Timelines for the development of in-group/out-group narratives can be very tight during such occurrences, so police practitioners must maintain a keen awareness of evolving community perceptions. To illustrate these dynamics, a brief comparison of the communications by the police and government officials following the death of George Floyd in Minneapolis and those after the recent death of Tyre Nichols in Memphis follows.

George Floyd was killed on the evening of Monday, May 25, 2020, when an officer pressed his knee into Floyd's neck for more than nine minutes as two other officers held Floyd down and another kept bystanders at bay.³³¹ Early the next morning, as a video of the murder began circulating through social media, the Minneapolis Police Department's public information officer posted a statement on the department's website stating simply that a subject who resisted officers and suffered medical distress had died in custody.³³² The enormity of the officers' transgression became apparent as day broke on Tuesday, and public outcry grew quickly. The city's mayor and police chief held a press conference that morning condemning the officers' actions and announcing they had been placed on administrative leave.³³³ Later that day, the chief announced that he had fired the four involved officers.³³⁴ The reactions to the mayor's announcement of the terminations on

³³¹ Brad Parks and Eric Levenson, "Officer Who Held Back Crowd during George Floyd's Murder Sentenced to over 4 Years in Prison," CNN, August 7, 2023, <https://www.cnn.com/2023/08/07/us/tou-thao-george-floyd-sentence/index.html>; Nicholas Bogel-Burroughs, "Prosecutors Say Derek Chauvin Kneled on George Floyd for 9 Minutes 29 Seconds, Longer than Initially Reported," *New York Times*, March 30, 2021, <https://www.nytimes.com/2021/03/30/us/derek-chauvin-george-floyd-kneel-9-minutes-29-seconds.html>.

³³² John Elder, "Investigative Update on Critical Incident," Minneapolis Police, May 26, 2020, <https://web.archive.org/web/20210331193824/https://www.insidempd.com/2020/05/26/man-dies-after-medical-incident-during-police-interaction/>.

³³³ Greta Kaul, "Seven Days in Minneapolis: A Timeline of What We Know about the Death of George Floyd and Its Aftermath," MinnPost, last modified June 1, 2020, <https://www.minnpost.com/metro/2020/05/what-we-know-about-the-events-surrounding-george-floyds-death-and-its-aftermath-a-timeline/>.

³³⁴ "4 Minneapolis Police Officers Fired Following Death of George Floyd in Police Custody," FOX 9, May 26, 2020, <https://www.fox9.com/news/4-minneapolis-police-officers-fired-following-death-of-george-floyd-in-police-custody>.

Twitter are illustrative of the public sentiment and the expectations of the social group.³³⁵ The immediate and overwhelming consensus was that termination was an insufficient response and that the officers should have been arrested. However, the officers' union cautioned against a "rush to judgment" and asked for calm as the investigation progressed.³³⁶ The primary officer involved in the murder was arrested on May 29, but only after several days of protests and riots that would spread across the United States in the days that followed.³³⁷

Tyre Nichols was severely beaten by five Memphis Police Department officers on the evening of Saturday, January 7, 2023, following a traffic stop and subsequent foot pursuit.³³⁸ The incident was captured on the officers' body-worn cameras and a stationary pole-mounted police camera.³³⁹ Nichols was hospitalized, and the police department initiated a use of force investigation, immediately placing the involved officers on administrative leave.³⁴⁰ On January 10, while still hospitalized, Nichols died.³⁴¹ On January 18, the U.S. Attorney's office announced a civil rights investigation, and on January 20, the officers were fired.³⁴² They were arrested six days later, and the video footage was released the next day, twenty days after the initial incident. There were nationwide protests the day the video was released, but they were mostly peaceful and

³³⁵ Jacob Frey (@MayorFrey), "Four responding MPD officers involved in the death of George Floyd have been terminated," May 26, 2020, 3:09 p.m., <https://twitter.com/MayorFrey/status/1265359374010273792>.

³³⁶ Sarah Mearhoff (@sarah_mearhoff), "Statement by the Police Officers Federation of Minneapolis," Twitter, May 27, 2020, 3:10 a.m., https://twitter.com/sarah_mearhoff/status/1265722071872688129; Liz Collins, *They're Lying: The Media, The Left, and the Death of George Floyd* (Minneapolis, MN: Paper Birch Publishing, 2022), 28, https://www.google.com/books/edition/They_re_Lying_The_Media_The_Left_and_The/j9mYEAAAQBAJ.

³³⁷ Kaul, "Seven Days in Minneapolis."

³³⁸ "What We Know about the Death of Tyre Nichols," *Commercial Appeal*, last modified January 8, 2023, <https://www.commercialappeal.com/story/news/crime/2023/01/11/what-we-know-about-the-death-of-tyre-deandre-nichols/69798500007/>.

³³⁹ City of Memphis, "4 Videos," Vimeo, accessed August 27, 2023, <https://vimeo.com/cityofmemphis>.

³⁴⁰ *Commercial Appeal*, "What We Know about the Death of Tyre Nichols."

³⁴¹ *Commercial Appeal*, "What We Know about the Death of Tyre Nichols."

³⁴² *Commercial Appeal*, "What We Know about the Death of Tyre Nichols."

limited in scale.³⁴³ Aside from the public reaction, there are obvious differences in how the aftermath of the deaths of Floyd and Nichols developed. The former occurred during a pandemic lockdown in the summer, the latter in the winter. The officer that killed George Floyd was white, the officers that killed Tyre Nichols were all black. Significantly, video of Floyd's murder was not in the hands of law enforcement and circulated immediately, while the video of the assault on Nichols was held by the police and only released after the officers had been fired and arrested. The critical differentiator, from the perspective of this thesis, is the narrative surrounding each killing.

After Floyd's death, the initial statement of the Minneapolis Police Department, whether intended or not, was misleading and gave the appearance of a cover-up.³⁴⁴ Even though the incident was addressed with some immediacy—the officers were suspended and fired later the same day—there was a sense that the actions of police and city leadership were reactionary. Arrests occurred only after days of violent protests. The officers' actions were blatantly incongruent with the values and norms of the Black community and society as a whole. When the police agency was perceived as slow to sufficiently denounce the officers' actions and the union counseled withholding judgment, the police assumed the role of an oppositional out-group. As majority groups across the United States aligned themselves with the values and norms of a demonstrably oppressed minority, the in-group values of activists within the minority seeking to delegitimize the police were more widely adopted within majority groups as well.³⁴⁵ It cannot be said whether swifter action by Minneapolis to arrest the involved officers would have led to less ferocious protests and fewer challenges to the legitimacy of the police nationwide. However, it may have

³⁴³ Melissa Moon, "Tyre Nichols Protestors Shut Down I-55 Bridge in Memphis," News Channel 3, last modified January 28, 2023, <https://wreg.com/news/local/tyre-nichols-protestors-shut-down-old-i-55-bridge/>; NBC News, "New York City Protests Erupt after Release of Tyre Nichols Video," January 27, 2023, <https://www.nbcnews.com/video/protests-erupt-in-new-york-after-release-of-tyre-nichols-video-162033733585>; Peter Hermann, Ellie Silverman, and Clarence Williams, "Demonstrators Gather in DC As Tyre Nichols Video Is Released," *Washington Post*, January 27, 2023, <https://www.washingtonpost.com/dc-md-va/2023/01/27/dc-demonstrations-tyre-nichols-video-k-street/>.

³⁴⁴ Maya Lau, "Police PR Machine under Scrutiny for Inaccurate Reporting, Alleged Pro-cop Bias," *Los Angeles Times*, August 30, 2020, <https://www.latimes.com/california/story/2020-08-30/police-public-relations>.

³⁴⁵ See Section IV.D.2.

contributed to a narrative in which law enforcement was less of an oppositional out-group and more aligned with the values of the majority group seeking immediate justice. Even though there was a longer delay in the firings and arrests, that type of narrative is closer to what emerged after the release of the videos of the assault on Nichols, which was preceded by the arrests of the former officers involved. The lesson for the police practitioner is to be attuned to social groups' values and norms and to anticipate developing narratives based on the particular circumstances of the situation at hand. From the viewpoint of legitimacy, in order to be perceived as congruous with the community, it is essential that agencies take conforming action prior to outcries that they are not.

Not all controversial officer conduct is as clearly outside of the bounds of acceptable behavior as in the cases of Floyd and Nichols. Some incidents, such as the shooting of Michael Brown, may not be found unjustified after investigation.³⁴⁶ In that case, the public outcry approached that which occurred after Floyd's murder; however, both a grand jury and the Department of Justice found that the officer's actions were not clear violations of the law, and no charges were ever filed against the officer.³⁴⁷ After the shooting of Brown, several factors contributed to the unrest that followed. Foremost was that Ferguson's police department had a legitimacy deficit prior to the incident. The unrepresentative composition of the department was discussed in the preceding section, and the institutional conduct of the police that contributed to delegitimation will be addressed in the next section. Adding to the perceived misalignment of the police and social values was the handling of several aspects of the investigation that were interpreted as disrespectful to the deceased Brown, including leaving his body in the street for four hours

³⁴⁶ Department of Justice, *Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown*.

³⁴⁷ Department of Justice, *Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown*; Brian Todd and Faith Karimi, "Citing Security Concerns, Darren Wilson Resigns from Ferguson Police Force," CNN, November 30, 2014, <https://edition.cnn.com/2014/11/29/us/ferguson-protests>.

and releasing footage of him robbing a convenience store just prior to the shooting.³⁴⁸ Finally, the inaccurate witness accounts stating that Brown had been accosted by the officer, had been shot in the back, and had been shot with his hands up in surrender “entered an information vacuum” as the police agency’s release of information was “erratic and infrequent.”³⁴⁹ The police practitioner may face varying degrees of incongruity between the values and norms of communities, perceptions of individual officers’ conduct in particular circumstances, and the realities of permissible conduct. The missteps of the Ferguson police illustrate several principles of legitimation that practitioners should bear in mind when confronted with disputed conduct that is not clearly malfeasance.

There are at least three principles to consider when unable to fully conform to the expectations of a social group after a controversial incident involving individual officer conduct. The police practitioner’s first rule must be to maintain a healthy level of legitimacy in the communities they serve. When controversial incidents occur, a foundation of trust and authority may dampen passions and defer judgments. As discussed throughout this thesis, that means conforming to social values and norms when possible and exerting social influence when not. When facing perceived but unproven misconduct, a second lesson is to conform to the relevant social group’s values and norms when and where possible. In Ferguson, conforming could have meant removing Brown’s body in a more timely manner and withholding the information about his involvement in a potential robbery until a later time. The release of information is a common issue when managing institutional responses in contentious situations, and it ties into the last principle for practitioners. The police agency must actively participate in influencing the narrative that emerges after a controversial incident. Such exertion of influence must be tactful, sincere, and transparent. The practitioner must communicate swiftly and publicly. The

³⁴⁸ Julie Bosman and Joseph Goldstein, “Timeline for a Body: 4 Hours in the Middle of a Ferguson Street,” *New York Times*, August 23, 2014, <https://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html>; Alan Scher Zagier, “Ferguson Police Chief Cedes Much of His Authority,” Associated Press, August 16, 2014, <https://apnews.com/article/e7b1bcbde46942a9a7032b74ba8804ba>.

³⁴⁹ David von Drehle, “The Long, Tangled Roots of the Michael Brown Shooting,” *Time*, August 12, 2014, <https://time.com/3104128/michael-brown-ferguson-cop-shooting-protests/>; Zagier, “Ferguson Police Chief Cedes Much of His Authority.”

community's expectations should be acknowledged and validated, and shared values and norms should be reiterated. Finally, the existing rules of conduct should be explained with an emphasis on the reasons for the rules in light of the necessary function of the police in society and the duties and responsibilities it entails. In sum, when unable to completely conform to the expectations of the community after an incident of perceived misconduct, the police practitioner must rely on pre-existing legitimacy, conform to values and norms to the extent possible, and attempt to influence the narrative through timely communication.

2. Institutional Conduct

When examining the conduct of police institutions, a distinction can be made between strategic actions in pursuit of organizational goals and tactical measures employed in operations. Examples of strategic agency conduct are the pursuit of broken windows policing, the implementation of community policing, or hot spot policing. Tactical agency conduct includes policies, procedures, and practices for affecting arrests, conducting traffic stops, or serving warrants. This section evaluates instances where institutional conduct was perceived as inconsistent with community values and agencies sought to conform to social norms, as well as circumstances where conformity was not possible, and agencies had to attempt to influence expectations instead. In examining strategic conduct cases, it appears that departments are usually willing and able to align their objectives with the expectations of social groups and sovereign institutions. However, the role of the police as a mechanism for non-negotiable coercion in attaining those objectives is generally not sufficiently asserted or considered, potentially giving rise to incongruity and delegitimation. Considering tactical conduct cases, it is apparent that the laws, policies, and procedures guiding permissible conduct are currently under unprecedented scrutiny. This attention to the propriety of police practices is undoubtedly of some benefit. However, the practitioner must guard against groups exerting influence in the community and on sovereign

institutions with the agenda of “disempowering” law enforcement.³⁵⁰ Certain regulations of allowable coercive actions are reasonable and good, but restraints that inhibit officers’ ability to perform their function effectively and confidently must be opposed. Applying the framework for legitimation to institutional conduct, the police practitioner must again ask where perceptions of the agency are incongruous with social groups’ expectations. When and where possible, agency practices should conform to the values and norms of the community. If expectations are incompatible with the function of the police, however, the practitioner must strive instead to influence social groups’ values and norms.

a. *Strategic Institutional Conduct*

The strategic conduct of the Ferguson Police Department prior to the shooting of Michael Brown again provides an example of an institution whose actions were inconsistent with the values and norms of a relevant social group. The DOJ investigation of Ferguson details that law enforcement was systematically used for revenue generation rather than public safety.³⁵¹ This strategic focus led to a “pattern and practice of constitutional violations,” including conducting stops of vehicles and pedestrians without reasonable suspicion, making arrests without probable cause, and using unnecessary force.³⁵² The DOJ report paints a clear picture of a department whose conduct was not only strategically misaligned with community values but who developed an identity that was adversarial to the population. Ferguson was a majority Black community; however, discretionary enforcement actions were disproportionately targeted at members of that social group, a fact exacerbated by the unconstitutional nature of much of the enforcement and the unrepresentative composition of the department.³⁵³ There was also little effort by the department to engage with the community at a social-collective level in order to gain

³⁵⁰ See, e.g., “The Strategy,” For a World Without Police, accessed August 27, 2023, <https://aworldwithoutpolice.org/the-strategy/>; “Transformational Public Safety: Reducing the Roles, Resources, and Power of Police,” ACLU, last modified June 8, 2021, <https://www.aclu.org/news/topic/transformational-public-safety-reducing-the-roles-resources-and-power-of-police>.

³⁵¹ Department of Justice, *Investigation of the Ferguson Police Department*, 9–15.

³⁵² Department of Justice, *Investigation of the Ferguson Police Department*, 15–41.

³⁵³ Department of Justice, *Investigation of the Ferguson Police Department*, 62–63, 88–89.

awareness of social groups' expectations.³⁵⁴ The strategic conduct of the police in Ferguson unavoidably led to deep distrust and resentment, particularly in the Black community.³⁵⁵ The incongruity between the agency's continuous conduct and the social group's values and norms resulted in a pronounced in-group/out-group narrative that undoubtedly contributed to the outrage and unrest following the shooting of Brown. The institutional practices of the Ferguson Police Department illustrate how misalignment with community values undermines legitimacy and highlight that in fulfilling the function of the police, it is critical to balance enforcement with community engagement.

Policing strategies that are widely endorsed and employed in modern American policing occupy a spectrum that ranges from those primarily focused on crime-fighting to those mainly concerned with community relations. Examples of strategic conduct aimed at fighting crime are hot-spot policing, which targets specific areas; intelligence-led policing, which uses information about offenders and victims; and evidence-based policing, which seeks to identify effective crime prevention techniques empirically.³⁵⁶ At the other end of the spectrum is a strategy of institutional conduct that the DOJ report on Ferguson endorsed and found lacking in that city—community policing.³⁵⁷ This strategy has been prominent in American law enforcement since its origins in the late 1960s and has in that time experienced various iterations.³⁵⁸ In its current form, it is defined as “the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of

³⁵⁴ Department of Justice, *Investigation of the Ferguson Police Department*, 86–88.

³⁵⁵ Department of Justice, *Investigation of the Ferguson Police Department*, 79–81.

³⁵⁶ See, e.g., “Hot Spots Policing,” Center for Evidence-Based Crime Policy, George Mason University, accessed August 27, 2023, <https://www.policechiefmagazine.org/changing-the-face-crime-prevention/>; Rich LeCates, “Intelligence-Led Policing: Changing the Face of Crime Prevention,” *Police Chief*, October 17, 2018, <https://www.policechiefmagazine.org/changing-the-face-crime-prevention/>; Lawrence W. Sherman, *Evidence-Based Policing* (Washington, DC: National Policing Institute, 1998) <https://www.policinginstitute.org/publication/evidence-based-policing/>.

³⁵⁷ Department of Justice, *Investigation of the Ferguson Police Department*, 90.

³⁵⁸ President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, DC: U.S. Government Printing Office, 1967), 99–103, <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/42.pdf>; Kenneth J. Peak, *Encyclopedia of Community Policing and Problem Solving* (Los Angeles, CA: SAGE Publications, 2013), 52–58, https://archive.org/details/encyclopediaofco0000unse_i3n7/page/n18/.

crime.”³⁵⁹ It focuses heavily on community partnerships, which, from a perspective of legitimation, means engaging with social groups to determine their values and norms and aligning agency conduct with them.³⁶⁰ For the purpose of legitimation, police practitioners must maintain a balance between police functions and community engagement when determining the strategic orientation of their agencies. Crime-fighting strategies typically incorporate aspects of community engagement or may exist alongside community policing efforts. However, if in their pursuit of law enforcement functions, agencies lose touch with the values and norms of the social groups they serve, as was the case in Ferguson, they will suffer delegitimation. On the other hand, if agencies focus solely on community policing and fail to assert their role as law enforcement, they will likewise suffer delegitimation because their function as the state’s mechanism of non-negotiable coercion will become incongruous with their perceived identity.

The rise, fall, and potential revival of the institutional strategy of police conduct known as broken windows policing illustrates the difficult balance practitioners face between responding to community concerns and realizing the role of law enforcement. The broken windows theory emerged in the 1980s and soon gained widespread acceptance among police departments.³⁶¹ Some partially credit it with the steep crime decline in many of America’s cities in the 1990s and 2000s.³⁶² The theory posits that order maintenance, in keeping with community norms, prevents crime, and perhaps more importantly, reduces the fear of crime.³⁶³ Though essentially an effort to align institutional police conduct with the expectations of particular areas and neighborhoods, broken windows has been

³⁵⁹ Community Oriented Policing Services, *Community Policing Defined* (Washington, DC: Department of Justice, 2014), 3, <https://portal.cops.usdoj.gov/resourcecenter/RIC/Publications/cops-p157-pub.pdf>.

³⁶⁰ Community Oriented Policing Services, *Community Policing Defined*, 3.

³⁶¹ James Q. Wilson and George L. Kelling, “Broken Windows,” *Atlantic Monthly*, March 1982, 29–38, <https://cdn.theatlantic.com/media/archives/1982/03/249-3/132638105.pdf>.

³⁶² See, e.g., Matt DeLisi, “Broken Windows Works,” *City Journal*, May 29, 2019, <https://www.city-journal.org/article/broken-windows-works>; Charles Murray, “In the Decade before Crime Rose, ‘Broken Windows’ Policing Stopped,” *Washington Post*, August 1, 2023, <https://www.washingtonpost.com/opinions/2023/08/01/broken-windows-policing-crime-trends/>.

³⁶³ Wilson and Kelling, “Broken Windows.”

disparaged and vilified. Some academics and activists argue that adherence to the theory did little to prevent crime and instead resulted in biased over-policing and over-incarceration of minority groups.³⁶⁴ In the face of such criticism, agencies have largely abandoned the strategy. However, as urban centers attempt to recover from the disarranging effects of the COVID-19 pandemic, community appeals for increased order maintenance and even a return to broken windows policing have grown.³⁶⁵ The framework for legitimization can provide some insight into the dynamics of the rise and fall of broken windows theory, and the course of action practitioners should take in answering calls for its return.

Order maintenance strategies, as with all police strategies, must remain aligned with social groups' values and norms. Initially, the broken windows theory was presented in a manner that could be considered a form of community policing.³⁶⁶ However, the coercive nature of police work and the particular tactics that would be employed to maintain order seem to have been little discussed as the theory gained popularity and was widely adopted by departments. Meanwhile, in the name of "fixing broken windows," some agencies doubled down on enforcement strategies that went far beyond the social groups' expectations—they failed to maintain the balance between community engagement and enforcement. Officers' aggressive actions and overreliance on arrests became incongruous

³⁶⁴ See, e.g., Bernard E. Harcourt, *Illusion of Order: The False Promise of Broken Windows Policing* (Cambridge, MA: Harvard University Press, 2005); Bench Ansfield, "How a 50-Year-Old Study Was Misconstrued to Create Destructive Broken-Windows Policing," *Washington Post*, December 19, 2019, <https://www.washingtonpost.com/outlook/2019/12/27/how-year-old-study-was-misconstrued-create-destructive-broken-windows-policing/>; "End Broken Windows Policing," Campaign Zero, accessed August 27, 2023, <https://web.archive.org/web/20161214134834/http://www.joincampaignzero.org/brokenwindows/>.

³⁶⁵ See, e.g., Lisa Fickenschner, "Midtown Merchants Plead with Hochul to Clamp Down on Skyrocketing NYC Crime," *New York Post*, April 6, 2022, <https://nypost.com/2022/04/06/midtown-merchants-plead-with-hochul-to-clamp-down-on-skyrocketing-nyc-crime/>; Peter Hermann, "Residents, Business Owners Confront DC Officials over Chinatown Crime," *Washington Post*, August 5, 2023, <https://www.washingtonpost.com/dc-md-va/2023/08/05/chinatown-crime-dc-police/>; Post Editorial Board, "Restore 'Broken Windows' Policing to Close the Window on Crime," *New York Post*, July 26, 2023, <https://nypost.com/2023/07/26/restore-broken-windows-policing-to-close-the-window-on-crime/>; Murray, "In the Decade before Crime Rose."

³⁶⁶ Wilson and Kelling describe how the police function of order maintenance evolved into "community relations" and how agencies moved away from that function in the 1960s and 70s to assume the role of crime fighters. They recommend a return to order maintenance, in keeping with "the standards of the neighborhood." Wilson and Kelling, "Broken Windows," 33–38.

with social groups' values and norms, and agencies came to be perceived as oppositional out-groups rather than part of an in-group pursuing joint good. It is in the rise of this incongruity that broken windows policing appears to have failed—not in theory, but in application. The lesson is that to avoid delegitimation, practitioners must always remain aware of community expectations and adjust strategic conduct as they are able. It should, however, be acknowledged that there is inherent tension between the essence of law enforcement and liberal values. As expressed by Carl B. Klockars, police work is by its nature unpalatable to many in society; therefore, community policing may become a mechanism of “concealment and circumlocution,” a form of rhetoric that “wraps police in the powerful and unquestionably good images of community, cooperation, and crime prevention.”³⁶⁷ Such rhetoric invariably leads to delegitimation, and the practitioner must guard against it. In determining and pursuing institutional strategies, the communities that agencies serve must be engaged and institutional conduct aligned to their expectations; however, the actual function of law enforcement must be simultaneously asserted and incorporated into mutual objectives. Finally, for social groups to properly understand the implications of strategic police conduct, it is essential that they also have an awareness of the tactical conduct that constitutes the actions officers take in pursuit of strategic objectives. The next section examines examples of such tactics.

b. Tactical Institutional Conduct

In order to acquire and retain legitimacy, the tactical conduct of police agencies must be perceived as congruent with the values and norms of relevant social groups. When agencies are not so aligned, practitioners should strive to conform to the expectations of the community or work to influence expectations to be consistent with police tactics. There is another possibility: sovereign institutions with the power to dictate agency conduct, influenced by social groups or special interests, may mandate the modification or cessation of controversial tactics. After the murder of George Floyd, such mandates were issued in

³⁶⁷ Carl B. Klockars, “The Rhetoric of Community Policing,” in *Community Policing: Rhetoric or Reality?*, ed. Jack R. Greene and Stephen D. Mastrofski (New York: Praeger Publishers, 1988), 257, https://archive.org/details/communitypolicin0000unse_n2c9.

progressive jurisdictions throughout the country—in response to resounding demands for police reform, new legislation regulating the tactical conduct of officers was passed. These regulations, to varying degrees, imposed stricter limits on actions officers were allowed to take in the performance of their duty. Common examples of such constraints were banning chokeholds, forbidding no-knock warrants, prohibiting pursuits, and narrowing search and seizure rules. Some laws codified policies already in existence; others set new significant limits on permissible conduct. This section will look at examples in Washington State and Washington, DC, to determine where new restrictions were inconsistent with prior police practices, where they conformed to community values and norms, and where they impeded the ability of law enforcement to fulfill its function. It will also consider which actions practitioners should take when faced with the prospect or the actuality of the imposition of such restrictions.

Vehicular pursuits are a contested topic in American law enforcement. Some jurisdictions have long placed a very high bar on when officers are authorized to engage in pursuits; other agencies have no restrictions and leave the choice to officers' discretion. Restrictive policies are more common in dense urban areas where there is more likely to be intervening traffic and pedestrian activity. The potential risk and cost of pursuits are significant, especially if they are high speed, and several advocacy groups have been urging to restrict them for many years.³⁶⁸ In Washington State, prior to 2021, state law only required reasonable suspicion to chase a fleeing suspect, and it was left to individual local agencies to impose further policies regulating their members' conduct.³⁶⁹ When a police reform bill passed in 2021, it changed the standard required to engage in a vehicular pursuit to probable cause, a much higher burden of proof than reasonable suspicion, necessitating

³⁶⁸ See, e.g., Zachary Crockett, "The Case for Banning High-Speed Police Chases," *Priceonomics*, July 22, 2015, <https://priceonomics.com/the-case-for-banning-high-speed-police-chases/>; Cat Brooks, "High-Speed Police Pursuits Have No Place in Public Safety," *Prism*, July 12, 2022, <https://prismreports.org/2022/07/12/high-speed-police-pursuits-no-place-public-safety/>; "About," *Pursuit for Change*, accessed August 27, 2023, <https://pursuitforchange.org/>; "Working to Prevent the Tragedy of Unnecessary Police Pursuits," *Pursuit Safety*, accessed August 27, 2023, <https://pursuitsafety.org/>.

³⁶⁹ Donald W. Meyers, "Union Gap, Yakima Police Say Public Safer If Pursuit Policies Restored," *Yakima Herald-Republic*, February 2, 2023, https://www.yakimaherald.com/news/local/crime_and_courts/union-gap-yakima-police-say-public-safer-if-pursuit-policies-restored/article_5b8e3936-a26a-11ed-b23f-237945e32a88.html.

that officers be able to articulate sufficient facts to justify an arrest for a violent crime or driving under the influence.³⁷⁰ The Metropolitan Police Department of Washington, DC, on the other hand, had for several decades equated engaging in pursuits to the use of deadly force against fleeing felons, requiring an immediate threat of death or serious bodily harm, probable cause for a felony, and consideration of danger to the public.³⁷¹ In 2022, DC's legislative body, the DC Council, passed an act that largely mirrored MPD's policy, requiring a crime of violence and immediate threat of death or serious bodily injury.³⁷² However, the new law also stipulated that pursuits could not be "likely to cause death or serious bodily injury to any person," a provision that essentially outlawed most any pursuit since they inherently pose a risk of serious injury to the fleeing suspect.³⁷³

The Washington State and Washington, DC, cases show both the breadth of pursuit policies and the similarity in efforts to limit the tactics available to police officers in progressive jurisdictions. In both instances sovereign institutions took steps to materially affect the operations of the police in order to align them with their perceptions of their constituencies' values and norms. Law enforcement in both jurisdictions had to conform to the new regulations. However, law enforcement in both jurisdictions continued to exert influence on their respective sovereign bodies and on the values and norms of their community.³⁷⁴ Police practitioners throughout Washington State engaged the residents they served in meetings, published articles, and posted to social media, speaking plainly about the change to their ability to pursue suspects without probable cause and for non-

³⁷⁰ Washington State Legislature, House Bill 1054, Sec. 7., July 25, 2021, <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1054-S.SL.pdf?q=20230827130457>.

³⁷¹ Metropolitan Police Department, General Order 301.03, February 25, 2003 (in the author's possession).

³⁷² Code of the District of Columbia, § 5-365.02(Perm), April 21, 2023, [https://code.dccouncil.gov/us/dc/council/code/sections/5-365.02\(Perm\)](https://code.dccouncil.gov/us/dc/council/code/sections/5-365.02(Perm)).

³⁷³ Code of the District of Columbia, § 5-365.02(Perm), (a)(2)(B).

³⁷⁴ See, e.g., Drew Mikkelsen, "Law Enforcement Push Legislators to Roll Back Restrictions on Police Pursuits before Session Ends," KING 5, March 22, 2023, <https://www.king5.com/article/news/local/law-enforcement-push-rollback-police-pursuit-restrictions-lawmakers-olympia/281-ca2c51f6-7a15-4ead-a099-9d97974a6c5a>.

violent crimes.³⁷⁵ MPD engaged directly with the DC Council to clarify the intent of the language in the reform bill limiting pursuits.³⁷⁶ Through these influencing efforts, practitioners in both jurisdictions were able to have the relevant legislation amended to less severely affect their ability to fulfill the function of the police in their communities. In Washington State, the reasonable suspicion threshold was reinstated, and several crimes were added to the list of offenses for which officers could pursue.³⁷⁷ In DC, language was added to the statute clarifying that prohibition on pursuits likely to result in the death or serious bodily injury to any person did not include suspects in fleeing vehicles.³⁷⁸ These examples involving pursuit laws demonstrate that police practitioners should remain engaged at the collective level both with the social groups they serve and with their superior sovereign bodies. In that engagement, they must oppose legislation that hinders their agencies' ability to fulfill the function of the police. However, if such legislation is passed, practitioners must influence social values and norms to realign with the necessities of their expected role and thereby prompt amendments to overly restrictive laws.

The police reform legislation put forth in Washington State and Washington, DC, in the years following George Floyd's murder also placed restrictions on officers' tactical conduct when using force. Two provisions in particular proved incompatible with the function of the police as the state's mechanism of non-negotiable coercion. In Washington State, a new law enumerated limited circumstances when police officers were allowed to

³⁷⁵ See, e.g., Andy Hwang, "Modification to the Police Reform Laws of 2021," *Federal Way Mirror*, March 18, 2022, <https://www.federalwaymirror.com/opinion/modification-to-the-police-reform-laws-of-2021-police-chief-andy-hwang/>; Meyers, "Union Gap, Yakima Police Say Public Safer If Pursuit Policies Restored"; Cal FitzSimmons, "Sheriff's Office Says Police Pursuit Law Again Allowed Suspect to Escape," *NCW Life*, December 21, 2021, https://www.ncwlife.com/news/sheriff-s-office-says-police-pursuit-law-again-allowed-suspect-to-escape/article_4825d2e7-0a7f-5850-92f0-59db5952b0ee.html; "State Patrol Says Troopers Were Unable to Pursue Wrong Way Driver Because of New Law," *KOMO News*, July 29, 2021, <https://komonews.com/news/local/state-patrol-says-troopers-were-unable-to-pursue-wrong-way-driver-because-of-new-law>.

³⁷⁶ Council of the District of Columbia, "Twelfth Legislative Meeting," video, 3:36:52, July 11, 2023, https://dc.granicus.com/MediaPlayer.php?view_id=3&clip_id=8387.

³⁷⁷ Washington State Legislature, Senate Bill 5352, May 3, 2023, <https://lawfilesexxt.leg.wa.gov/biennium/2023-24/Pdf/Bills/Senate%20Passed%20Legislature/5352.PL.pdf?q=20230824173700>.

³⁷⁸ Council of the District of Columbia, DC Act 25-174, July 20, 2023, <https://code.dccouncil.gov/us/dc/council/acts/25-174#§2>.

use force: when having probable cause to effect an arrest, to prevent escape from custody, and to protect against an imminent threat of bodily injury to the officer or another person.³⁷⁹ Given that the very purpose of the police is to intervene with force on behalf of the state in a myriad of unforeseeable circumstances, this extreme stricture immediately caused alarm among many of the state’s law enforcement practitioners.³⁸⁰ Two common circumstances that were identified as problematic were the inability to stop suspects based only on reasonable suspicion that they committed a crime and the inability to assist with the detention and hospitalization of persons experiencing mental health crises when there was no imminent threat of injury.³⁸¹ As the new law went into effect, these scenarios bore out.³⁸² In addition to limiting when officers could use force, Washington State’s statute banned chokeholds and neck restraints.³⁸³ The succinct provision received no notable pushback as it specified that neither airways nor blood flow were to be restricted by applying pressure to the neck.³⁸⁴ DC’s new statute went well beyond those requirements and has proven incompatible with MPD’s role as the mechanism of the state’s monopoly on the use of force.

Prior to the passage of the new law, MPD already had strict model policies in place regarding the use of chokeholds and neck restraints, and the new law again largely mirrored

³⁷⁹ Washington State Legislature, House Bill 1310, Sec. 3., July 25, 2021, <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/1310-S2.SL.pdf?q=20230827140612>.

³⁸⁰ See the analysis of Bittner’s work in Section II.B.1.; Amy Radil, “‘Cultural Changes Ahead’ for Police in Washington State, as Controversial Reform Laws Take Effect,” KUOW.org, July 26, 2021, <https://www.kuow.org/stories/washington-s-new-police-reform-laws-now-in-effect>.

³⁸¹ Radil, “‘Cultural Changes Ahead’ for Police in Washington State.”

³⁸² See, e.g., Gene Johnson, “Confusion Besets New Police Reform Laws in Washington State,” Associated Press, July 26, 2021, <https://apnews.com/article/health-police-death-of-george-floyd-laws-washington-5f2d6f4fc511db52496ffb1ba3ade382>; Daniel Gilbert, “In a Shopping Center Parking Lot, a Dying Man Exposes a Gap in Washington’s Police Reform,” *Seattle Times*, last modified December 21, 2021; <https://www.seattletimes.com/seattle-news/times-watchdog/in-a-shopping-center-parking-lot-a-dying-man-exposes-a-gap-in-washingtons-police-reform/>; David Kroman, “King County Crisis Services Ask For Clarity on Police Intervention,” *Crosscut*, September 30, 2021, <https://crosscut.com/news/2021/09/king-county-crisis-services-ask-clarity-police-intervention>; Jake Goldstein-Street, “Deputy Faults State Law after Woman Stabs Social Worker near Bothell,” *HeraldNet*, February 7, 2022, <https://www.heraldnet.com/news/deputy-faults-state-law-after-woman-stabs-social-worker/>.

³⁸³ Washington State Legislature, House Bill 1054, Sec. 2.

³⁸⁴ Washington State Legislature, House Bill 1054, Sec. 2.

those policies.³⁸⁵ At the time the legislation was being considered, the director of the city’s Office of Police Complaints went on record stating that he was very satisfied with the low number of neck restraints alleged against MPD.³⁸⁶ The DC Council, however, took the law a step further, including language defining a neck restraint as any pressure against a person’s neck “with the purpose, intent, or effect of controlling or restricting the person’s movement” and making this action unlawful.³⁸⁷ Unlike prior policy and the standards of other jurisdictions such as Washington State, DC, forbade not only restricting persons’ airways and blood flow but any contact with any part of the neck that had the effect, whether intended or not, of controlling or restricting their movement. The incompatibility of DC’s law with the necessities of police work is reflected in the number of serious use of force cases MPD has reported since the permanent law on chokeholds took effect in April of 2023.³⁸⁸ The agency is required to publish body-worn camera footage of all such cases, and at the time of this writing in August of 2023, twenty serious uses of force have been posted by MPD.³⁸⁹ All but three of these involve incidental or negligible neck contact as officers struggled to secure resistant and assaultive subjects. None involved the restriction of subjects’ airways or blood flow—none were actually chokeholds or neck restraints, as those terms are commonly understood. In comparison, in the twelve months preceding the new statute, only five serious uses of force were reported, and only two were neck

³⁸⁵ Jodie Fleischer, “DC Police Banned Neck Restraints Years Ago; Council Wants to Make Law Clear,” NBC4, June 8, 2020, <https://www.nbcwashington.com/news/local/dc-police-banned-neck-restraints-years-ago-council-wants-to-make-law-clear/2326479/>.

³⁸⁶ Fleischer, “DC Police Banned Neck Restraints Years Ago.”

³⁸⁷ Code of the District of Columbia, Title 5, Chapter 1, Subchapter XIII. Limitation on Chokehold, April 21, 2023, <https://code.dccouncil.gov/us/dc/council/code/titles/5/chapters/1/subchapters/XIII>.

³⁸⁸ The bill was passed in December of 2022 on its first and second readings. It was sent to Congress for review in January 2023 and became effective on April 21, 2023. MPD’s first published video in compliance with the new law was published on April 18, 2023. Council of the District of Columbia, DC Law 24-345, Title 1, Subtitle A, April 21, 2023, <https://code.dccouncil.gov/us/dc/council/laws/24-345>; Washington DC Metropolitan Police Department, “Videos,” YouTube, accessed August 25, 2023, <https://www.youtube.com/@OfficialDCPolice/videos>.

³⁸⁹ Counted were incidents titled “Serious Use of Force” and “Officer Involved Shooting.” Of the three incidents that were not neck restraints, two were cases where the subject lost consciousness, and one was an officer-involved shooting. Washington DC Metropolitan Police Department, “Videos.”

restraints—both of a more serious nature.³⁹⁰ Not only are officers who make brief and incidental neck contact now being investigated administratively, but they are subject to a criminal allegation that is referred to the U.S. Attorney’s Office for prosecutorial review and are exposed to the possibility of revocation pending that determination.

Both Washington State and Washington, DC, were left facing use of force standards incompatible with effectively performing the role of the police in society. The former could not use force except in a limited prescribed set of circumstances, frustrating both officers and citizens as criminals walked away and behavioral health patients were left untreated. The latter subjected officers to criminal liability every time they went hands-on with a combative subject and incidentally touched a neck during the affray. As they did with the pursuit restrictions, practitioners in Washington State remained vocal about the inability of officers to fulfill their public charge. Ten months after the law was enacted that restricted when the police could use force, the legislature amended the statute, explicitly allowing the use of force in investigative stops without probable cause and when taking persons in crisis into custody.³⁹¹ The law in DC remains unchanged, and though MPD is undoubtedly engaging directly with the Council to amend the language in their statute, the time may come when there must be a public appeal to make the legal liability officers face in the ordinary discharge of their duties known. The cases concerning the use of force legislation in Washington State and DC once again make clear the importance of having a solid legitimacy foundation with the social groups that comprise the community and with the sovereign institutions that can materially affect police conduct. Equally important is that those social groups and sovereign bodies have an understanding of the function of the police as the embodiment of the state’s monopoly on the legitimate use of force. Officers must be able to discharge this duty effectively and confidently.

³⁹⁰ Washington DC Metropolitan Police Department, “Videos.”

³⁹¹ Gene Johnson, “Washington Governor Signs Rollback of Police Reform Bill,” OPB, March 17, 2022, <https://www.opb.org/article/2022/03/17/washington-inslee-signs-rollback-of-police-reform-bill/>; Washington State Legislature, House Bill 2037, March 17, 2022, <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/House/2037-S.SL.pdf?q=20230827150423>.

The laws in Washington State and Washington, DC, concerning pursuits and uses of force examined in this section demonstrate that though tactical police conduct must be congruent with social groups' values and norms, it must also enable law enforcement to fulfill its role effectively and confidently. While there are reasonable limits on police tactics, when legislatures pass restrictions that hinder or discourage police officers from discharging their duty as the state's mechanism of non-negotiable coercion, dilemmas emerge. There is then no state-empowered entity to intervene and assist in situations that the community expects to see handled. This deficiency may lead to further delegitimation of the police and of the state. To so disempower law enforcement is the goal of organizations whose agendas have influenced law-making bodies in progressive jurisdictions.³⁹² Though agencies must conform when superior sovereign bodies pass restrictions, practitioners should also continue to engage and influence both lawmakers and the public about the police function. Through direct advocacy and public information campaigns, police leaders can reassert their ability to use necessary tactics in the maintenance of public safety and order.

C. EXPRESSIONS OF CONSENT

Expressed consent as a requisite for legitimacy is not widely discussed in the literature on police legitimation. In individual interactions, it is prudent that officers seek consent when able. However, as has been discussed at length in this thesis, the core function of the police is quite the opposite of seeking consent; it is to be the state's mechanism for non-negotiable coercion. At the social-collective level, though, it is clear that consent is a necessary element of legitimacy, as argued by Beetham. He proposed that evidence of consent is a requisite part of the definition of legitimacy.³⁹³ Per Beetham, acts of consent are not purely symbolic but actually confer legitimacy.³⁹⁴ Aside from the literature,

³⁹² E.g., "About the Defund MPD Coalition," Defund MPD, accessed August 27, 2023, <https://www.defundmpd.org/about>; "Defund Seattle Police," Decriminalize Seattle, accessed August 27, 2023, <https://decriminalizeseattle.com/>. See, For a World Without Police, "The Strategy."

³⁹³ Beetham, *The Legitimation of Power*, 16.

³⁹⁴ Beetham, *The Legitimation of Power*, 91.

expressed consent at the social-collective level is also not widely discussed within law enforcement, and even conceiving what it would look like is challenging. Officers may assume that the mere existence of the police implies that the community consents to their authority. That assumption is of course not necessarily valid for all social groups in a community. Consent is also sure to fluctuate within social groups as legitimacy beliefs about the police are formed based on perceptions of congruity with groups' values and norms. It is, therefore, a matter that practitioners should consider. This section analyzes examples of expressed consent in the political realm as given by Beetham and conceptualizes how they might or might not apply to the legitimation of the police.

There are a few examples Beetham relays that are not easily applied to law enforcement. The most obvious of these are oaths of allegiance.³⁹⁵ In the United States, it is nonsensical to imagine citizens taking oaths to obey police authority. Rather, in a sense, officers take an oath to the citizens—to support and defend the Constitution, the power of which derives from the popular sovereignty of “We the people.”³⁹⁶ Another example that only applies to law enforcement in limited and indirect ways is elections.³⁹⁷ Some police leaders are directly elected in the United States—sheriffs commonly are, and some small-town chiefs are as well.³⁹⁸ It could also be said that the election of local executive leaders, such as mayors and city councils, indirectly influences consent to the authority of the police, but that is a tenuous conclusion. There is no indication in the literature or observed experience that public consent expressed through the election of political leaders conveys to law enforcement. Public acclimation is another example that does not immediately seem

³⁹⁵ Beetham, *The Legitimation of Power*, 92.

³⁹⁶ U.S. Constitution, preamble. See Andrew G. I. Kilberg, “We the People: The Original Meaning of Popular Sovereignty,” *Virginia Law Review* 100, no. 5 (September 2015): 1061–1109, <https://www.jstor.org/stable/pdf/24362715>. The state is “of the people, by the people, and for the people,” and the state empowers the police to use legitimate force against the people; this system gives rise to the *servant and master* dilemma mentioned by Tim Newburn. Abraham Lincoln, “Gettysburg Address,” Library of Congress, November 19, 1863, <https://www.loc.gov/resource/rbpe.24404500/?st=text>; Newburn, “The Inevitable Fallibility of Policing,” 443–44.

³⁹⁷ Beetham, *The Legitimation of Power*, 92.

³⁹⁸ Gaby Del Valle and Francisco Navas, “The Police We Vote For: How Americans Can Shape Criminal Justice with a Ballot,” *Guardian*, June 26, 2020, <https://www.theguardian.com/us-news/2020/jun/26/us-police-americans-polls-criminal-justice>.

applicable to the police, but it may have some limited potential. Beetham describes this act of consent as “demonstrations of popular support and mass mobilization,” such as at a rally.³⁹⁹ It is possible that being cheered while participating in events such as parades or ceremonies confers some small measure of consent from those cheering the police. It would perhaps be beneficial for practitioners to seek out such opportunities. Common police rituals, such as awards ceremonies and promotions traditionally held behind closed doors for internal audiences, could be conducted in community forums to encourage public acclimation. A final application of public acclimation may be the wider promotion of holidays honoring the police. Congress declared October 28, 2019, as “Honoring the Nation’s First Responders Day,” and several police-support organizations have designated January 9 as “National Law Enforcement Appreciation Day.”⁴⁰⁰ There is opportunity to expand the profile of such days of recognition to foster public acclimation, consent, and thereby legitimacy.

Two examples of expressed consent are more easily applied to policing. Consultations or negotiations are described as discussions about an institution’s policies or services that result in an agreement.⁴⁰¹ According to Beetham, such discussions result “not only in an agreement on the part of the subordinate to support the policy or observe the terms agreed, but an implication that they acknowledge the authority of the powerful more generally, and this act itself confers legitimacy.”⁴⁰² An existing best practice for police agencies is the establishment of citizen advisory boards that assess performance and provide advice to police leadership from a community perspective.⁴⁰³ Their role resembles

³⁹⁹ Beetham, *The Legitimation of Power*, 93–94.

⁴⁰⁰ Rachel Engel, “Origin story: National First Responders Day,” FireRescue1, October 18, 2022, <https://www.firerescue1.com/national-first-responders-day/articles/origin-story-national-first-responders-day-hWdwQqSAsvEx7KbP/>; “January 9, 2015 is National Law Enforcement Appreciation Day,” DC.gov, January 5, 2015, <https://dc.gov/release/january-9-2015-national-law-enforcement-appreciation-day>.

⁴⁰¹ Beetham, *The Legitimation of Power*, 93.

⁴⁰² Beetham, *The Legitimation of Power*, 93.

⁴⁰³ President’s Task Force on 21st Century Policing, *Final Report*, 46; John G. Reece and Judy Macy, “Citizen Advisory Boards in Contemporary Practice: A Practical Approach in Policing,” *Police Chief*, accessed August 27, 2023, <https://www.policchiefmagazine.org/citizen-advisory-boards-in-contemporary-practice-a-practical-approach-in-policing/>.

the consultation or negotiation function. To succeed and to foster consent, however, such boards must be representative of the consequential social groups served by a police agency and must be visible and discernable in the community. To stimulate vibrant advisory boards that contribute to acquiring consent, practitioners should deliberately consider the represented social groups and make every effort to publicly promote boards' activities as reflective of those groups. As recommended by Beetham, practitioners should also strive to produce tangible agreements that can serve as a basis for social groups' conferral of legitimacy. The last example of expressed consent, the contract, is similar in nature to an agreement but carries formal commitments and consequences for breach. While it is not possible to enter into formal contracts with the community, the police practitioner may consider entering into informal contracts—agreements that have more ceremony attached than those emerging from advisory boards and committee meetings. These could be symbolic documents agreed to in a ritualized manner, which may earn a measure of the consent reserved for formal contracts.

Applying the element of expressed consent to circumstances and instances of police-community relations is unconventional and not straightforward. The ideas briefly presented in this section are only intended to stimulate further exploration of the concept. Actively seeking collective-level consent from the social groups police departments serve may be an area of opportunity for practitioners. As with the elements of constitution and conduct, practitioners should consider where legitimacy is lacking, why it is lacking, and then conform to social groups' values and norms or work to influence them. Seeking consent is a potential form of community engagement that could provide the police with valuable insight into groups' expectations and also significantly contribute to groups aligning their values and norms to the function of police in society.

D. CONCLUSION

This chapter has examined instances and circumstances that affected the authority of police departments and used the framework for legitimation to analyze how those situations developed and unfolded. Many of the reviewed events were likely familiar to the reader, and the objective was not to uncover new examples or to treat them

comprehensively. Rather, the aim was to observe the events from a perspective of legitimacy formation and depletion. The framework for legitimation provides the police practitioner with a foundational understanding of the concept of legitimacy and the social dynamics that form it. In its application, the practitioner must ask where their authority and right to dictate behavior falls short, why they are perceived as incongruent with social groups' values and norms, and how they might engage with those groups to remedy those shortfalls. Through the analysis of the examples in this chapter and the application of the framework, several themes emerged. First, engagement with the social groups that an agency serves must be intentional and continuous, both to conform the agency's institutional conduct to the expectations of the community and to influence groups' perceptions and beliefs to align with the function of the police. Second, the 'conform or influence' construct is powerful and pragmatic, providing a simple but profound device for understanding the dynamics affecting perceptions and beliefs and for informing practitioners' courses of action. Third, while engaging with social groups—while conforming and influencing, the role of law enforcement must be continuously, clearly, and confidently asserted so that expectations are not incongruous with the function of the police in society. These lessons represent fundamental concepts that practitioners can apply to varied challenges as they pursue the legitimation of the police.

VI. FINDINGS, RECOMMENDATIONS, AND CONCLUSION

This thesis sought to provide law enforcement practitioners with clarity and confidence when contending with challenges to the legitimacy of their departments. As a concept, legitimacy has a rich and deep history—it is nuanced and complex, both in its formulation and application. However, as understood and applied to the police, the concept has been limited and diluted. A review of the prevalent literature provided a foundational understanding of legitimacy’s empirical and normative aspects and demonstrated its multidimensional nature. The primary objective of this thesis was to construct a framework for the legitimation of the police through an analysis and synthesis of classical and contemporary scholarship. In that effort, four elements were identified as crucial components: the definition of legitimacy, the assertion of the function of the police, the recognition of distinct social groups, and the implementation of strategies for legitimation. This chapter will briefly review the findings associated with these elements of the framework for legitimation. It will then offer recommendations on methods of engagement practitioners may tailor to their communities.

A. A FRAMEWORK FOR THE LEGITIMATION OF THE POLICE

The analysis of classical and contemporary scholarship in Chapters II and III made clear that an adequate definition is foundational to understanding and utilizing the concept of legitimacy. A definition of the concept for law enforcement was therefore determined to be the first element of the framework for legitimation developed in Chapter IV. This research indicated that to arrive at an operational definition, both its empirical and normative characteristics must be considered. However, these considerations should be sequential. First, practitioners should use a formulation that asks whether certain social groups believe their agencies to be legitimate, and if groups do not, they should ask why. So that the definition, as a whole, reads as follows:

An institution is legitimate to the degree to which an audience perceives it as having the authority and right to dictate the audience’s behavior and to the degree to which an audience perceives it as being congruent with the audience’s values and norms.

As a complement to the use of this definition, analysis of the relevant literature, particularly the work of Egon Bittner reviewed in Chapter II, elucidated the importance of understanding the function of the police in society. As the second element of the framework for legitimation, the role of law enforcement was further examined in Chapter IV. This research revealed the necessity of asserting the function of the police as the state's mechanism of non-negotiable coercion at every step of legitimation. Practitioners must be able to competently and confidently explain the necessity and desirability of this function in society. The need for an institution empowered with the state's monopoly on force discomforts citizens and many police practitioners and is a topic often avoided in favor of focusing on law enforcement's ancillary activities. However, incongruities between community expectations and the realities of police work only lead to further delegitimization.

The contemporary literature on the effects of narratives and social identity on legitimacy formation that was analyzed in Chapter III prompted the third element of the framework to focus on distinct audiences. This element was developed in Chapter IV, and this research indicated that identifying social groups that comprise the communities that agencies serve is crucial to legitimation. Social groups arise from the self-identification and self-categorization of individuals based on certain characteristics they share with others.⁴⁰⁴ They are powerful motivators of individual behavior, as members align their actions with the values and norms that will earn in-group prestige. As such, it is crucial that practitioners engage them at the collective level. Whether or not social groups perceive the police as aligned with their values and norms is likely the greatest predictor of whether individual members of that group will believe the police to be legitimate. Another audience that cannot be disregarded is comprised of those superior institutions that have the power to materially affect agencies' power and resources. Sovereign bodies are themselves in legitimating dialogue with the community's social groups and are influenced by special interest groups and other institutions. In order to earn and retain the legitimacy of their

⁴⁰⁴ Tajfel and Turner, "The Social Identity Theory of Intergroup Behavior," 15.

agencies, police practitioners must consistently engage with relevant social groups and their superior institutions.

The last element of the framework developed in Chapter III built on the research of social groups and social identity. This further work delved into the formation of social groups' values, norms, and beliefs and identified strategies for practitioners to employ in that realm to achieve police legitimacy. It is of crucial importance that social groups perceive institutions as congruous. To that end, legitimation strategies must seek to either conform to groups' values and norms or influence them to align with the role of the police and the realities of the profession. The final section of Chapter III revealed that managing such strategies becomes even more challenging in times of social change when norms are reevaluated. Practitioners must remain aware of the cultural environment and participate in the formation of narratives.⁴⁰⁵

The application of the framework for legitimation to real-world examples in Chapter V highlighted certain themes. First was the importance of intentional and continuous engagement with agencies' various audiences. Such engagement must occur so that practitioners know how to align when they seek to conform to community values and so that practitioners may in turn have an avenue to influence norms that are incompatible with the function of the police. The pragmatic power of the 'conform or influence' construct was the second significant takeaway from the application of the framework. It provides a simple but profound mechanism for understanding the factors influencing legitimacy formation and for guiding practitioners' actions to that end. Finally, the examination of incidents and circumstances from the vantage of the framework underscored that the function of the police in society must be consistently asserted as practitioners engage with social groups and sovereign bodies. While the consideration of the examples in Chapter V was not comprehensive, it demonstrated that the framework for legitimation provides concrete insights into the dynamics that shape communities' legitimacy beliefs.

⁴⁰⁵ Suchman, "Managing Legitimacy," 595.

B. RECOMMENDATIONS

This thesis has established that it is critical for police practitioners to continuously engage with their communities' social groups and sovereign bodies in order to build and maintain legitimacy. Through the application of the framework for legitimation to varied examples, it has examined benefits of succeeding in such engagement and consequences of failing. However, the framework has operationally remained at a conceptual and theoretical level. The manner in which particular engagements should occur has not been described in detail. This lack of specificity is due, in part, to the immense diversity of social groups in American communities, the vast variation in local and state governance systems, and the significant cultural and operational differences found in the nation's law enforcement agencies. Effective means and methods of engagement will be unique in each jurisdiction and may even depend on individual practitioners' strengths and personality traits. Based on the findings of this thesis related to the framework for legitimation, the remainder of this section provides general recommendations for methods of engagement that may provide a catalyst for actions practitioners can tailor to their communities.

First, an example of engagement already widely employed by agencies throughout the country is holding Citizen Police Academies (CPAs).⁴⁰⁶ Considered part of an approach to community policing, CPAs consist of agencies hosting groups of citizens for several evenings or weekends over several weeks. During those sessions, community members will learn about the organization, operations, procedures, and role of their police department. They should also contribute to a reciprocal relationship between citizens and officers, one of the hallmarks of a successful community policing strategy.⁴⁰⁷ When hosting CPAs, however, it is not evident that agencies consistently consider the social groups they are targeting and selecting to participate in academies, nor that they sufficiently convey the societal role of the police during

⁴⁰⁶ Michael E. Breen and Brian R. Johnson, "Citizen Police Academies: An Analysis of Enhanced Police–Community Relations Among Citizen Attendees," *The Police Journal* 80, no. 3 (September 2007): 246–66, <https://doi.org/10.1350/pojo.2007.80.3.246>; Chris Brown, "Next-Gen Citizen's Police Academies," *Police Chief*, July 31, 2019, <https://www.policechiefmagazine.org/next-gen-citizens-police-academies/>.

⁴⁰⁷ Breen and Johnson, "Citizen Police Academies," 246–48; W. T. Jordan, "Citizen Police Academies: Community Policing or Community Politics?," *American Journal of Criminal Justice* 25, no. 1 (September 2000): 93–94, <https://doi.org/10.1007/BF02886813>.

academies.⁴⁰⁸ For CPAs to be an effective tool for legitimation, practitioners must be intentional in both the selection of participants and the communication of the police function. Left to proceed along natural tendencies, those who choose to participate in academies will be citizens who are already well disposed to the police and part of social groups in little need of having agencies conform to them or influence them. An example of intentional outreach to a specific social group is providing CPAs in Spanish to Latino community members, a practice that is increasingly embraced.⁴⁰⁹ Messaging about the role of the police must be unambiguous, but CPAs should also be used as an opportunity to align agencies with characteristics of their communities that are not incompatible with that role. When conducted with consideration and introspection, CPAs present an excellent form of engagement that legitimizes law enforcement.

Hosting or attending community meetings is another widespread form of police engagement. Departments may hold their own police-community meetings for particular beats, or officers may participate in regular meetings held by civic associations, community improvement organizations, or local government bodies. While such gatherings often target specific social groups because they are attended by residents of certain geographic areas or even hosted by social groups themselves, they do not often involve meaningful dialogue about the role of the police in society. When hosted by other organizations, the time dedicated to law enforcement is generally limited and focused on crime trends or specific incidents, or meetings are centered around community concerns about particular events. While they may present opportunities to communicate conformity with community values, practitioners are less likely to see such meetings as favorable venues to influence social groups to align their norms with the function of the police. When given the chance, however, practitioners should

⁴⁰⁸ E.g., W. T. Jordan, “Citizen Police Academies,” 99–102.

⁴⁰⁹ See, e.g., Francisco Sandoval Alarcón, “Ante un Aumento del Crimen, así Busca Acercarse la Policía Metropolitana de DC a los Latinos,” *El Tiempo Latino*, August 22, 2023, <https://eltiempolatino.com/2023/08/22/local/ante-un-aumento-del-crimen-asi-busca-acercarse-la-policia-metropolitana-de-dc-a-los-latinos/>; 11Alive, “Brookhaven Relaunches Citizens Police Academy for Spanish-Speakers,” video, 2:01, YouTube, July 8, 2023, <https://www.youtube.com/watch?v=HWlAjGnPDjw>; Carrollton Texas Police Department, “OUR CITIZEN POLICE ACADEMY IS BACK! (¡En español también!),” video, 3:45, Facebook, March 17, 2022, <https://www.facebook.com/CarrolltonTXPD/videos/la-academia-de-polic%C3%ADa-para-la-comunidad-en-espa%C3%B1ol/978826006091019/>.

seek openings to speak clearly and confidently about the role of the police in the context of addressing community concerns. Practitioners should also seek additional forums to intentionally discuss the role of the police in society. An excellent example of that type of engagement is a series of video-recorded interviews titled “LAPD—Know Your Rights,” published by the Los Angeles Sentinel, a newspaper serving L.A.’s African-American community.⁴¹⁰ In these pieces, two Black sergeants were interviewed about citizens’ rights and how citizens should conduct themselves during encounters with the police. The advice they gave was pragmatic and directly addressed the function of the police. Practitioners should actively pursue such opportunities to engage social groups in legitimating dialogue in their homecourts.

A last recommendation concerns engagement with superior institutions. The form such engagement takes depends on variables ranging from political associations, local government structures, and compatibility of personalities. In jurisdictions where police unions hold sway, including at the state and national levels, they commonly take the lead in lobbying for police interests.⁴¹¹ Their efforts often occur behind closed doors, and there is a perception that their interest is to excuse inappropriate officer conduct and to preserve improper power at all costs. Lacking from the national dialogue is a rational and considered voice that confidentially asserts the function of the police, that is willing to conform to local community values when appropriate, and that has the temperance to influence norms when they conflict with the function of the police. Progressive think tanks and activist organizations aiming to disempower law enforcement have dominated the influence of sovereign bodies in America’s large cities, especially in those jurisdictions that lack politically powerful unions. This thesis suggests that a respected national bodies representing forward thinking that is aligned with the function of the police should take as active a role in influencing local governing

⁴¹⁰ “LAPD—Know Your Rights,” *Los Angeles Sentinel Newspaper*, March 1, 2019, <https://lasentinel.net/lapd-know-your-rights-pt1.html>.

⁴¹¹ Noam Scheiber, Farah Stockman, and J. David Goodman, “How Police Unions Became Such Powerful Opponents to Reform Efforts,” *New York Times*, June 6, 2020, <https://www.nytimes.com/2020/06/06/us/police-unions-minneapolis-kroll.html>; Paige Fernandez and Nicole Zayas Fortier, “Protect People, Not Police Lobbyists,” *ACLU*, June 1, 2021, <https://www.aclu.org/news/criminal-law-reform/protect-people-not-police-lobbyists>.

institutions as unions and the ACLU. An obvious candidate for that role would be the Major Cities Chiefs Association, and organizations such as the Police Executive Research Forum and the National Policing Institute are also poised to take on that responsibility.⁴¹² These groups do excellent research and leadership development, advancing the law enforcement profession. They also lobby extensively at the national level. Similar efforts would be of great benefit at the local level—where legitimacy is generally gained or lost. They should not engage in backroom lobbying but should engage sovereign bodies openly and transparently in dialogue that confirms the necessity and desirability of the police function in society, thus contributing to the legitimation of the police.

This thesis concludes by offering practical recommendations to advance police legitimacy grounded in its conceptual framework. First, CPAs can be optimized for legitimation by intentionally targeting diverse social groups and unambiguously conveying law enforcement’s societal role. Second, practitioners should leverage community meetings to candidly discuss policing functions while also pursuing opportunities in other forums to engage key social groups. Finally, national police leadership organizations should transparently assert the necessity of proper policing when influencing legislative and oversight bodies at the local level, providing an alternative to closed-door union lobbying. While tailored engagement strategies are required for each jurisdiction, these recommendations aim to catalyze efforts to align agencies with community values and norms. By applying such intentional practices, police practitioners can foster open dialogue and mutual understanding necessary for the legitimation of the police.

C. FUTURE RESEARCH

The framework for legitimation developed in this thesis is firmly grounded in conceptual analysis of scholarship on the topic. Its application to real-world examples showed it to be both robust and adaptable. However, the framework would benefit from rigid empirical

⁴¹² “About,” Major Cities Chiefs Association, accessed September 2, 2023, <https://majorcitieschiefs.com/about/>; “About PERF,” Police Executive Research Forum, accessed September 2, 2023, <https://www.policeforum.org/about-us/>; “About Us,” National Policing Institute, accessed September 2, 2023, <https://www.policinginstitute.org/about-us/>.

testing of its elements. In applying the various aspects of legitimacy and social identity theory to law enforcement, informed and well-reasoned inferences were made. The application of the framework to various case studies was informative but informal. Both the construction of the framework and its use to explain and assist in the legitimation of the police require confirmational research. The focus of this thesis was also very much on policing in the United States, and it concentrated on urban municipal policing. Future research could more explicitly broaden the framework's application to state and federal agencies and law enforcement in other countries. This thesis' conceptual and theoretical work is intended as a starting point for the legitimation of the police, not its final destination.

D. FINAL THOUGHTS

Law enforcement is enduring an era of heightened scrutiny and evolving social perspectives on policing. The profession has in recent years experienced a legitimacy crisis as the prevalent methods of building community trust and cultivating authority have fallen short in the face of concerted efforts to disempower the police. Police agencies that lack legitimacy not only lead to local disorder and instability but have diminished capacity to contribute to the homeland security project, increasing vulnerability to threats that impact the nation as a whole. Through a detailed analysis of legitimacy's multi-dimensional nature and a synthesis of scholarship on the social dynamics that contribute to its formation, this thesis presented a framework for the legitimation of the police. Practitioners must be aware of their communities' beliefs and perceptions and balance their values and norms against the necessities of the law enforcement function. Engagement at the social-collective level is complex and arduous, but it must be continuous and intentional. With the strategic acumen the framework provides, practitioners can promote dialogue that asserts the function of the police, conforms to compatible community values, influences incompatible social norms, and achieves the legitimation of the police.

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