

CRIMINOLOGY

NOT YOUR FATHER'S POLICE DEPARTMENT: MAKING SENSE OF THE NEW DEMOGRAPHICS OF LAW ENFORCEMENT

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I. INTRODUCTION

Several decades ago, when social scientists were discovering the police, and the Supreme Court was beginning to construct the modern law of criminal procedure, American law enforcement was structured roughly the same way it is today. Policing was largely a local responsibility. Departments were organized hierarchically and quasi-militarily. Line officers exercised wide discretion. Patrol and detective functions were separated, and most officers were assigned to patrol. Detectives, like supervisors, started out as patrol officers and were promoted from within. The critical operational unit was the squad: a handful of line officers supervised by a sergeant, or in the case of detectives, by a lieutenant. Officers generally began police work when young and made it their career. All of this remains true today. "As a legal and organizational entity," David Garland is right to observe, "the public police look much the same today as they did thirty years ago."¹

* Professor of Law, University of California, Berkeley. Ann Carlson first focused my attention on the topics I address here, and Frank Zimring helped me develop and sort out my ideas. For criticism and assistance along the way, I also owe thanks to Gillian Lester, Justin McCrary, Anjuli McReynolds, Michael Musheno, Katherine Saral, Jerry Skolnick, Joel Willard, Leti Volpp, and Stephen Yeazell; to workshop participants at the Center for the Study of Law and Society at U.C. Berkeley; and to the UCLA and U.C. Berkeley law libraries.

¹ DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 169 (2001).

In other respects, though, American policing has been transformed. Three changes are particularly notable. First, the mantra of community policing has replaced the orthodoxy of police professionalism. Second, civilian oversight, once resisted tooth-and-nail by the police, has become unexceptionable. Third, and most striking of all, police workforces have grown much more diverse. The virtually all-white, virtually all-male departments of the 1950s and 1960s have given way to departments with large numbers of female and minority officers, often led by female or minority chiefs. Openly gay and lesbian officers, too, are increasingly commonplace. Today's Los Angeles Police Department is not the homogeneous workplace celebrated on *Dragnet*—and neither is the police force of any other large American city.

This article focuses on the last of these changes, the dramatic shift in the demographics of police departments—in who the police *are*. What implications should this transformation have for how we think about and regulate the police? The same question can, and should, be asked about community policing and civilian oversight. But workforce diversity is at once the most dramatic and the least scrutinized major change that American policing has undergone over the past several decades. There is a widespread sense that the change has been revolutionary,² but it is hard to know quite what to make of it. So often the change is simply ignored. Law enforcement is analyzed as though it were still monolithically white, male, and straight.³ The *Dragnet* picture of American law enforcement continues to lurk, in particular, in the background of most criminal procedure scholarship—even when that scholarship pays careful attention to the race, gender, and sexual orientation of the people *being* policed.

Those scholars who have *not* ignored the new demographics of American policing have tended to reach one of two polar conclusions about their implications. Either the growing diversity of American police forces changes almost nothing, or it changes almost everything. Usually the new demographics are treated as cosmetic or, at best, largely symbolic. The nature of policing, the argument goes, is overwhelmingly a matter of occupational outlook and organizational culture, not of the personal characteristics of new recruits. “Blue is blue”: the job shapes the officer, not the other way around.⁴ Officers of all backgrounds are assumed either

² See, e.g., DAVID H. BAYLEY, *POLICING IN AMERICA: ASSESSMENT AND PROSPECTS* 3 (1998), available at <http://www.policefoundation.org/pdf/Bayley.pdf>.

³ See, e.g., KENNETH BOLTON JR. & JOE R. FEAGIN, *BLACK IN BLUE: AFRICAN-AMERICAN POLICE OFFICERS AND RACISM* 2, 4 (2003) (noting that “[i]n many discussions of policing, all the law enforcement officers are, implicitly or explicitly, taken to be white”).

⁴ See, e.g., SAMUEL WALKER, CASSIA SPOHN & MIRIAM DELONE, *THE COLOR OF JUSTICE:*

to make peace with the “white, masculine, heterosexual ethos”⁵ of policing, or to have difficulty lasting. At the other extreme, the growing diversity of American police forces is sometimes cited as grounds for a complete rethinking of criminal procedure and, more generally, our entire approach to law enforcement. Here the line of thinking is that the integration of police forces, coupled with the increased political power of minority groups, has made the restrictions the Supreme Court placed on law enforcement in the 1960s obsolete. The “great theme of the Warren Court,” that “the criminal justice system had to be massively reformed to protect the constitutional rights of all citizens,” makes little sense now that police departments, and the political establishments that oversee them, reflect the diversity of the communities they serve.⁶

I argue here for a less categorical assessment. The transformation of law enforcement workforces is far from complete, and it does not come close to justifying a complete overhaul of criminal procedure—in part because the transformation may in fact be slowing. Still, the demographics of law enforcement have already altered dramatically, and the consequences are profound.

This article has three parts. The first part describes how the makeup of police workforces has changed over the past several decades. The short answer is that the workforce has grown much more diverse with regard to race, with regard to gender, and more recently with regard to sexual orientation—but that the pace of change has varied greatly from department to department, and virtually all departments have a good ways left to go.

The second part of the article assesses the effects of the changes that have already occurred in law enforcement demographics. I consider three different categories of effects: *competency effects* (ways in which minority officers, female officers, and openly gay and lesbian officers may have distinctive sets of abilities), *community effects* (ways in which the demographic diversity of a police department may affect its relations with

RACE, ETHNICITY AND CRIME IN AMERICA 111-12, 115 (2d ed. 2000) (summarizing research).

⁵ Kristen A. Myers et al., *Officer Friendly and the Tough Cop: Gays and Lesbians Navigate Homophobia and Policing*, 47 J. HOMOSEXUALITY 17, 18 (2004); see also, e.g., JAMES W. MESSERSCHMIDT, MASCULINITIES AND CRIME 184 (1993) (arguing that “the police construct a white, heterosexual form of hegemonic masculinity”).

⁶ Craig Bradley, *The Middle Class Fourth Amendment*, 6 BUFF. CRIM. L. REV. 1123, 1126-28 (2003).

In a category by himself, there is John Lott, who argues that police diversity has been purchased at a sobering cost: higher crime rates, particularly in minority neighborhoods. See John R. Lott, Jr., *Does a Helping Hand Put Others at Risk? Affirmative Action, Police Departments, and Crime*, 38 ECON. INQUIRY 239 (2000). For a discussion of Lott's findings, see *infra* text accompanying notes 76-77.

the community it serves), and *organizational effects* (ways in which the workforce diversity may affect the internal dynamics of the department itself). Of these three categories of effects, the last one has received the least attention but is probably the most important. In particular, there is mounting evidence—increasingly commonplace among police ethnographers, but largely unfamiliar to legal academics and the broader public—that the demographic transformation of American law enforcement has done much to break down the police subculture, by weakening both the occupational solidarity and the social insularity of the police. When police departments began adopting affirmative action policies three decades ago, even some police officials sympathetic to the policies worried about factionalism and a decline in *esprit de corps*. As it has turned out, though, the decline in occupational solidarity is very good news. Police effectiveness does not appear to have suffered, a range of police pathologies have been ameliorated, and police reform has grown easier and less perilous.

The third and last part of the article explores the ramifications of the changing demographics of law enforcement. I focus on four sets of ramifications. The first set concerns affirmative action. Here law enforcement appears to be a striking success story, but a success story in danger of ending prematurely. The evidence is strong that the demographic transformation of American law enforcement over the past few decades owes much to race-conscious remedies, typically imposed pursuant to consent decree or other court order. There are lessons here for the broader debate over affirmative action, and grounds for concern about future progress integrating police departments as court-ordered hiring and promotion plans expire or are rescinded. The second set of implications concerns the debate over litigation as a strategy for social reform. Here, again, the integration of police departments is a noteworthy success story—one that casts doubt on sweeping generalizations about the ineffectiveness of courts in catalyzing social large-scale change. The third set of ramifications concerns police reform. Here the lessons are twofold: continued diversification of law enforcement workplaces deserves more attention as a key component of police reform, and the diversification already accomplished should prompt reconsideration of avenues of reform previously thought too dangerous because of the solidarity and insularity of the police. The fourth and final set of implications concerns criminal procedure. The changing demographics of American law enforcement fall far short of making Warren Court criminal procedure obsolete, but they do justify more careful and nuanced thinking about race, gender, and sexuality dynamics in policing.

There is a story running through this article, about a profound insight ossifying into orthodoxy. The insight in this case was that police behavior is overwhelmingly determined by a homogeneous occupational subculture, a subculture shaped by the nature of the job itself and marked by paranoia, insularity, and intolerance. This became the orthodox view of the police for good reason: it had tremendous explanatory power when it was first developed in the late 1950s, and made even more sense by the end of the 1960s, as the police felt themselves increasingly under siege. Even today, police solidarity and insularity are hardly things of the past. But neither are they what they used to be. In large part because of the demographic transformation of law enforcement, police officers are far less unified today and far less likely to have an “us-them” view of civilians. But our beliefs about the police have had trouble keeping pace with the changes on the ground. We still tend to believe that police behavior is shaped by a monolithic professional subculture, to which all recruits either assimilate or fall victim. That belief has made it hard for us to see the ways in which policing has changed as police officers themselves have changed—the ways in which the new diversity of police workforces has altered the dynamics of law enforcement.

II. CHANGES

How have the demographics of American police departments changed since the 1960s? The short answer is by quite a lot, although not as much as might be hoped, and at a widely varying pace. That is the short answer with regard to race, with regard to gender, and with regard to sexual orientation. But the details of the three stories differ.

A. RACE

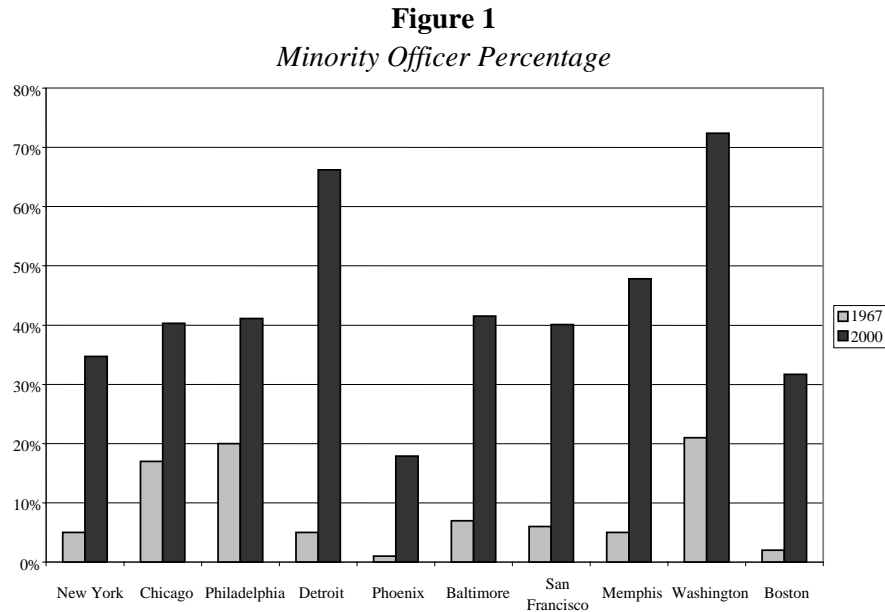
American police departments are far more racially integrated today than they were in the 1960s. In 1970, blacks made up somewhere around six percent of sworn officers in the three hundred or so largest American police departments; today that figure is around eighteen percent.⁷ In cities with populations over 250,000, twenty percent of sworn officers are black, and fourteen percent are Latino—up from figures of eighteen percent and nine percent, respectively, in 1990.⁸ In 2005, for the first time in the history

⁷ See Justin McCrary, *The Effect of Court-Ordered Hiring Quotas on the Composition and Quality of Police* 44 (Nov. 30, 2003) (unpublished manuscript), available at <http://www-personal.umich.edu/~jmccrary/mccrary2004.pdf>.

⁸ See BRIAN A. REAVES & MATTHEW J. HICKMAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *POLICE DEPARTMENTS IN LARGE CITIES, 1990-2000*, at 3 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pdlc00.pdf>. This report compiles figures from the

of the New York City Police Department, a majority of the new officers graduating from its academy were members of racial minorities.⁹

Figure 1 shows the change, since the 1960s, in the minority percentage of a sampling of major American police forces:¹⁰



Two things are particularly worth noting about Figure 1. First, the overall pattern is one of dramatic increases in racial diversity. Second, there is a lot of variation among departments: with respect to how diverse they were in the 1960s, with respect to how much they have changed, and with respect to how diverse they are now. Some departments, like Phoenix, are still heavily white. In other departments, like Detroit and Washington, D.C., white officers are now a clear minority.¹¹ Some departments, like

2000 Law Enforcement Management and Administrative Statistics (LEMAS) survey.

⁹ Jennifer 8. Lee, *In Police Class, Blue Comes in Many Colors*, N.Y. TIMES, July 8, 2005, at B2.

¹⁰ The figures for 2000 are from REAVES & HICKMAN, *supra* note 8. The 1967 figures are from NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968).

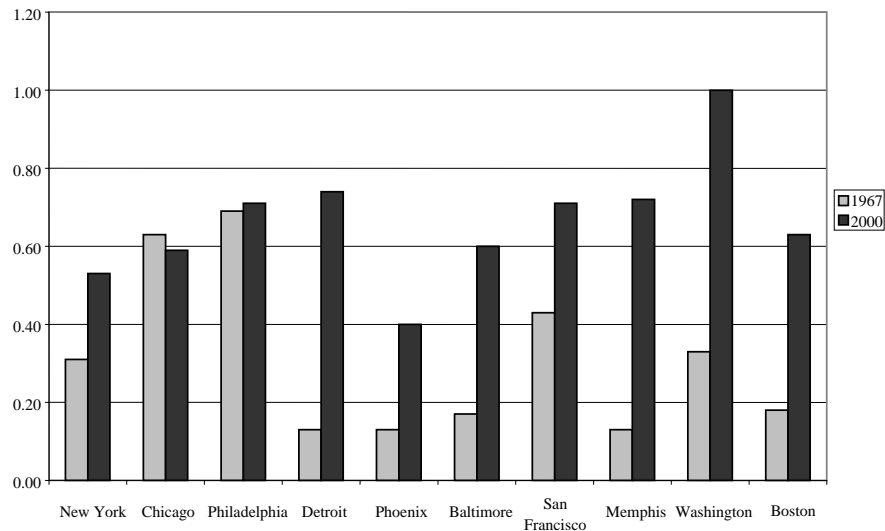
¹¹ Although it does not appear in Figure 1, Los Angeles is also in this category. White officers now constitute slightly less than forty-six percent of the Los Angeles Police Department. See L.A. POLICE DEP'T, LOS ANGELES POLICE DEPARTMENT ANNUAL REPORT, at 27 (2000); REAVES & HICKMAN, *supra* note 8.

Chicago and Philadelphia, were relatively integrated by the standards of the 1960s, but now lag behind other cities in this respect.

Do the increases shown in Figure 1 simply reflect increases in the minority population of the cities in question? They would be noteworthy even if they did, but for the most part they do not. Figure 2 shows the results of dividing the percentages in Figure 1 by the minority percentages of the city populations:¹²

Figure 2

Minority Officer Percentage Divided by Minority Resident Percentage



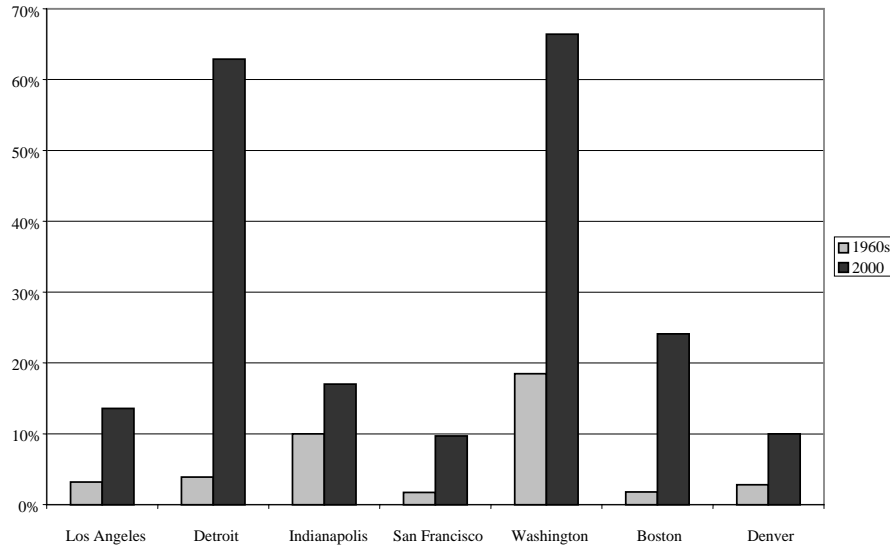
In cities like Chicago and Philadelphia, where there has been little change in the ratio of the minority share of the police department to the minority share of the city population, the increases shown in Figure 1 reflect demographic shifts in the cities themselves. But for most of the cities in this sample, there have been dramatic increases, not only in the minority percentage of the police force, but also in the ratio of that percentage to the minority percentage of the city itself.

One difficulty with comparing figures of these kinds from two different decades is that the definitions of “white” and “minority” have changed, particularly with regard to Americans of Mexican or Latin American heritage. But the basic patterns remain the same if we look

¹² Again, the figures for 2000 are from REAVES & HICKMAN, *supra* note 8, and the figures for 1967 are from NAT’L ADVISORY COMM’N ON CIVIL DISORDERS, *supra* note 10.

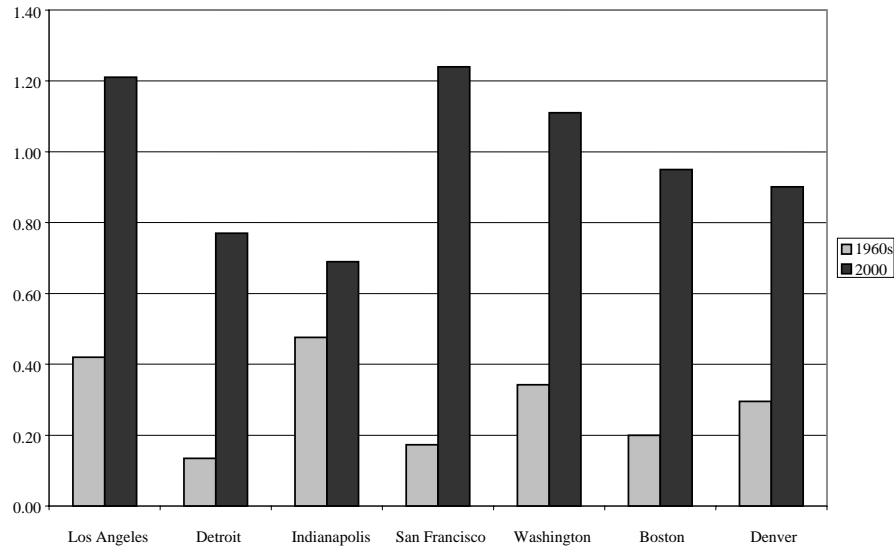
instead at black officers. Figure 3 compares the percentage of black officers in a handful of major American police departments in the 1960s and 2000.¹³ Figure 4 gives the same numbers, divided by the black percentage of the city population.¹⁴

Figure 3
Black Officer Percentage



¹³ The figures for 2000 are from REAVES & HICKMAN, *supra* note 8. The earlier figures for Detroit, Indianapolis, Washington, and Boston are for 1966; they are taken from PRESIDENT'S COMM'N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* (1967). The earlier figure for Denver is from DAVID H. BAYLEY & HAROLD MENDELSON, *MINORITIES AND THE POLICE* 157 (1969). The figure for San Francisco is for 1962; it comes from CAL. ADVISORY COMM. TO U.S. COMM'N ON CIVIL RIGHTS, *POLICE-MINORITY GROUP RELATIONS IN LOS ANGELES AND THE SAN FRANCISCO BAY AREA* (1963).

¹⁴ The denominators are taken from the 1960 census.

Figure 4*Black Officer Percentage Divided by Black Resident Percentage*

Again, the story is one of great variation from city to city, but with a clear overall change in the direction of much more diverse departments.

Figures on the penetration of minority officers into supervisory and command ranks are harder to obtain. Figures from Los Angeles, though, will suggest the nature of the change, at least in one city:¹⁵

¹⁵ L.A. POLICE DEP'T, *supra* note 11, at 27.

Figure 5
LAPD Racial Composition by Rank, 2000

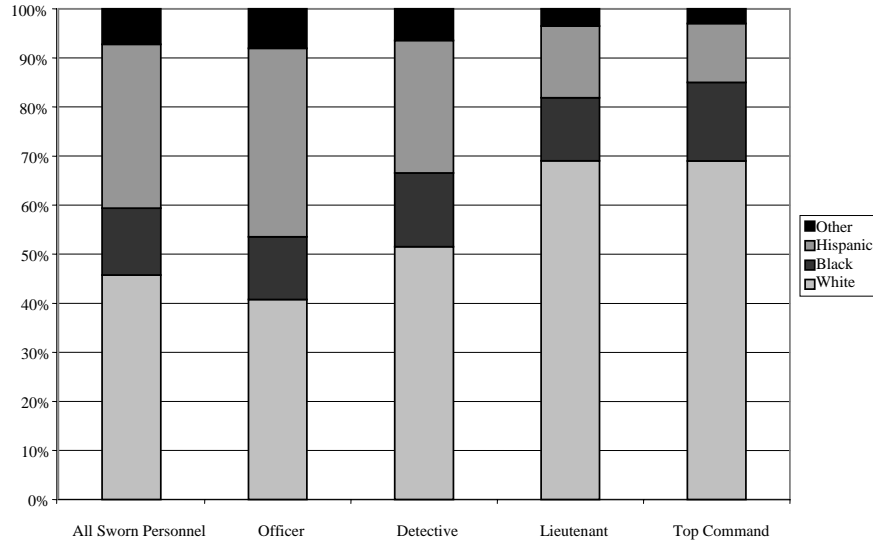
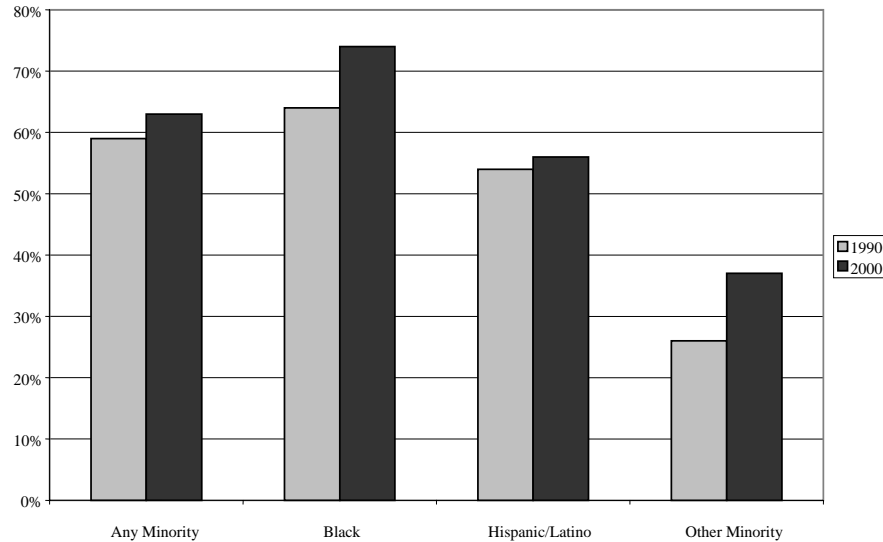


Figure 5 shows that minority officers remain concentrated in the lower ranks of the Los Angeles Police Department. But the degree of concentration is lower than might be expected, in part because black officers, as opposed to minority officers more broadly, are *not* concentrated in the lower ranks. Latino officers, by contrast, *are* strongly concentrated in the lower ranks—at least in part, presumably, because the Latino percentage of the city population has been steadily growing over the past several decades, and with it the Latino percentage of new officers hired by the department. Nationwide, as in Los Angeles, the Latino officer-to-resident ratio lags behind the black officer-to-resident ratio, but leads the corresponding figure for other minorities:¹⁶

¹⁶ Figure 6 is reformatted from REAVES & HICKMAN, *supra* note 8, at 3.

Figure 6
Officer Percentage Divided by Black Resident Percentage



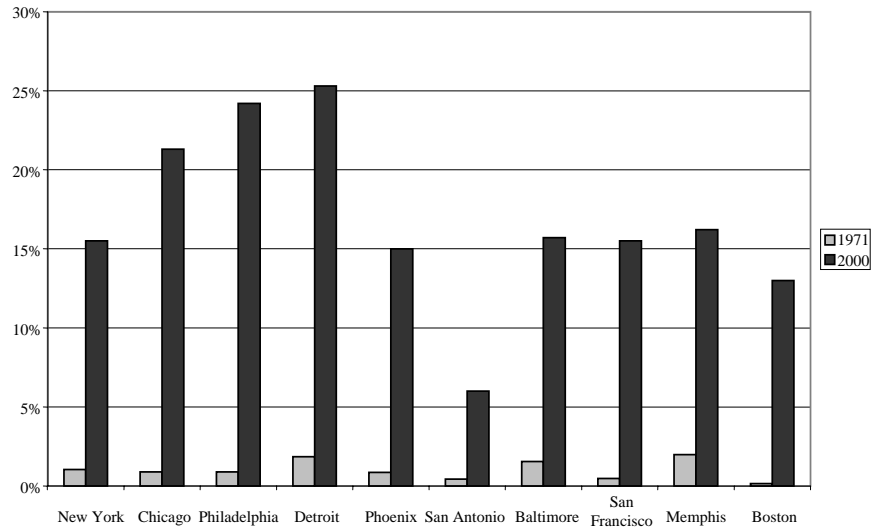
B. GENDER

The basic story about women officers is the same as the story about minority officers: dramatic increases over the past three decades, with tremendous variation between departments. But there is one important wrinkle: whereas the proportion of minority officers in some large departments now approaches or exceeds the minority percentage of the city population, the proportion of women officers tops out at twenty-five percent, and there are indications that this ceiling may remain in place for the foreseeable future.¹⁷

¹⁷ Women comprise a much larger share of the civilian workforce in large police departments. In departments with over one hundred sworn officers, women hold more than two-thirds of the civilian positions—which generally are lower paid and offer fewer opportunities for advancement. See KIM LONSWAY ET AL., *EQUALITY DENIED: THE STATUS OF WOMEN IN POLICING: 2001 8* (2002), available at http://www.womenandpolicing.org/PDF/2002_Status_Report.pdf. Chiefly to save money, American police departments have greatly increased their reliance on civilian employees in recent years; large departments now employ more civilians than sworn officers. See, e.g., REAVES & HICKMAN, *supra* note 8, at 2. The stark gender difference between the two groups—the vast majority of officers are men, and the vast majority of civilian employees are women—both exacerbates and makes more troubling the way in which “civilianization” has tended to create two-tier departments, with civilian employees treated as second-class citizens. For a discussion of this problem in the Los Angeles Police Department, see RAMPART INDEP. REVIEW PANEL, *REPORT OF THE RAMPART INDEPENDENT REVIEW PANEL 62-66* (2000).

Figure 7 compares the percentage of female officers in several large departments in 1971 and 2000.¹⁸ As with racial integration of American police departments, the overall picture is one of dramatic increases in gender integration, with very substantial variation among departments.

Figure 7
Female Officer Percentage



Female officers, like minority officers, remain concentrated in lower ranks—although, once again, the extent and uniformity of the concentration is less than one might expect. Figure 8 shows the numbers calculated by the National Center for Women in Policing (NCWP) for the gender composition of American police forces, by rank, in 2001. Figure 9 shows the breakdown for ten large departments, again based on the data reported to the NCWP. As with the overall degree of gender integration, there is tremendous variation among departments with regard to the penetration of female officers into upper ranks.

¹⁸ The sources are the 2000 LEMAS survey, *supra* note 8, and the 1971 FBI survey of American police departments, *see* FED'L BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES 165-72 (1971).

Figure 8
Gender Composition by Rank, 2001

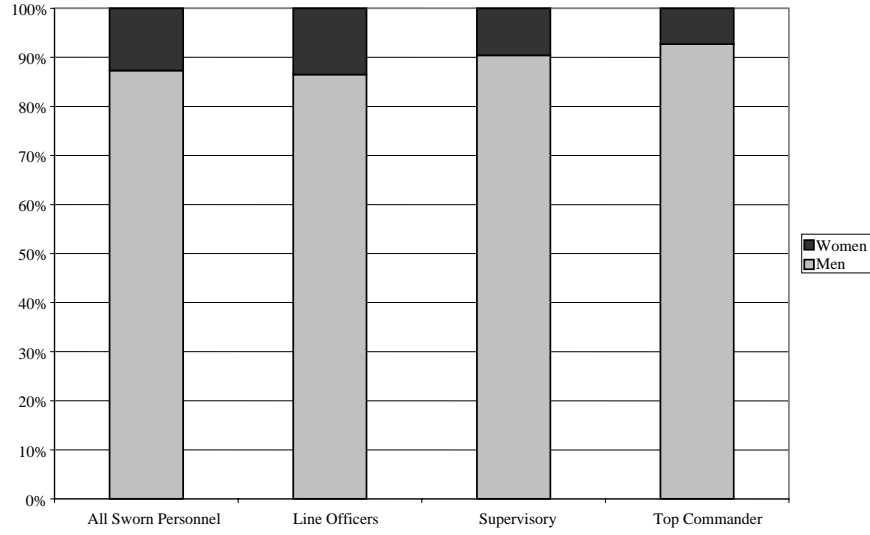
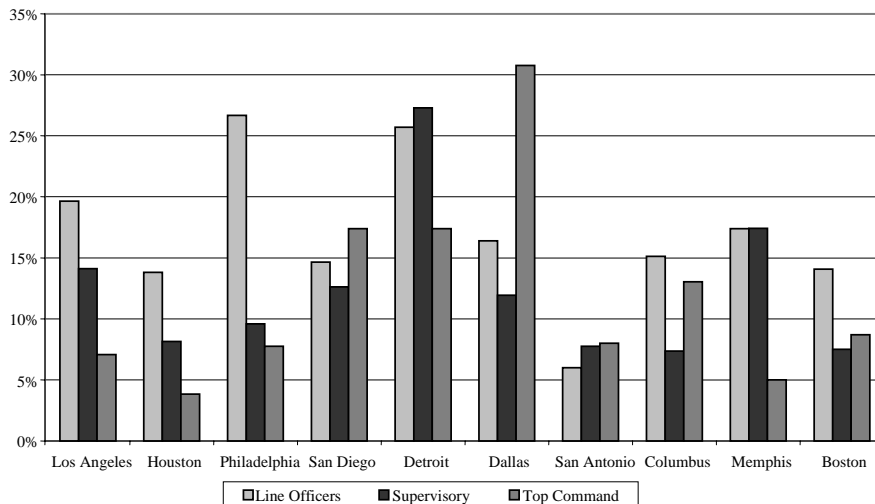


Figure 9
Female Officer Percentage by Rank



C. SEXUAL ORIENTATION

The presence of openly gay and lesbian officers, and even some openly gay and lesbian command staff, in American police departments is a sea change from the situation thirty years ago. San Francisco had no openly gay or lesbian officers as late as 1980; Chicago had none as recently as 1991.¹⁹ Even today, gay and lesbian officers can feel strong pressures to

¹⁹ See STEPHEN LEINEN, *GAY COPS* 11 (1993); Katy Butler, *The Gay Push for S.F. Police Jobs*, S.F. CHRON., Apr. 9, 1979, at A1; Randy Shilts, *Gay Police—“We’re Not All That Different,”* POLICE MAG., Jan. 1980, at 32. The novelist Jonathan Kellerman recalls that he created the character of a gay Los Angeles homicide detective in the early 1980s “because I wanted to avoid clichés, and a gay officer was a revolutionary concept.” Jonathan Kellerman, *Two Identities, But One Compulsion*, N.Y. TIMES, Mar. 31, 2003, at E1. Most police chiefs at the time adamantly opposed hiring gay officers, and “even San Francisco Police Chief Charles Gain, a staunch gay-rights supporter, concede[d], ‘In most cities it would be considered catastrophic to have homosexual police officers.’” Shilts, *supra*, at 32.

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

keep their sexual orientation hidden, or at least unadvertised. This is particularly true for gay male officers.²⁰

It is therefore difficult to estimate the number of gay and lesbian police officers, or even those who are, to a greater or lesser extent, open about their status. The latter category is clearly growing, though, to the point where, in some departments, “the presence of self-disclosed gay and lesbian officers has become normalized.”²¹ Between 1992 and 2001, for example, the number of “self-identified gay men and women” working for the San Diego Police Department increased from five to somewhere between thirty-five and fifty. In San Diego, as elsewhere, as the number of “out” cops has risen, their presence on the force has become increasingly taken for granted.²² The participation of uniformed police officers in gay pride parades is now commonplace, if at times still controversial. And in November 2004, the annual meeting of the International Association of Chiefs of Police included, for the first time, a workshop on gay, lesbian, bisexual, and transgendered officers.²³

III. EFFECTS

American law enforcement has come a long way from the overwhelmingly white, virtually all-male, pervasively homophobic police forces of thirty or forty years ago—although there is still a good way left to go, and the extent of the changes vary greatly from department to department. What have been the effects of this dramatic, if uneven and incomplete, transformation? Let us consider, in turn, three categories of possible effects: *competency effects*, *community effects*, and *organizational effects*. By *competency effects*, I mean distinctive sets of skills and abilities that minority officers, female officers, and gay and lesbian officers may bring to their work. *Community effects* are consequences that integrating a police department may have for the relationship between the department and the community it serves. *Organizational effects* are ways in which the presence of minority, female, and gay and lesbian officers may change the internal dynamics of a police department.

²⁰ See, e.g., DAVID E. BARLOW & MELISSA HICKMAN BARLOW, POLICE IN A MULTICULTURAL SOCIETY 275-76 (2000).

²¹ Belkin & McNichol, *supra* note 19, at 78; see also, e.g., SUSAN L. MILLER, GENDER AND COMMUNITY POLICING: WALKING THE TALK 134 (1999).

²² Belkin & McNichol, *supra* note 19, at 77-83.

²³ See Fox, *supra* note 19, at B11; Laurel J. Sweet, *O'Toole Aims for Gay Cops' Acceptance at Powwow*, BOSTON HERALD, June 21, 2004, at 12.

A. COMPETENCY EFFECTS

The special skills of officers who are not white males have long been an important part of the case for diversifying police departments, dating back at least until the 1960s. *The Challenge of Crime in a Free Society*—the landmark report by President Johnson’s Commission on Law Enforcement and the Administration of Justice—blamed much of the difficulties that police experienced in the inner city on white officers’ “lack of understanding of the problems and behaviors of minority groups,” and on the inability of all-white police departments “to deal successfully with people whose ways of thought and action are unfamiliar.”²⁴ Here, as elsewhere, minority officers were suggested to have two different kinds of special competencies: greater *understanding* of minority communities, and greater *credibility* in minority communities.

Minority officers have long believed that they do, in fact, have these special competencies.²⁵ But the quantitative evidence on this score is actually quite conflicting. There are studies finding that black officers shoot just as often as white officers;²⁶ that black officers arrest just as often as white officers;²⁷ that black officers are often prejudiced against black citizens;²⁸ that black officers get less cooperation than white officers from black citizens;²⁹ and that black officers are just as likely, or even more likely, to elicit citizen complaints and to be the subject of disciplinary actions.³⁰ But there are also studies concluding that black officers get more

²⁴ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 13, at 107.

²⁵ See, e.g., BOLTON & FEAGIN, *supra* note 3, at 6-7, 215-16, 250.

²⁶ See, e.g., James J. Fyfe, *Who Shoots? A Look at Officer Race and Police Shooting*, 9 J. POLICE SCI. & ADMIN. 367, 372 (1981); William A. Geller & Kevin J. Karales, *Shootings of and by Chicago Police: Uncommon Crises, Part I: Shootings by Chicago Police*, 72 J. CRIM. L. & CRIMINOLOGY 1813, 1815 (1981); cf. Albert J. Reiss, *Police Brutality*, in CRIME AND JUSTICE: THE CRIMINAL IN THE ARMS OF THE LAW 157 (Leon Radzinowicz & Marvin E. Wolfgang eds., 2d ed. 1977) (finding little difference in the likelihood of black and white officers to use force).

²⁷ See Robert E. Worden, *Situational and Attitudinal Explanations of Police Behavior: A Theoretical Reappraisal and Empirical Assessment*, 23 LAW & SOC’Y REV. 667, 700 n.42 (1989).

²⁸ See Jack L. Kuykendall & D.E. Burns, *The Black Police Officer: An Historical Perspective*, 4 J. CONTEMP. CRIM. JUST. 4, 9-10 (1980).

²⁹ See Stephen D. Mastroski et al., *Compliance on Demand: The Public’s Response to Specific Police Requests*, 33 J. RES. CRIME & DELINQ. 269, 289 & tbl. 2 (1996).

³⁰ See BERNARD COHEN & JAN M. CHAIKEN, POLICE BACKGROUND CHARACTERISTICS AND PERFORMANCE xii & tbl. 24 (1972); ANTONY M. PATE & LORIE A. FRIDELL, POLICE USE OF FORCE: OFFICIAL REPORTS, CITIZEN COMPLAINTS, AND LEGAL CONSEQUENCES 102, 155 (1993); Liqun Cao & Bu Huang, *Determinants of Citizen Complaints Against Police Abuse of Power*, 28 J. CRIM. JUST. 203, 209 (2000); Kim M. Lersch & Tom Mieczkowski, *Who Are*

cooperation than white officers from black citizens;³¹ that black officers are less prejudiced against blacks³² and know more about the black community;³³ and that black officers are more likely to arrest white suspects and less likely to arrest black suspects.³⁴ On both sides of this debate, many of the findings are hard to interpret. If, for example, black officers draw more complaints, is that because they act more aggressively, or because they are assigned to tougher beats, or because prejudice makes their assertions of authority seem more objectionable, or because minority citizens feel more comfortable complaining about officers from whom they do not fear retaliation?

The fairest summary of the evidence is probably that we simply do not know whether black officers, or minority officers more generally, bring a significantly different set of pertinent abilities and understandings to their work. But that is not the way the evidence is usually understood. Instead, the evidence is typically viewed as demonstrating that minority officers do not, in fact, differ appreciably in their on-the-job behavior from white officers. The scholarly consensus is that “no evidence suggests that African American, Hispanic, and white officers behave in significantly different ways.”³⁵ Or, as Edward Conlon puts it in his recently published memoir of his work as a New York City police officer, “[o]ver time and in the main, cops tend to think like other cops.”³⁶

The evidence has been understood in this way in part because there is an orthodox, long-standing explanation of why minority officers should be expected to behave the same as white officers. The explanation is occupational ethos and organizational culture. As an influential scholar of policing explained in the mid-1970s, “[t]he pressures for conformity are so strong that the new officer will either be forced into the police subculture,

the Problem-Prone Officers? An Analysis of Citizen Complaints, 15 AM. J. POLICE 23, 33 (1996).

³¹ See Albert J. Reiss, Jr., *Career Orientations, Job Satisfaction, and the Assessment of Law Enforcement Problems by Police Officers*, in 2 STUDIES IN CRIME AND LAW ENFORCEMENT IN MAJOR METROPOLITAN AREAS 81 (Albert J. Reiss ed., 1967).

³² See Donald J. Black & Albert J. Reiss, *Patterns of Behavior in Police and Citizen Transactions*, in 2 STUDIES IN CRIME AND LAW ENFORCEMENT IN MAJOR METROPOLITAN AREAS 132-37, *supra* note 31.

³³ See Rita M. Kelly & Gorman West, *The Racial Transition of a Police Force: A Profile of White and Black Policemen in Washington, D.C.*, in THE URBAN POLICEMAN IN TRANSITION 354, 374-77 (John R. Snibbe & Homa M. Snibbe eds., 1973).

³⁴ See John J. Donohue III & Steven D. Levitt, *The Impact of Race on Policing and Arrests*, 44 J.L. & ECON. 367, 371 & tbl. 2 (2001).

³⁵ WALKER, SPOHN & DELONE, *supra* note 4, at 111; *see also, e.g.*, BARLOW & BARLOW, *supra* note 20, at 249.

³⁶ EDWARD CONLON, BLUE BLOOD 320 (2004).

with the values and orientation of the larger group replacing his own, or his life will be made so unpleasant that he will decide to resign.”³⁷ This view has become pervasive among scholars who study the police, including legal scholars writing about criminal procedure. The governing assumption is that police behavior is determined by “situational and departmental factors,” not by race.³⁸ Nor, for that matter, by gender: the consensus view is that “male and female officers,” like white and black officers, “have been found to behave in roughly similar ways.”³⁹

In fact, the quantitative evidence regarding the differential performance of women officers, like the corresponding evidence about minority officers, is equivocal. Several studies have found that female officers are slightly less proactive than male officers but otherwise behave substantially the same.⁴⁰ Other studies have found no differences whatsoever.⁴¹ Still other studies have concluded that female officers are substantially less apt to shoot or to use excessive force,⁴² and significantly more helpful to victims of domestic violence.⁴³ There are also studies,

³⁷ HERMAN GOLDSTEIN, *POLICING A FREE SOCIETY* 259 (1977).

³⁸ WALKER, SPOHN & DELONE, *supra* note 4, at 111; *see also, e.g.*, JOHN L. COOPER, *THE POLICE AND THE GHETTO* 29-53, 116-19, 125-28 (1980); Ellis Cashmore, *Black Cops Inc.*, in *OUT OF ORDER?: POLICING BLACK PEOPLE* 87, 104-08 (Ellis Cashmore & Eugene McLaughlin eds., 1991); Reiss, *supra* note 26, at 157; *cf.* Janet Chan, *Changing Police Culture*, 36 *BRIT. J. CRIMINOLOGY* 109, 110 (1996) (“Conspiracy theory aside, the most powerful and currently popular explanation for the recalcitrance of police organizations to change has been to postulate the existence of a ‘police culture.’”).

³⁹ Chan, *supra* note 38, at 110; *see also* COMM. TO REVIEW RES. ON POLICE POLICY & PRACTICES, FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 147 (Wesley Skogan & Kathleen Frydl eds. 2004) (reporting the “received wisdom from the research community . . . that whatever influence race and gender may exert on behavior is overwhelmed by the unifying effects of occupational socialization”).

⁴⁰ *See* PETER B. BLOCH & DEBORAH ANDERSON, *POLICEWOMEN ON PATROL: FINAL REPORT* 2-3 (1974); JOYCE SICHEL ET AL., *WOMEN ON PATROL: A PILOT STUDY OF POLICE PERFORMANCE IN NEW YORK CITY* 28-31 (1978); Lewis J. Sherman, *An Evaluation of Policewomen on Patrol in a Suburban Police Department*, 3 *J. POLICE SCI. & ADMIN.* 434, 435 (1975).

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

⁴² *See* INDEP. COMM’N ON THE L.A. POLICE DEP’T, *REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT* 83-84 (1991); Frank Horvath, *The Police Use of Deadly Force: A Description of Selected Characteristics of Intrastate Incidents*, 15 *J. POLICE SCI. & ADMIN.* 226, 229 (1987).

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

though, suggesting that women officers may be *more* apt to shoot than male officers.⁴⁴ Again, many of these findings are difficult to interpret: the greater helpfulness of female officers to domestic violence victims may simply reflect the fact that female officers tend to be better educated than male officers and are more likely to be single.⁴⁵

Whereas minority officers tend to believe that they do in fact have special competencies—specifically, understanding of their communities and credibility in their communities—female officers appear to be divided on that question. The divide is mirrored in the arguments advanced by advocates of increased hiring and promotion of women in police departments, arguments that reflect, in turn, the broader divide between “equality feminism” and “difference feminism.” A recent report, for example, from the NCWP argues both that male and female officers are “equally capable” and that women are, in fact, *better* officers in a range of respects: less prone to use excessive force, more skillful at “defusing and de-escalating potentially violent confrontation,” better at securing the “cooperation and trust,” and more effective in responding to incidents of domestic violence.⁴⁶

There has been virtually no research on the relative competencies of gay and straight officers. Anecdotally, though, claims have been made for gay and lesbian officers that echo claims long made for minority officers: that they bring to their work a valuable understanding of their off-the-job community, as well as greater credibility within that community.⁴⁷ There are suggestions, too, that gay and lesbian officers, because of “their own experience in marginalized groups,” may be especially skilled in “responding to the needs of other oppressed groups.”⁴⁸ But there are also suggestions that homosexual officers, like minority officers and female officers, are strongly constrained by the “white, male, heterosexual ethos”

⁴⁴ See Lott, *supra* note 6, at 260; Brad W. Smith, *The Impact of Police Officer Diversity on Police-Caused Homicides*, 31 POLICY STUD. J. 147, 155 (2003).

⁴⁵ See Homant & Kennedy, *supra* note 43, at 34-35.

⁴⁶ KIM LONSWAY ET AL., HIRING AND RETAINING MORE WOMEN: THE ADVANTAGES TO LAW ENFORCEMENT 2-4 (2003), available at <http://www.womenandpolicing.org/pdf/NewAdvantagesReport.pdf>.

⁴⁷ See, e.g., ROBIN A. BUHRKE, A MATTER OF JUSTICE: LESBIANS AND GAY MEN IN LAW ENFORCEMENT 25-131 (1996); Belkin & McNichol, *supra* note 19, at 87; Brittany Wallman, *Police Try to Recruit More Gay Officers*, SUN-SENTINEL (Ft. Lauderdale, Fla.), Dec. 18, 2005, at 1.

⁴⁸ Miller, Forest & Jurik, *supra* note 19, at 378; see also *id.* at 370-71, 376; Myers et al., *supra* note 5, at 34.

of policing and by the overriding determination to be perceived as “good cops,” both by their fellow officers and by themselves.⁴⁹

Most scholars of policing, including most criminal procedure scholars, probably assume that an individual officer’s sexual orientation—like the officer’s race and gender—is a relatively unimportant influence on the officer’s behavior; what really determines police conduct is the police subculture. That is one reason why it is such welcome news that the growing diversity of police workforces is changing the police subculture, too—a matter to which we will return shortly.

B. COMMUNITY EFFECTS

The presence of minority officers, female officers, and gay and lesbian officers in a police force might have a range of beneficial effects in the surrounding community. One important set of effects, indirect and often overlooked, stems from the role that police employment has traditionally played in social mobility.⁵⁰ A more immediate set of effects pertains to the benefits that police diversity can provide for the credibility of the department overall. Just as black officers, for example, may have more credibility than white officers in a predominantly black neighborhood, a department that recruits, retains, and promotes a significant number of black officers may find the credibility of its entire force enhanced in black neighborhoods.

That prospect has long served as a significant part of the case for diversifying police workforces. President Johnson’s Crime Commission, for example, argued strongly in the late 1960s that improving relations between the police and minority communities required “recruiting more, many more, policemen from minority groups”—because “every section of the community has a right to expect that its aspirations and problems, its hopes and fears, are fully reflected in the police.”⁵¹ A similar argument has been made, more recently, for hiring more gay and lesbian officers. Gay and lesbian officers in San Diego, for example, believe that the success of community policing in San Diego is attributable in part to the involvement of openly homosexual officers. As one gay officer explained, “[y]ou gain way more respect from the community that you’re policing if you have members of the diverse community working as cops.”⁵²

⁴⁹ Myers et al., *supra* note 5, at 18, 35; *see also* Shilts, *supra* note 19, at 32-33.

⁵⁰ *See, e.g.*, ROBERT M. FOGELSON, *BIG-CITY POLICE* 296-98 (1977).

⁵¹ PRESIDENT’S COMM’N ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, *supra* note 13, at 107.

⁵² Belkin & McNichol, *supra* note 19, at 87.

As with competency effects, though, the objective evidence regarding community effects is mixed. Just as there is some evidence that black officers get more cooperation from black citizens than white officers, and some evidence that they get less,⁵³ so there is some evidence that minority citizens think minority officers improve the overall quality of policing, but also some evidence that they perceive no difference.⁵⁴

Again, there is a longstanding, broadly accepted explanation for the lack of any clear effect of police diversity on community relations, and, here as well, the explanation blames the police subculture. That subculture has long been thought to sever a minority officer, for example, “from his community and his roots.”⁵⁵ An early, influential ethnographic study of black police officers concluded that they forfeited, in becoming officers, much of their credibility as blacks. Occupying “a doubly marginal position between the marginal police and his own [racial] marginality,” the black officer was “a man exposed to the shame of his race,” because his occupational role was perceived as antagonistic to the interests of the ghetto.⁵⁶ A pioneering, equally influential study of female officers found that they, too, suffered from a kind of double marginality, forced to choose between “defeminization” and “deprofessionalization”: only by relinquishing much of their identity as women could they fully succeed as police officers.⁵⁷ Gay and lesbian officers, too, have been said to lead “double lives”: by joining the ranks of law enforcement they estrange themselves from the gay and lesbian community.⁵⁸

C. ORGANIZATIONAL EFFECTS

Organizational effects of police diversity have received relatively less attention than competence effects and community effects. That is a mistake: the clearest benefits provided by the growing numbers of minority officers, female officers, and gay and lesbian officers pertain to the effects

⁵³ See *supra* notes 29 & 31.

⁵⁴ See Irving A. Wallach & Colette C. Jackson, *Perception of the Police in a Black Community*, in *THE URBAN POLICEMAN IN TRANSITION*, *supra* note 33, at 382, 401; Ronald Weitzer, *White, Black, or Blue Cops? Race and Citizen Assessments of Police Officers*, 28 J. CRIM. JUST. 313, 316 (2000).

⁵⁵ See BARLOW & BARLOW, *supra* note 20, at 249.

⁵⁶ NICHOLAS ALEX, *BLACK IN BLUE: A STUDY OF THE NEGRO POLICEMAN* 20-21 (1969); accord, e.g., COOPER, *supra* note 38, at 111-15, 119-25; Cashmore, *supra* note 38, at 96; Edward Palmer, *Black Police in America*, *BLACK SCHOLAR*, Oct. 1973, at 19, 21-23.

⁵⁷ SUSAN E. MARTIN, *BREAKING AND ENTERING: POLICEWOMEN ON PATROL* 197-98 (1980).

⁵⁸ Marc Burke, *Homosexuality as Deviance: The Case of the Gay Police Officer*, 34 BRIT. J. CRIMINOLOGY 192 (1994); see also, e.g., Myers et al., *supra* note 5, at 31.

that the new demographics have had on the internal dynamics of police departments. The organizational effects can usefully be subdivided into three further categories: *one-on-one interactions*, *rival trade groups*, and *social fragmentation*.

By *one-on-one interactions*, I mean the way that a minority, female, or openly homosexual officer can change the attitudes and behavior of other officers with whom he or she comes into contact—particularly his or her partner. Minority officers tend to believe these effects are significant.⁵⁹ So do gay officers⁶⁰ and appreciable numbers, if not a majority, of female officers. Quantitative studies of this matter are limited, but they too suggest that the officers are correct. There is evidence, for example, that biracial teams of partners use less force,⁶¹ and men partnered with women handle domestic violence calls as well as women.⁶² These results are broadly consistent with the large body of research on integration outside of policing, which suggests on the whole that “the experience of working together across lines of social division . . . though not untroubled by prejudice and hostility, tends to reduce prejudice and hostility.”⁶³

By *rival trade groups*, I mean groups that compete for membership with the longstanding police benevolent associations, which generally serve today not only as social and fraternal organizations but also as collective bargaining agents and lobbying groups. The police benevolent associations now co-exist with a range of organizations, many highly vocal, representing the interests of minority officers.⁶⁴ In Los Angeles, for example, the Police Protective League competes for members with the Oscar Joel Bryant Foundation, which represents black officers, and the Latin American Law Enforcement Association, known informally as “La Ley.” On the national level, there is the National Black Police Association, the National Organization of Black Law Enforcement Officers, the National Organization of Black Law Enforcement Executives, the Hispanic National Law Enforcement Association, and the National Latino Peace Officers Association.

⁵⁹ See, e.g., BOLTON & FEAGIN, *supra* note 3, at 22.

⁶⁰ See, e.g., Belkin & McNichol, *supra* note 19, at 77-79.

⁶¹ See Robert J. Friedrich, *Police Use of Force: Individuals, Situations, and Organizations*, 452 ANNALS AM. ACAD. POL. & SOC. SCI. 82, 90 (1980).

⁶² See Michael Cassidy, Caroline G. Nicholl, Carmen Ross & Kimberly A. Lonsway, *The Victims' View: Domestic Violence and Police Response* 4-15 (August 2003) (unpublished paper on file with author).

⁶³ CYNTHIA ESTLUND, *WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY* 84 (2003); see also *id.* at 60-101.

⁶⁴ See, e.g., BARLOW & BARLOW, *supra* note 20, at 235-41; Erin Aubry Kaplan, *Rethinking the LAPD Black and Blue*, L.A. WEEKLY, Sept. 6, 2002.

At both the local and national level, these organizations often take positions at dramatic variance from the position of mainline police organizations—not just on hiring and promotion policies, but on issues such as racial profiling and police brutality,⁶⁵ and on questions of police leadership. In Los Angeles, for example, when Chief Bernard Parks was being considered for reappointment in 2002, he was strongly opposed by the Police Protective League, supported by the Oscar Joel Bryant Foundation, and opposed by La Ley.⁶⁶ Another, earlier, example: in 1991, after Milwaukee's police chief suspended three officers in the fallout from the Jeffrey Dahmer case, the Milwaukee Police Association voted “no confidence” in the chief, but the League of Martin—an organization of black officers—pointedly distanced itself from the vote and defended the suspensions.⁶⁷

One-and-one interactions and rival trade groups are important, but not nearly as important as the third subcategory of organizational effects: *social fragmentation*—the decline of the monolithic police subculture. This is something that older officers—particularly white, male, heterosexual officers—talk about a lot. A white male officer interviewed by sociologist Robin Haarr in the mid-1990s put it this way: “It used to be we were all ‘blue,’ but that has changed over the past years. Today there is black, white, and female segregation.”⁶⁸ Haarr agrees. Expressing what seems to be the emerging consensus among police ethnographers, she reports that “unified occupational subculture” of policing is being replaced by workplaces marked by “division” and “segmentation.”⁶⁹

⁶⁵ See, e.g., SAMUEL WALKER & CHARLES M. KATZ, *THE POLICE IN AMERICA* 433 (4th ed. 2002); Cashmore, *supra* note 38, at 96; NAT'L ORG. OF BLACK L. ENFORCEMENT EXECUTIVES, *A NOBLE PERSPECTIVE: RACIAL PROFILING—A SYMPTOM OF BIAS-BASED POLICING* (2001); National Black Police Association, *Positions of the National Black Police Association*, <http://www.blackpolice.org/Positions.html> (last visited June 9, 2006).

⁶⁶ See, e.g., *Latino Group Opposes Parks' Bid for Second Term*, L.A. TIMES, Mar. 12, 2002, at B5; Jill Leovy, *Review of Parks Will Be Private*, L.A. TIMES, Apr. 2, 2002, at B1.

⁶⁷ Melissa Hickman Barlow, David E. Barlow & Stan Stajkovic, *The Media, the Police and the Multicultural Community: Observations of a City in Crisis*, 17 J. CRIME & JUST. 133, 137, 140, 144-45 (1994).

⁶⁸ Robin N. Haarr, *Patterns of Interaction in a Police Patrol Bureau: Race and Gender Barriers to Integration*, 14 JUST. Q. 53, 66 (1997).

⁶⁹ *Id.* at 53; see also, e.g., BARLOW & BARLOW, *supra* note 20, at 205; COMM. TO REVIEW RES. ON POLICE POLICY & PRACTICES, *supra* note 39, at 80-82; STEVEN MAYNARD-MOODY & MICHAEL MUSHENO, *COPS, TEACHERS, COUNSELORS: STORIES FROM THE FRONT LINES OF PUBLIC SERVICE* 64-76 (2003). Samuel Walker has been pressing this point for twenty years. See WALKER, SPOHN & DELONE, *supra* note 4, at 115; Samuel Walker, *Racial Minority and Female Employment in Policing: The Implications of 'Glacial' Change*, 31 CRIME & DELINQ. 555, 556, 565 (1985).

This is exactly what many people feared thirty years ago, when courts began imposing race and gender-conscious hiring plans on police departments. Samuel Williams, a black lawyer serving as president of the Los Angeles Board of Police Commissioners, warned in 1975 that “[t]he entrance of minorities into a department under a judge-fashioned statistical umbrella can only lead to an organization . . . torn by faction and laced with angry mutterings,” an organization “deprived of that crucial cooperation among brother officers so critically essential to effective service.”⁷⁰

The factions and angry mutterings have come. Police officers today report lines of division, distrust, and resentment, not only between white officers and minority officers, but also between male and female officers, between gay and straight officers, and sometimes between black officers and Latino officers, Latino officers and Asian-American officers, and so on. It is not clear how much of this can be laid at the feet of the courts; some of it may have happened no matter what route police departments took to greater workforce diversity. But the decline in solidarity is everywhere apparent. The good news is that it has turned out to be a much more beneficial development than Williams and others feared. The decline in solidarity does not seem to have impaired police effectiveness. For operational purposes, it appears still to be true that “blue is blue.”⁷¹ In between calls to service, police officers are a less cohesive group than they used to be. But that appears to be a very good thing. It makes the internal cultures of police departments less stifling, and it opens up space for dissent and disagreement. Studies of police departments today read far differently than those of thirty or forty years ago: investigators rarely find a single police perspective on any given issue, but rather a range a conflicting perspectives.⁷²

Moreover, the social fragmentation has gone hand in hand with a decline in police insularity. For identity binds as well as divides.⁷³ Minority officer organizations frequently work closely with minority organizations outside law enforcement; to a lesser extent, female officers sometimes form organizational ties with women working in other historically male professions. The National Center for Women and Policing, for example, is part of Eleanor Smeal’s Feminist Majority Project. Organizational alliances like this operate alongside, and help to foster, less

⁷⁰ Samuel L. Williams, *Law Enforcement and Affirmative Action*, POLICE CHIEF, Feb. 1975, at 72.

⁷¹ See, e.g., Myers et al., *supra* note 5, at 34.

⁷² See, e.g., Barlow, Barlow & Stajkovic, *supra* note 67, at 140.

⁷³ See Trish Oberweis & Michael Musheno, *Policing Identities: Cop Decision Making and the Constitution of the Citizen*, 24 L. & SOC. INQUIRY 897, 901-02, 904 (1999).

formal ties of affinity between minority cops and minority citizens, female cops and women more broadly, and gays and lesbians inside and outside law enforcement.⁷⁴ Both the formal, organizational alliances and the less formal ties of affinity create channels for expanding civilian involvement in the shaping and directing of law enforcement.⁷⁵ The social fragmentation I have been discussing might more accurately be described, therefore, as social realignment.

The benefits of social realignment would come at a steep cost if, as people like Williams predicted, the decline in police solidarity meant the police did a worse job controlling crime. But that does not seem to have happened. John Lott concluded several years ago that affirmative action in policing had raised crime, particularly in black neighborhoods. He attributed this effect not to a decline in solidarity but the relaxed hiring standards that he claimed had been part and parcel of affirmative action in policing.⁷⁶ Lott's results, though, have never been duplicated, and more recent work casts them in serious doubt.⁷⁷

There is reason to think that the growing, though still far from complete, acceptance of openly gay and lesbian officers may contribute in a particularly powerful way to the social realignment of law enforcement—in part by accelerating the fragmentation of the police subculture, in part by creating new channels of communication with groups outside of law enforcement, and in part by challenging the endemic homophobia of law enforcement.⁷⁸ There is good reason to think that the suppression of homosexuality has played a central role in cementing police solidarity, in part by rendering professional male-male partnerships sexually unthreatening, and in part by helping to shape a whole, hyper-masculinized professional ethos.

When William Westley did his pioneering ethnography of an American police department in the 1950s, for example, he found that the

⁷⁴ See BARLOW & BARLOW, *supra* note 20, at 235-41; Oberweis & Musheno, *supra* note 73, at 910-17.

⁷⁵ I owe this point to Michael Musheno.

⁷⁶ See Lott, *supra* note 6.

⁷⁷ Using data regarding hiring of police officers in New York City, Justin McCrary has found that “even aggressive hiring quotas change the test score distribution of new hires only minimally.” McCrary, *supra* note 7, at 26-31, 33. McCrary also did a time series comparison of crime rates in cities that had been sued for discriminatory police hiring and in cities that had not, and an “event study” analysis of crime rates before and after litigation. He found little evidence that litigation was related to crime rates. See *id.* at 26-29.

⁷⁸ Cf. COMM. TO REVIEW RES. ON POLICE POLICY & PRACTICES, *supra* note 39, at 82 (noting that “in important respects,” the new employment of openly gay and lesbian officers “represents an even greater transformation of the traditional police subculture than the employment of female officers as equals in the 1970s”).

rampant condoning of illegal violence among police officers owed a good deal to the experiences that officers had policing “sex cases”—a category which for him, and for the officers he studied, lumped homosexuals together with rapists, peeping toms, and exhibitionists. Westley thought the police correctly understood the public to approve “extremely rough treatment” in sex cases, but to want that treatment carried out unofficially and without their involvement.⁷⁹ The experience of the police in these cases, Westley believed, “encourage[d] them to use violence as a general resource,” and left them embittered and cynical about what the public expected of them.⁸⁰ It helped to convince them that their jobs required them to exercise discretion in a way that could not be publicly acknowledged—that police work was essentially and necessarily outside the law.

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

IV. RAMIFICATIONS

I now want to explore four sets of ramifications of the demographic changes in police departments and of the various effects that those changes have had. The first set of ramifications concerns affirmative action. Law enforcement appears to be a striking success story for affirmative action—but a success story that remains incomplete, even as affirmative action plans around the country expire or are rescinded. The second set of implications concerns the debate over litigation as a strategy for institutional reform; I will call this the “hollow hope” debate, after Gerald Rosenberg’s influential

⁷⁹ WILLIAM A. WESTLEY, *VIOLENCE AND THE POLICE: A SOCIOLOGICAL STUDY OF LAW, CUSTOM, AND MORALITY* 61-63 (1970).

⁸⁰ William Westley, *Violence and the Police*, 59 *AM. J. SOC.* 34, 37-38 (1953); *see also id.* at 89-90, 107. Seven of fifteen law enforcement agencies in Los Angeles County interviewed by law students in 1966 admitted engaging in organized, extralegal harassment of homosexuals. *See Project, The Consenting Adult Homosexual and the Law: An Empirical Study of Enforcement and Administration in Los Angeles County*, 13 *UCLA L. REV.* 643, 719 (1966).

argument that courts are ineffective in catalyzing large-scale social change.⁸¹ The integration of police departments, I will suggest, is some evidence to the contrary, some evidence that the hope is not always hollow. The third set of ramifications concerns police reform. Here I will suggest both that the continued diversification of law enforcement workplaces deserves more attention as a key component of police reform, and that what the integration has already accomplished should prompt reconsideration of avenues of reform previously thought too dangerous because of the solidarity and insularity of the police. The fourth and final set of implications concerns criminal procedure. Here the lessons are harder to state with confidence. The changing demographics of American law enforcement pretty plainly fall far short of making Warren Court criminal procedure obsolete, but it does justify, at a minimum, more careful and nuanced thinking about race, gender, and sexuality dynamics in policing.

A. AFFIRMATIVE ACTION

The first and most obvious ramification of the new demographics of American law enforcement pertains to the continuing debate over race-conscious and gender-conscious affirmative action. Policing seems to be a dramatic success story for such measures, because the overwhelming weight of the evidence suggests affirmative action played a pivotal role in the diversification of American police departments.

Some of the most striking evidence is the progress over time in particular departments. In Pittsburgh, for example, the percentage of women officers went from 1% in 1975, when court-ordered hiring quotas were imposed, to 27.2% in 1990, the highest figure at the time for any large city in the nation. When the quota was lifted in 1991, the female share of new hires plummeted from 50% (required under the court order) to 8.5%, and by 2001 the percentage of women in the rank of police officer had dropped to 22% and continued to decline.⁸²

Justin McCrary has compiled a more extensive set of data about the integration of the Chicago Police Department. A lawsuit challenging racial discrimination in police hiring in Chicago was filed in 1970 by the Afro-American Patrolmen's League; it was joined by the United States Department of Justice in 1973, and it resulted, in 1974, in a court-ordered hiring quota, made permanent in 1976. The black share of new hires rose

⁸¹ GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991).

⁸² KIM LONSWAY ET AL., *NATIONAL CENTER FOR WOMEN & POLICING, UNDER SCRUTINY: THE EFFECT OF CONSENT DECREES ON THE REPRESENTATION OF WOMEN IN SWORN LAW ENFORCEMENT I* (2003).

from roughly 10% in 1971-1973 to 40% in 1975.⁸³ (The percentage of black officers on the force as a whole rose much more slowly, even following the hiring change. There is a lesson here: police departments have low turnover. The annual quit rate is around 4%.⁸⁴ So it takes a while for changes in hiring practices to alter the composition of the workforce.)

McCrary also conducted a more systematic examination comparison of changes in what he calls the “representation gap”—the difference between the percentage of black officers and the black share of the relevant city population. He compared changes in this figure in two groups of cities: those that were sued for discriminating against blacks in hiring, and those that were not. The bulk of the lawsuits were filed in the 1970s, and they were concentrated in big cities with large black populations—populations that were growing faster than the black share of the local police workforce. Many of the hiring quotas remained in effect into the 1990s, and some are still in place.⁸⁵ McCrary found that the representation gap in the 1970s was much more sizeable in litigated cities than in unlitigated cities, but that in the 1980s and 1990s, when hiring quotas would be expected to begin having an effect on workforce composition, the gap in litigated cities improved markedly, while there was relatively little change in the unlitigated cities.⁸⁶

McCrary’s study is the most sophisticated and wide-ranging work to date on the relationship between affirmative action decrees and either racial or gender integration of police departments. But the broad conclusion he reaches—that affirmative action has played a large role in the demographic transformation of American police forces—is the same conclusion reached by virtually everyone who has studied these questions. Fifteen years ago, for example, William Lewis ran regressions on black police employment in 46 municipal police departments between 1975 and 1985. He found that the most powerful variables associated with increases in the black percentage of the police force were “Black mayors, Black police chiefs, and affirmative action consent decrees.”⁸⁷ Even John Lott is in agreement on this point. Reviewing data on the race and gender composition of 189 American police forces in 1987 and 1993, Lott concluded that the median change in the percentage of black officers was 3.2% in cities with consent decrees as opposed to 0.73% in other cities, and that the 90th percentile

⁸³ McCrary, *supra* note 7, at 8.

⁸⁴ *See id.* at 9.

⁸⁵ *See id.* at 7, 14, 26.

⁸⁶ *See id.* at 47.

⁸⁷ William G. Lewis, *Toward Representative Bureaucracy: Blacks in City Police Organizations, 1975-1985*, 49 PUB. ADMIN. REV. 257 (1989).

change in the percentage of black officers was 18.2% in cities with consent decrees and 6.0% in cities without them.⁸⁸

The available statistical work on women officers points in a similar direction. After surveying 446 departments in the mid-1980s, Susan Martin reported that police forces with consent decrees addressing gender in hiring or promotion were 10.1% female, compared with 8.3% for forces with voluntary affirmative action programs, and 6.1% for all other departments.⁸⁹ Based on a smaller survey, the National Center for Women in Policing estimated in 2003 that 17.8% of the officers in municipal police departments with consent decrees were women, compared to 10.1% in surveyed departments without consent decrees, and 14.2% of all municipal departments.⁹⁰ Tim Sass and Jennifer Troyer, performing a regression analysis of EEOC data, concluded that prior anti-discrimination ruling were associated in the 1980s with an increase of seven to ten percent in the female proportion of newly hired officers.⁹¹ Lott reported that, in his sample of 189 large departments, the median decrease in the percentage of male officers between 1987 and 1993 was 2.8% in departments with consent decrees and 1.1% in departments without decrees.⁹²

Because the statistics regarding gay and lesbian officers are so paltry, it is much more difficult to assess the role of lawsuits here. Anecdotally, however, lawsuits appear to have played a significant role in spurring departments to become more welcoming to, and tolerant of, openly gay and lesbian cops,⁹³ just as earlier lawsuits were pivotal in bringing more race and gender diversity to policing.

The heavy role that court-ordered affirmative action has played in integrating police departments provides reason to be concerned that

⁸⁸ See Lott, *supra* note 6, at 244.

⁸⁹ Susan E. Martin, *The Effectiveness of Affirmative Action: The Case of Women in Policing*, 8 JUSTICE Q. 489 (1991). Martin ran a series of regressions to control for the effects of region, city size, and minority representation. The results indicated that “both court-ordered and voluntary affirmative action were associated significantly with the proportion of women in a department,” after controlling for other variables. *Id.* at 494.

⁹⁰ LONSWAY ET AL., *supra* note 82.

⁹¹ Tim R. Sass & Jennifer Troyer, *Affirmative Action, Political Representation, Unions, and Female Police Employment*, 20 J. LAB. RES. 571 (1999). They found no similar effect on hiring rates in 1991, a result they speculated might reflect the fact that most of the decisions were handed down in the early 1980s: “Of the 65 decisions in gender-related cases against municipal police departments decided by 1991, only 16 decisions occurred in the 1986-1991 period.” *Id.* at 579, 585 n. 14.

⁹² See Lott, *supra* note 6, at 244.

⁹³ On the impact, in particular, of a lawsuit filed by a gay LAPD officer in 1988, see, e.g., Belkin & McNichol, *supra* note 19, at 69; Marita Hernandez, *2 LAPD Officers Join Homosexual Bias Suit*, L.A. TIMES, Nov. 22, 1989, at B3.

progress may stall, or even be reversed, as consent decrees expire or are rescinded—often before departments are fully integrated. (The court-ordered hiring quotas in Boston, for example, were rescinded in 2004, despite the fact that the minority representation gap remained somewhere between six to eight percent: racial minorities made up thirty-eight to forty percent of the population in Boston, but only approximately thirty-two percent of the police force.⁹⁴) The worry is that the Pittsburgh experience will be replicated nationwide.⁹⁵

There is some evidence that this is already occurring. Figure 10 shows how the overall female percentage of large American police departments have changed over the past thirty-five years:

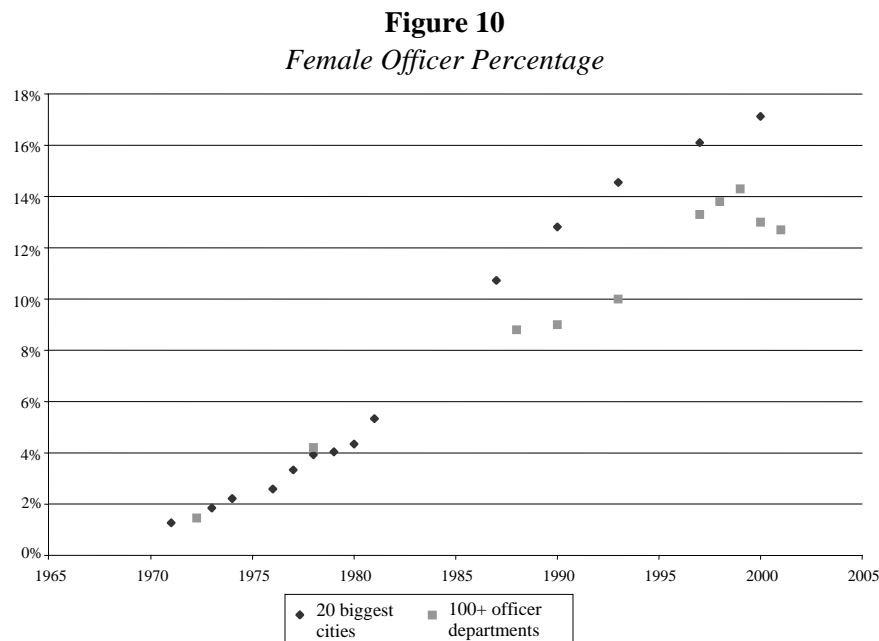


Figure 10 contains two sets of figures: one for the twenty largest American cities,⁹⁶ and the other for all departments with 100 or more

⁹⁴ See *Deleo v. City of Boston*, No. 03-12538-PBS, 2004 U.S. Dist. LEXIS 24034 (D. Mass. Nov. 23, 2004); Reaves & Hickman, *supra* note 8, at 11.

⁹⁵ See *supra* note 82 and accompanying text.

⁹⁶ The data are drawn from LEMAS surveys, and before 1987 from the FBI surveys of American police departments. FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS FOR THE UNITED STATES (1965-1986); NAT'L ARCHIVE OF CRIMINAL JUSTICE DATA, LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS DATA, available at <http://www.icpsr.umich.edu/NACJD/lemas/>. The twenty cities included are: New York, Los

officers.⁹⁷ The latter set of figures suggests that the gender integration of American police departments has stalled and even suffered a slight reversal since 2000. The researchers who compiled this set of figures for the National Center for Women and Policing believe that the decline is in fact real, and that it reflects the expiration of consent decrees.

B. HOLLOW HOPE

The key role that race-conscious remedies imposed pursuant to consent decrees appear to have played in diversifying American police forces has implications beyond the debate over race-conscious remedies. It also has implications for the debate over the utility of litigation in bringing about social change—what might be termed the “hollow hope” debate, after the title of Gerald Rosenberg’s influential argument that the utility is, in fact, close to zero.⁹⁸

The demographic transformation of American police forces looks like a success story not only for affirmative action, but also for litigation as a strategy for social reform. Rosenberg can easily accommodate this story, because he is careful to acknowledge that courts can, in fact, help to bring about social change in instances where they implement polices blessed by the legislature, and/or where court decrees provide political cover for forward-thinking bureaucrats.⁹⁹ But the story of police diversification reminds us that this is a larger category than we sometimes imagine, and that conflating all impact litigation within simple pronouncements from on high—like *Brown v. Board of Education* or *Roe v. Wade*—is a serious mistake.

C. POLICE REFORM

Now consider the ramifications of changing police demographics for police reform. There are two implications that seem particularly important.

First, continuing diversification of police workforces should be a central component of police reform. The evidence regarding the competence and community effects of police integration is equivocal, but certainly not sufficiently negative to warrant discounting the belief, very broadly held by minority, female, and openly gay officers, that they bring special understandings and special credibility to their work. All the more so

Angeles, Chicago, Houston, Philadelphia, San Diego, Detroit, Dallas, Phoenix, San Antonio, San Jose, Baltimore, Indianapolis, San Francisco, Jacksonville, Columbus, Milwaukee, Memphis, Washington, and Boston.

⁹⁷ See LONSWAY ET AL., *supra* note 17, at 6.

⁹⁸ See ROSENBERG, *supra* note 81.

⁹⁹ See *id.* at 30-36.

when much of the reason for skepticism about these benefits has stemmed from concern about the insular and monolithic police subculture—a subculture that is itself now being transformed, segmented, and rendered more porous by the growing diversity of the police workforce. By weakening the social solidarity of the police, the growing diversity of law enforcement workforces makes it more likely that departments will be able to take advantage of the special competencies of minority officers, female officers, and openly gay and lesbian officers. And by weakening the political solidarity of the police, and the uniformity of viewpoints within police departments, police diversity greatly facilitates other reforms—including civilian oversight, community policing, and systematic efforts to ameliorate racial bias in policing.¹⁰⁰

The second ramification for police reform is this: in the late 1960s and early 1970s, a series of efforts were made to bring a degree of workplace democracy or participatory management to policing—efforts to get police officers intellectually and collectively involved in the shaping of their work. The core idea was that officers who participated collectively in the shaping of police work would be less alienated, more effective, and more acculturated to and comfortable with democratic values and practices.¹⁰¹ There were even scattered efforts to implement these ideas, and they met with a promising degree of success. In Oakland, for example, a team of researchers led officers in the collective development of novel institutional mechanisms for reducing police violence¹⁰²—mechanisms that themselves drew heavily on the involvement of rank-and-file officers, and that actually enjoyed a promising degree of success, before they fell victim to budget cuts.¹⁰³

By the end of the 1970s, those efforts had all been abandoned—in large part, but not exclusively, because many of the people that might

¹⁰⁰ On the large obstacle that the monolithic occupational subculture of law enforcement posed to police reform, see, e.g., HERMAN GOLDSTEIN, *PROBLEM-ORIENTED POLICING* 29-30 (1990).

¹⁰¹ See GEORGE E. BERKLEY, *THE DEMOCRATIC POLICEMAN* 29-39 (1969); EGON BITTNER, *THE FUNCTIONS OF THE POLICE IN MODERN SOCIETY* (1970), reprinted in EGON BITTNER, *ASPECTS OF POLICE WORK* 89, 162-68 (1990); WILLIAM KER MUIR, JR., *POLICE: STREETCORNER POLITICIANS* (1977); WESTLEY, *supra* note 80, at xvii; John E. Angell, *Toward an Alternative to the Classic Police Organizational Arrangements: A Democratic Model*, 9 *CRIMINOLOGY* 185, 187, 193-95 (1971); David Alan Sklansky, *Police and Democracy*, 104 *MICH. L. REV.* 1699, 1774-78 (2005).

¹⁰² See HANS TOCH, J. DOUGLAS GRANT & RAYMOND T. GALVIN, *AGENTS OF CHANGE: A STUDY IN POLICE REFORM* (1975).

¹⁰³ See JEROME K. SKOLNICK AND DAVID H. BAYLEY, *THE NEW BLUE LINE: POLICE INNOVATION IN SIX AMERICAN CITIES* 151-52 (1986); HANS TOCH & J. DOUGLAS GRANT, *POLICE AS PROBLEM SOLVERS* 85 (1991).

otherwise have been expected to support them were scared half to death, for good reason, by the extraordinarily reactionary forms that police activism took in the late 1960 and early 1970s.¹⁰⁴ Those kinds of police activism—rabid, knee-jerk opposition to civilian oversight, active participation in far right-wing organizations, vigilante attacks on black activists, organized brutality against political protesters¹⁰⁵—are now a thing of the past, along with the monolithic police subculture that allowed them to emerge. Police departments today, in short, are much safer places for experiments in workplace democracy, and many of the ideas along those lines, shelved since the 1970s, may deserve to be dusted off and reexamined.

D. CRIMINAL PROCEDURE

What implications, if any, do the changing demographics of law enforcement have for criminal procedure? I have left these implications for last, because they are the hardest to state with certainty. The most that can be said with confidence is that the dramatic but still incomplete integration of American police departments does not remove the entire foundation of criminal procedure law, but neither can it be entirely ignored. As it happens, these are important claims, because most criminal procedure scholars either exaggerate the significance of the new demographics of law enforcement or disregard them altogether.

On the one hand, there are occasional suggestions that the integration of police forces, coupled with the increased political power of minority groups, has made the restrictions the Supreme Court placed on law enforcement in the 1960s obsolete. The argument here begins with the proposition that the whole point of Warren Court criminal procedure—albeit a point often left unstated—was to guard against the use of the criminal justice system as an instrument of racial subordination. Now that police departments, and the political establishments that oversee them, reflect the diversity of the communities they serve, judicial constraints on police practices approved or tolerated by majoritarian political processes no longer make sense: they have become unjustifiable, antidemocratic encumbrances to collective self-rule.¹⁰⁶

This is doubly simplistic. First, police departments are still far from completely integrated, and, with race-conscious remedies being phased out,

¹⁰⁴ See, e.g., JEROME H. SKOLNICK, *THE POLITICS OF PROTEST* 286-88 (1969); Sklansky, *supra* note 101, at 1772, 1778.

¹⁰⁵ See, e.g., FOGELSON, *supra* note 50, at 239-42; CHRISTOPHER LASCH, *THE AGONY OF THE AMERICAN LEFT* 206 (1969); SKOLNICK, *supra* note 104, at 274-78.

¹⁰⁶ See, e.g., Bradley, *supra* note 6, at 1126-28; Dan M. Kahan & Tracey L. Meares, *The Coming Crisis of Criminal Procedure*, 86 *GEO. L.J.* 1153, 1161-62 (1998).

progress toward complete integration may be slowing. Second, the exclusion of minority groups and women from police ranks and political power structures was never the sole basis for the criminal procedure revolution. Race has long been an important subtext to criminal procedure jurisprudence, but it has never been the whole story. The landmark criminal procedure rulings of the 1960s were motivated by a complex set of commitments, concerns, and intuitions. Among these were commitments to human dignity, concerns about European-style totalitarianism, and intuitions that the political system—even without regard to race—was unlikely to give much weight to the rights and interests of criminal defendants.¹⁰⁷ Even the complete integration of police departments would not put these worries to rest; the partial integration that we have actually achieved surely does not do so.

At the same time, criminal procedure scholars cannot simply ignore the changing demographics of American policing—particularly not when they are trying to understand the racial and gender dynamics of policing (issues that many criminal procedure scholars do try to understand) or the role that the suppression of homosexuality has played in how both the police and the rest of us think about the work of law enforcement (issues that fewer scholars, to date, have explored). It will not do, for example, to suggest that criminal procedure jurisprudence would be improved if the Supreme Court saw police-citizen interactions as, at their core, a special case of the interaction of white authorities with black subjects, or understood domestic violence investigations as about male power figures deciding the fate of female victims. Nor, increasingly, will it do to analyze the police as monolithically heterosexual and homophobic. The altered demographics of American policing do not change everything, but they may well mean that some features of criminal procedure law deserve to be reconsidered, and they certainly mean that criminal procedure scholars trying to understand the role of race, gender, and sexuality in police-citizen interactions need to broaden their focus beyond the citizen.

V. CONCLUSION

Incomplete revolutions can easily escape notice. Because American police departments remain far from fully integrated, they are widely assumed still to be the overwhelmingly white, nearly all-male, uniformly homophobic institutions they were thirty years ago. But they are not. Large numbers of minority officers, female officers, and openly gay and lesbian officers are dramatically transforming the profession. Some

¹⁰⁷ See Sklansky, *supra* note 101, at 1728-56.

departments have made much more progress than others, and virtually all departments have a good way to go before their rank-in-file and command structure fully reflect the diversity of the communities they serve. There are grounds for concern; moreover, that progress may be slowing. Still, the progress that has already been made is impressive, and it has broad ramifications. Ignoring the new demographics of law enforcement, or failing to appreciate their significance, will leave us less committed than we should be to continued diversification of police departments; it will blind us to new possibilities of police reform now opening up; and it will thwart our efforts to understand, in any but the crudest way, the complex dynamics of race, gender and sexuality that shape and give meaning to policing.

