“One of Our Rules”: Police Views, Discretion, and How They Vary

Thesis

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Abstract

Despite previously being one of the most studied topics in policing literature, little work since the 1980s has focused on the role of discretion in police behavior and actions. I address this gap in this paper by analyzing officer views on why and how police discretion exists, as well as the conditions under which officers activate such discretion. In doing so, I focus on occupational position, status, structure, and power. My results, which draw on 35 qualitative interviews from seven police departments across two regions of the United States, advance sociological insights regarding discretion by interrogating first-hand accounts of the uses of discretionary actions and their internal and external constraints. I find that discretion looks different across departments; it is also interpreted distinctly by individual officers. Officers generally see discretion as an inherent part of their job and one that allows them significant autonomy to make, or not make, decisions. Discretion is also used differently based on perceptions of internal and external support. Where support declines, police officers lean toward "deactive" policing and, correspondingly, are seemingly slow to act. These findings indicate barriers to universal police reforms and show the existence of internal safeguards against hasty police behavior as well as structural dynamics that can lead to (mis)behavior.

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Table of Contents

Abstract iii
Vita iv
List of Tables vi
1. Introduction 1
2. Understanding and Defining Police Discretion 3
3. The Role of Occupational Position, Status Dynamics, and Structural Constraint 6
4. Methods 12
5. Analysis 18
6. Police Discretion as Described and Understood 20
7. Reported Consequences of Position, Status, and Structure 24
    7.1. As Individuals 24
    7.2. Within a System 28
8. Discussion 36
Bibliography 41

List of Tables

Table 1: Descriptive Statistics 15

1. Introduction

Police in America have many roles. They are often viewed as safekeepers of law, community safety organizers, and America's first line of defense against crime. Despite the multitude of rules and ordinances governing police behavior, police act in variable contexts—contexts that may enable or constrain their behaviors, interpretations, and discretion (Brown, 2020). Regardless, policing reflects a distinct occupational domain and identity (Brown, 2020), and one imbued with power. Indeed, policing is one of the very few occupational positions undergirded by state sanctioned rights to violence when necessary. Individual police officers are also legally imbued with discretion, the ability to make decisions about where, when, and how to act. They can, in fact, choose when to approach a suspect, what to file in their reports, and when to arrest. Rarely are these discretionary decisions overseen or challenged.

Prior research has shown that who an officer is and what parts of their identities they view as important are relevant to the discretion they use (Schulenberg, 2018; Huff, 2021). Other research has also shown that officer decision making can vary depending on situational factors such as the time or place in which they are forced to decide as well as who may be watching an interaction (Schulenberg, 2018; Taylor, 2016). Just how this variation in decision making and discretion might be shaped by an officer's perspective on their internal support structure and the larger criminal justice system, however,

remains an open question. Although some historical analyses get at officer's occupational positioning, identity and discretion using potentially relevant quantitative indicators (: Davis 1969; Davis, 1975; Gottfredson & Gottfredson, 1988), more in-depth and qualitative analyses in these regards are warranted

This draws on conceptual frameworks pertaining to occupational positioning and identities (Kurtessis et al, 2015; Schulenberg, 2018), in addition to status dynamics, power, and autonomy (Shanock and Eisenberg, 2006; Reynolds et al, 2018; Roscigno et al, 2009). These perspectives provide the context for the findings I present that are derived from semi-structed interviews with 35 police officers representing seven departments across two regions of the United States to more deeply interrogate the issue of police discretion, how it is used, and factors that enable or constrain it. Specifically, I ask how do police officers describe and understand discretion and what factors impact its use? These firsthand police officer accounts provide insight on the uncertainties and variations in the discretion police conceive of and activate in the course of their jobs. Discretion, moreover, is activated both to act and not to act, often depending on perceptions of internal and external organizational support. Aside from addressing a critical discourse moment in American debates on policing, my discussion and findings provides important insights regarding occupational position, status, and autonomy that contemporary criminological research would arguably benefit from.

2. Understanding and Defining Police Discretion

Historically, discretion in policing is derived from a variety of sources and through a variety of actions. Policing as we know it was first created by Sir Robert Peel in Britain in 1829 (Brown, 2020). As a part of his original explanation of what policing was, he underscored the potential for autonomy and choice when taking possible actions. Policing in the United States has built upon these original policing principles. Through time, there has been an understanding among police and policy makers that officers maintain a freedom to make decisions regarding the actions they take (Brown, 2020).

Such autonomy arguably allows officers to undertake actions as needed and when needed but also to refrain from acting if they view the action as unnecessary. In the United States, this freedom in decision making comes from the constitutional based power that gives states the ability to determine their own laws and enforcement of laws (Young, 2011). The freedom for individual agencies to determine their own policies and rules for action also removes the ability for the general public to impact policing procedure (Miller, 2015). With the individualization of police action, the industry of policing expanded use of discretion to individual behavior creating policies and guidelines meant to instruct as to when discretion was allowed (Bronitt and Stenning, 2011).

Despite the existence of rules governing police behavior, most policing researchers and critics (see Nickels, 2007; Crotty, 2016; Young, 2011) argue that guidelines do not fully cover the breadth of policing decision making as each action a police officer takes is the result of the discretion to take that action and all subsequent behavior can additionally be a result of their discretion. Previous research on discretion in policing has also been essential to the policy and practice of policing as an institution and occupational domain. Previously a fundamental aspect of policing research, foundational works investigated officer use of discretion as a crime control tool (Muir, 1977; Moskos, 2004; Wilson, 1968). Muir's *Police Types*, which since publication have been empirically questioned, has been used to design and implement police training protocol (Hochstedler, 1980). Wilson's work—i.e., outlining ways in which police officers could act on the job—was instrumental in his creation of broken windows policing, perhaps one of the most influential police policy changes in the 20th century (Kelling & Wilson, 1982; Harcourt, 2005). Given that previous research on discretion has had such powerful impacts on policing, it is important that this work is continually updated.

Throughout all research on discretion, including my own findings presented momentarily, there are ambiguities and disagreements in how to measure discretion and what to count as discretionary decisions (for a thorough review of the inability to define discretion see Nickels, 2007). On the one hand, and as some suggest, officer decision making is inherently about discretion and always underlies how officers use their power (Schulenberg, 2018). On the other hand, as Miller (2015) explains, because the Constitution allows for all policing entities to determine their own rules and freedoms in

discretion, we end up with a variety of policing policies that make comparing districts and conclusions about discretion difficult. Despite such operational difficulties, researchers agree that understanding discretion is required to understand the impact of police on public life.[1]

[1] In the easiest to measure case, police discretion looks like the decision to arrest versus not arrest (Huff, 2021). However, police discretion can also include choosing to set up surveillance, deciding to stop someone for looking suspicious, opting to ignore a warrant and more (Miller, 2015). In fact, by simply interpreting a situation, officers are using their discretion in determining its meaning (Bronitt and Stenning, 2011).

3. The Role of Occupational Position, Status Dynamics, and Structural Constraint

No less important to conceptual definitions of discretion is the theoretical recognition that discretion does not happen in a social vacuum. Rather, discretion is also partially a product of occupational position, identity, and status, as well and the power and leverage conferred by the social and organizational context within which police reside (Preito-Hodge & Tomaskovic-Devey, 2021). In the case of my analyses and conception, I draw from three strands of theoretical literature highlighting the pertinence of occupational position, occupational identity, and power. Combined, this theoretical literature leads to findings that reflect on occupation position, status dynamics, and structural constraints. I conceptualize occupational position as the role and identity that the officers hold both in their roles in enforcing the law and in their relationships with civilians. Status dynamics are the consequences of the standing officers maintain within their policing network, often present as representations of power based on connections. Structural constraints are seen in both the rules and regulations within which police operate, as well as the system in which they are embedded. Each provides some conceptual backdrop for the sociological understanding of the discretion cops perceive and/or activate.

Police officers are embedded in a larger criminal justice system, and generally hold a unique occupational status, identity and understanding of their responsibilities,

rights, and power in the social world—responsibilities, rights, and power that all have implications for the discretion they have and sometimes activate. In their roles they serve as the threshold for entry into the system; they also serve as those whose work is most likely to be experienced by everyday citizens. Through their occupation, they make individual decisions and are guided in those decisions by a larger culture and informal guidelines of behavior. For this reason, actions cannot just be judged through the lens of the individual but also must be viewed as insight into the larger system (Cooper, 1892).

Officer's occupational position also allows for them to participate in the control of the masses, discussed by Weber when referencing the lives of civilians in a democracy. As police officers, they are agents of the government, a role for which they are invested with a level of power that the rest of the citizens do not have. Internally, they also grapple with questions of prestige as some officers have more power than others due to the policing hierarchy. In considering occupational embeddedness, status hierarchies and power, it is necessary to acknowledge how perceptions of discretion and its actual use are at least partially defined by positioning, status dynamics, and group identity.

In research looking at discretion based on individual officer identity, it has been shown that white officers and male officers are more likely to choose to arrest a suspect. Other research shows that the presence of other officers matters more to arrest decision making for women than for men (for further review see Schulenberg, 2018). Previous research into specific variation in discretionary outcomes (arrest decisions, entering unknown areas, etc.) has focused on the characteristics of those with whom the police are interacting showing that civilians appearing under the influence and being viewed as

hostile by police are more likely to end up detained or arrested (Dawson & Hotten, 2014; Klinger, 1996).[2]

Beyond occupational position, status dynamics and the power derived from them, attention to policing and discretion must also acknowledge structural dimensions of support and/or constraint. Technological advancements in policing, for instance, are often publicized as a way to make policing more effective, and perhaps safer, for everyone. However, there have also been concerns shared by researchers and activists about the consequences of body worn camera advancements on discretion. While there is the potential for body worn cameras to reduce discretion in terms of use of force, as there is the concept of being watched, there is also the potential that cameras restrict how officers use discretion in the minor, everyday interactions that they can choose to let go. While generally publicly and politically supported for bringing transparency to policing, police have also voiced concerns about cameras constricting their positive uses of discretion. Cameras have been shown to decrease use of force but have also been shown to increase arrest for lower-level crimes (Ariel et al, 2015; Katz et al, 2014).[3]

[2] Broadly, situational factors such as where and when are stronger predictors of police decision than individual officer factors. The physical and verbal responses of the civilian are also relevant predictors of officer decision making (Schulenberg, 2018; Huff, 2021). Because discretion allows for extreme variation in police behavior, from determining if to act to determining if use of force is necessary, researchers have voiced concerns about the variety of reasons an officer decides. As Bronitt and Stenning (2011: 325) say, due to the inevitability of police discretion in decision making, there is also the potential for "arbitrary, corrupt or unethical behaviour" which must be preliminarily protected against with policy. This sentiment is similarly shared by Young (2011:1,) who calls police discretion "a powerful and unpredictable tool" which allows "legitimate powers to take away an individual's liberty or freedom."

[3] Previous work has documented that police feel like cameras restrict their ability to let small things go or ignore minor infractions (Taylor, 2016). Conclusions from these works show the impact of being watched on behavior, a concept reminiscent of Kornhauser's criminological social control theory which argues that direct or indirect supervision can impact individual's potentials for committing deviant acts (Kornhauser, 1978).

There has also been an increase in constraint on police discretion as a function of greater public commentary on police (mis)behavior. For many officers, this perceived decrease in public support in policing has had consequences in a decreased willingness to act. While I refer to it as de-active policing, this concept has been previously investigated as de-policing and the Ferguson Effect. Anecdotal evidence provided by media, politicians, and public facing law enforcement have argued that since the killing of Michael Brown in Ferguson, the public has become more openly critical of police which has led to a decreased willingness to police proactively in areas of public police incidents (Shjarback et al, 2017). From an officer perspective, the Ferguson Effect is said to impact time spent on community policing, desirable officer behaviors, and willingness to put themselves in potential harm (Wolfe & Nix, 2016).[4]

Prior research likewise points to the enabling versus constraining character of administrative and internal support, concluding that employees generally explain their amount of autonomy in the context of the support they receive or do not receive from supervisors. The character of police hierarchies and status seems especially pertinent here. Using general Organizational Support Theory, which argues that general employee behavior can be explained by their perceptions of supervisor support, it can be expected

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[4] Mixed results have been found as to whether his decreased policing happens and what its true effects are, but research is clear that officers throughout policing literature perceive a reduction in effort to be present in their policing experiences (Nix & Wolfe, 2016; Shjarback et al, 2017; Wolfe & Nix, 2016). Independent of the actuality of whether the Ferguson Effect exists, theories surrounding its potential impacts on policing are valid, including the potential for use of force restraint, motivation, and commitment to ideals (Wolfe & Nix, 2016). This existing research also suggests that in response to public scrutiny, supervisors may negatively call out the actions of their officers as a way of maintaining public support. Nix and Wolfe (2016) find that this is commonly perceived by lower-level officers as a loss of support and that they may feel less motivation to do their jobs as a result.

that officer behavior also varies dependent on how they view the support of their leadership (Kurtessis et al, 2015). From the top down, research has showed that employees report feeling more respected and supported in environments where supervisors report support from the overall organization (Shanock & Eisenberger, 2006).

On the other hand, organizations with poor managerial connections can create environments of bullying, which in policing could lead to forced decision making (Roscigno et al, 2009). In other industries, such as waste management and construction, evidence indicates that on the ground workers have different perceptions of the effectiveness of the system than those in leadership, and those perspectives affect their work (Lingard et al, 2010). While little work has been done about internal support within policing, it has been shown that perceived organizational injustice has been linked with a reduction in police related production as well as an increase in self-protective behavior (Reynolds et al, 2018).

As only one part of the larger criminal justice system, it is also important to understand police perspectives on the rest of the system. Police serve as the first introduction to the larger criminal justice system for many and are often the most visual part of the system to everyday Americans. However, their role is inherently linked with the rest of the system as for most who experience the courts, it is the police that get them there. Because of this, we must also understand how police view the rest of the system and if that impacts their decision making. Surprisingly, police perspectives of the larger criminal justice system—something my analyses address—are quite understudied. I found only one study by Spencer and colleagues (2018) who look specifically at sex

crimes police officers' perspectives of the larger system and find that there is an overwhelming sense that the larger system does not do enough in dealing with those who have committed sex crimes. [5] They also find that police share fears that the system is not good for victims' health and safety.[6]

Building off the existing literature, I will be providing updated officer perspectives on what discretion is and its role in everyday policing. I will also be expanding the understanding on for whom and when discretion uses vary. Finally, I include new findings about how perceptions of internal support and the larger system affect the use of discretion in policing. Thinking specifically about how identity affects actions and is shaped by structure, I analyze through the availability of power to those in these roles and how that has consequences in their uses of discretion.

[5] The vast majority of criminological research is done using quantitative methods, with a 2010 report showing that only 5.74% of publications from 2004-2008 in criminology journals contained qualitative methodologies (Tewksbery et al, 2010). In looking specifically at policing research, 11.8% of articles published in the top journals were based on qualitative research methods (Jenkins, 2014). While this amount is much higher than that of general criminology journals, it still shows an extreme publication bias for quantitative research within the field.

[6] This lack of prior knowledge on individual perceptions of the larger criminal justice system could also be a symptom of the larger lack of qualitative police research in the United States. Academic research does not have many examples of police officers talking about themselves. Whether it be the perceived inability to understand policing that police practitioners have, as explained by Engel and Whalen (2010), or a general distrust with those outside the profession there are few examples of police participating in qualitative research with the academy.

4. Methods

The 35 interviews with active and recently inactive police officers analyzed in this paper are part of a larger multi-methods police research project conducted by the Lab for Applied Social Science Research at the University of Maryland. As an undergraduate, I assisted in research design and execution, interviews, and analysis for the lab. The 35 qualitative interviews that contribute to this study were collected in two waves. The first took place in early spring of 2021 and the second in fall of 2022. Due to the ongoing covid pandemic, the first wave of interviews was conducted over Zoom. The second wave was conducted both in person and over Zoom. As part of a larger project, these interviews sought first to evaluate a piece of training technology. The evaluation, framed as receiving the expert's perspective, was then followed by sections of questions relating to the officer's opinions on policing as a role and as an institution. Given the delicate nature of the subject and the hesitation of the participants, some aspects of recruitment are confidential.[7]

We conducted interviews with participants from seven police districts across two wide regions of the United States. Regions were chosen based on existing connections to departments. While some departments were added through snowball sampling, no new

[7] Department location, number of officers who participated, and point of first contact are confidential. For participants, specific age, name, and department are confidential.

regions were added because of snowball sampling. Districts ranged in size from 10 officers to over 800 active officers.

Given the almost secretive nature of the field and the hesitation to speak to outsiders the lab used existing connections with police personnel to bypass the trust-based barrier to entry (Reynolds et al, 2018). Using these established connections, lab leadership first verified with department leadership that individual officer participation in the project was approved. After receiving that approval, we provided districts with recruitment materials detailing the opportunity to serve as an expert reviewing policing technology as well as opinions on policing in the 21st century. At this point, specific recruitment strategies varied by department, but officers generally reached out to us with their interest in participating. We also allowed for snowball sampling opportunities as often the participants had peers they wanted to recommend for the conversations. A small minority of our sample came through this method.

Interviewees were all active or recently active police officers. They occupied roles ranging from patrol officer to training officer as well as chief of department. Most respondents were of lower ranks. About a quarter of the interviewees were women, more than the 13% of the policing profession that they normally occupy. Also, unlike the field in general, most of my respondents were Black (51.43%). This oversampling was intentional as we wanted to ensure that we represented the less heard from voices within policing literature. Additionally, as prior research has shown that policing is experienced differently by people of different identities, it was important that we include individuals with a multitude of identities (Headley, 2022; Schaible, 2018). The districts the

participants represented also ranged from small local district with less than 10 officers to a district overseeing the entirety of one of the fastest growing cities in the United States. For further breakdown of demographics, including race, gender, and time on force, see Table 1. To maintain confidentiality, officers are identified by whether their district was in the MidAtlantic or MidWest.

Gender	Frequency (n=35)	Percentage
Man	25	71.43
Woman	10	28.57
Race		
Black	18	51.43
White	13	37.14
Hispanic	2	5.71
Asian	1	2.86
Other	1	2.86
Region		
MidAtlantic	24	68.57
MidWest	11	31.43
Rank		
Senior Officer	10	28.57
Sergeant	7	20.00
Lieutenant	5	14.29
Chief	3	8.57
Captain	3	8.57
Senior Detective	2	5.71
Detective	2	5.71
Acting Lieutenant	1	2.86
Missing	2	5.71
Age		
25-34	7	20.00
35-44	13	37.14
45-54	10	28.57
55+	5	14.29

Table 1: Descriptive Statistics

Prior to the interviews, the interview team and lab leaders participated in informal interviewer training focused on building rapport in the conversations. The interview team consisted of one Black man, one white man, one Hispanic woman, and me, a white woman. We each interviewed participants from multiple locations and of various ranks. There was an intentional focus from each of us on building rapport and creating the feeling of a safe space with the officers to attempt to build as authentic an interview space

as possible. The research team received informed consent at the beginning of the recruitment process as well as multiple times throughout the interviews.

Through our recruitment, we learned that American policing tends to be closed off from research and conversation with the general public. Multiple departments warned us that we would need to establish trust quickly in our interviews for them to be productive. Because of the closed off nature of the profession and the ongoing feeling of being attacked by outsiders that many of the respondents shared, the interview team did our best to present ourselves as unbiased allies (Reynolds et al, 2018). This meant ensuring that we did not include anything in our interview spaces that could be interpreted as anti-police. It also meant providing the occasional reassuring "mhmm" if an officer trailed off looking for confirmation that their opinion or perspective could be shared safely.

As a white woman conducting research on policing, I was confident that I would visually present as someone supportive of the policing tradition, as white Americans are more likely to support the police (Ramsey, 2017). Going into the conversations, I expected that this would make it easier for me to establish rapport without having to reveal part of myself. The comfort that most officers seemed to feel in speaking with me also meant that, on occasion, they said things I hesitate to assume they would share with just anyone. This sometimes left me feeling a bit uncomfortable by the end of the conversation as I felt that I may have reaffirmed beliefs with which I disagreed to maintain the rapport and open nature of the conversation (Fujii, 2017).

Overall, the individual interviews averaged between 3.5-4 hours each. They began with the program evaluation, which I removed from the material before I coded it, and ended with sections about contemporary policing. The four sections of the interview were Officer Mental Health, Police-Community Relations, Race Relations, Policing and the Rule of Law, and the Officer Role and its Effects. What was left was transcripts of interviews between 40-60 pages long containing answers to the questions, stories about the police experience, and many thank you's for providing a space the officers felt comfortable sharing in.

Finally, with respect to discretion, we did not provide our own definition of discretion during the interviews. Due to the aforementioned uncertainty about what discretion is, we allowed for officers to respond to discretion related questions with their own perceptions of what discretion meant. Sample discretion related questions from the interview guide include "How much discretion are officers able to use while working?", "In what cases can an officer use discretion?", and "Has the amount of discretion officers are allowed changed over time?" Officers responded to these questions not only with their own ideas for whom and where discretion exists but also what outside factors can influence how they make decisions.

5. Analysis

For data analysis I followed traditional inductive qualitative strategies, coding the data before fully immersing myself in the existing literature (Charmaz, 2009). With this approach, I coded the interviews before reviewing the specific literature, allowing the foundation for my paper to be built from what was shared by the participants. I began the review of the data knowing that I wanted to look at how discretion, which I initially conceptualized as the decision whether to arrest, was described and varied. In further revisiting the questions, I ascertained there would be the potential to learn more about discretion from the officer responses to the questions on support and the larger system. For coding, I followed the guidelines of Thematic Analysis looking first for broad themes before narrowing themes (Braun & Clarke, 2006). Using NVIVO qualitative coding software, I coded three broad themes focusing on comments regarding discretion, support, and views of the larger system. After coding the first five interviews, I realized that discretion was described broadly by the officers. Because of this, I restarted the coding process, coding discretion as any time that officers indicated that they had a choice to make which varied from whether to approach a scene to whether they should attend a court date.

After coding this first round, I reviewed each isolated quote and broke down the "support" category based on whether respondents talked about internal or external

support. I also expanded the "views on system" code to include secondary codes for completely positive or completely negative. From here, I sorted the discretion comments focusing on what aspects of discretion respondents referred to and if they were said once or multiple times.

Consistent throughout the interviews, and relevant for analysis, was the continual officer inclination to say that broadly something did not happen but then when asked specifically they would be able to confirm its occurrence. This was seen commonly in the questions about mental health as officers would say "no mental health problems here" but then provide multiple examples of their or a peer's struggles with mental health. Similarly, this was seen in questions about discretion. In the discretion conversations, this presented most often as officers saying there was no variation in who could use discretion and then providing specific examples of some officers being able to get away with more. This continual back and forth between general dismissal of a phenomenon coupled with quickly provided examples of that phenomenon made it so that in analysis, I was occasionally required to connect comments across the duration of an individual's interview to truly interpret what they were saying.

6. Police Discretion as Described and Understood

In our conversations with officers, discretion was reported as both being common and specialized. As already discussed, officers tended to report that discretion was not common but then highlight multiple aspects of their daily work in which discretion could be used. Despite almost each officer providing at least one report of how discretion is used, they reported that how and where they use discretion consistently varies. Due to this variation in how officers viewed discretion, I begin the results section by highlighting officer perspectives on what discretion is and where in their work opportunities for it exist.

Simply put, most officers described discretion in deciding whether to arrest an individual. The concept of discretion is inherent in the field of policing, something Celestine shared as it is "one of our rules, that the first paragraph [of the officer rule book] is that officers have discretion." Marco, a black male captain from the MidWest, shared that for him discretion exists when he stops someone. He states that "although I stopped you, it don't mean I gotta lock you up, and it don't mean I always gotta write you a ticket". In addition to formal consequences of discretion within the legal system, Peony also shared that officers use their discretion in deciding whether to use force. Use of force, an ongoing debate in the academic and public literature on policing, is often

reported as at the discretion of the officer. Peony said that officers "absolutely" vary their use of force even though there are set rules as to when they are allowed to use force.

Most commonly, officers reported using their discretion in letting people go for minor offenses or when the civilian's behavior was not worth the long-standing effects of criminal legal contact. Celestine, a Black female from the MidWest, reported that while she was a street cop, she often though about whether it was necessary to take someone to jail. She specifically referenced interacting with people with outstanding warrants saying that "just because somebody may have had two bench warrants or, you know, something like that, that didn't mean that they were automatically going to jail." She shared that if she interacted with someone in that or a similar circumstance, she might not take them in because if they "couldn't pay or whatever…why still keep penalizing them and giving them more warrants."

A less common but still reported use of discretion was that to "un-arrest." Rich, a Black male chief from the MidWest, shared that when he was on the street, he often used his discretion as someone in a higher role to "un-arrest" based on how the arrest answered his "litmus test of is it legal, is it ethical, and is it within our policies and guidelines?" He explained that upon being allowed this privilege, it helped him make sure that officers around him were arresting only in necessary situations. Rich emphasized that this use of discretion was not always respected by those around him but that it allowed for him to feel comfortable in his policing behavior.

Though not how the media and the policing institution would like to describe discretion, officers also discussed the discretion fellow officers would use in reporting.

Many reported biased questions and answers being reported, or important questions not being asked. Marie shared an example of this by talking about officers who "might not have known to ask that question [she adds] um I would say a lot of bias comes into um when I worked in areas where there were prostitutes who would report that they were raped." Marie explained that in these situations some officers "don't see prostitutes as getting raped" and therefore will not ask the right questions. Others shared that officers may leave out witness reports when it suited them. Most poignantly, Henry, a white sergeant from the Midwest, reported that officers use discretion in what details of their actions they must report. He shared "if an officer's doing something wrong, they're not gonna put it in the report" and that they might try "using the report to kinda justify, uh, what their- what they're making the charge of." When the interviewer followed up and asked if officers might leave out use of force in the report, Henry said "yeah, to make it, uh, make it more congruent with the situation."

The situations and locations in policing in which discretion is accessible to officers vary greatly. Bart, a white male cop from a small district in the MidAtlantic, reported that "we give them full discretion… it's up to them and what they decide to do whether they want to arrest…give a ticket…give a warning." Bart did follow up this comment with recognition that this amount of discretion is rare stating that this is "probably not the case for some other agencies." On the other hand, Beth a female detective from the MidAtlantic, highlighted that in her district it varies based on crime, "felonies you have no discretion, um, you must arrest. Uh, certain misdemeanors, you must arrest, you have no choice…certain traffic things…and misdemeanors, you have

some discretion." This aligned with what officers reported: that for certain more severe crimes, there was no discretion in arrest, but for misdemeanors and traffic stops, officers could use their discretion.

7. Reported Consequences of Position, Status, and Structure

7.1. As Individuals

In their role as police officers, decisions must be made that are reflective of the larger system in which they are embedded as well as who they are as a person. Occupational position and identity becomes relevant when officers are forced to combine the lives they live as civilians with the power they hold in their role. This becomes relevant in reports on mood and emotional stability in discretion choices. Billy, a Black male sergeant from the MidWest, highlighted that mood can play a role in the use of discretion. He stated blatantly that "what gets officers in a pickle… if I'm feeling good today, you can go. But if I'm in a shitty mood, then you can't." This sentiment was echoed by Tommy, a male senior officer from the MidAtlantic, who added that stress and anxiety about parts of an officer's life outside of the job can lead to varied decisions in arrest and force.

This theme was shared commonly in reference to mental health with officers commenting that they knew of other officers who misbehaved on the job for reasons that were later linked to internal or external stress. Caden shared a personal example of a time he used his discretion to act more aggressively. He told the story of a domestic house call he went on just hours after another call in which he saw an infant die. In his words, "the guy that I dealt with on that day on that domestic "caught hell, 'cause I was still

processing the earlier call." In the context of external stress, Edward spoke of a fellow officer who he reported for threatening his wife and being erratic in the field. Edward explained that the officer was deemed "unfit for duty" and that his mental break was connected to the stress of his impending fatherhood. Bart also talked about the effects of external stress saying that it was probably people "bringing their personal stuff to work with them" that led officers to behave in ways the public did not approve of.

Position also becomes important in focusing on how the civilian exists in the officer's mind. Officers reflected on their use of discretion varying based on their position in relation to the individual with whom they were interacting. A commonly reported determinant of when officers use discretion reflected how often they had interacted with a suspect. Many officers reported that if it was someone with whom they had not interacted before and the crime was relatively minor, they were likely to let the person go with only a warning. This was different if the person was a repeat offender, someone whose identity was already established within the mind of the officer. Bonnie, a female senior officer from the MidAtlantic, shared that for her, it "depends on how many times have I interacted with that person, have I had to come out here five times already for him? Then he's probably going to jail."

Occupational identity and position are also reflected in reports of how discretion use varies based on behavior expectations. Marshall, a Hispanic male captain from the MidAtlantic, talked about the use of discretion by more "heavy-handed officers." He stated that they, viewed as an identity group within policing, are often able to get away with more discretion because "they're making a bunch of lock-ups" and the "leaders look

the other way." Marshall connected this statement to a further argument about the potential negative effects of unsupervised discretion. This may be support for Muir's police types as Marshall's comments seemed to support the conclusion that different officers maintain different expectations for their role and supplement that with their expectations of behavior (1977).

Status dynamics played a direct role in discretion allotment for those who shared that discretion was more accessible, or approved, for some versus others. One factor determining who had discretion was experience. Those further along in the ranks were reported as having more discretion by most officers, though the members of the sample who were higher up in the ranks did not report themselves as having more discretion. Brennan, a male sergeant from the MidAtlantic, referred to varying uses of discretion by stating that more experienced officers "may just take the opportunity to use it more." Intertwined with rank is a connection to the upper leadership that may affect who can use discretion. According to Caden, a Black male lieutenant from the MidWest, some officers are allowed more discretion than others "because supervisors grow confidence in certain officers over other officers." Edward, a Black male Chief from the MidAtlantic, agreed with this, saying that some "officers, they just get away with it 'cause they've been here longer, culture again, they know the Sergeant, relationships, and so they kinda get away with a lot of discretion."

Structural constraints were present throughout conversations, in everything from logistical requirements to technological advancements to the role of the larger system. Logistically, location seemed to play a role in discretion application. When asked if

discretion was evenly applied, officers were about half and half in answering in the affirmative. Kenneth, a male senior officer from the MidAtlantic, talked about the variation in how discretion is used based on neighborhood, which is an example of when discretion depended on location. He shared that there are some areas of his city where "zoning violations are addressed," "some communities where you can walk around and drink in public and other communities where that will get the police called on you" and they will be forced to act. He highlighted that a lot of this variation is based on socioeconomic status, "there's a benefit of the doubt given to nicer communities."

Technological structural constraints were shared in conversations on body and phone cameras. Body cameras were often pointed to as a reason for a decrease in the amount of discretion allotted to officers. Bernie, a black male sergeant from the MidWest, shared a hypothetical story of stopping a mother who had her kids in the car as well as a blunt. He said that whereas in the past he may have confiscated the blunt and let the mother go with no charges, now because of body cameras, the question would get asked "why don't you lock her up, and towed her car, and get those kids out?" He summarized his thoughts with cameras are "kinda eliminating discretion" in that they force officers to act when they may previously have let something pass. Though he was the only officer to make this direct connection, prior research shares similar ideas (Taylor, 2016).

Another common theme regarding body cameras was their potential to change the decisions police made related to physical action. Billy, a Black male officer from the MidWest, shared that while previously he may have encountered a "neighborhood kid"

and given “him a one two gut shot” to get him to change behavior, cameras now mean that he cannot do that. However, Marshall reported that body cameras might not have caused a reduction in use of force for officers saying that “the officers that are gonna abuse people which are a small percentage, they’re gonna do it no matter what… no matter how many body cameras you put out there. They’re still gonna do it.”

7.2. Within a System

Conclusions surrounding a sociological application of structure were most salient in responses regarding internal and external support as well as views on the larger system. Partially due to the time period in which these interviews were conducted, an underlying theme of lowered support and increased public recognition for the impact of policing was persistent. These interviews were conducted through 2021 and 2022 which, as many officers commented, was a new time for policing. Bart described the current climate as “a war on police” from both the media and police leadership. Officers commented throughout interviews on the changed landscape of policing resulting from increased public and media attention and changed pressure from politicians. As part of the interviews, we asked if the stress level of the job was changing based on perceived support from leadership as well as changing support from the general public. Almost every officer interviewed shared some sense of decreased support from their leadership or a sense that their leadership had begun “playing the public game.” While telling a story about many officers leaving their jobs in the past few years, the interviewer asked Bonnie if this was due to a reduction in leadership support. Bonnie answered in the affirmative and added that while she understood the leadership needing to “keep[ing] the public’s

trust…there needs to be a, uh, we need to look out for our officers as well." Brad also felt this way and attempted to apply a hierarchical reason for why it was happening. He pointed out that "city leaders are putting more pressure on department heads and department leadership," especially in questions of use of force and the public response to use of force incidents.

While this theme was common in our interviews, officers who had been around for longer also added that it was a relatively recent development in their policing careers. Henry, who had been a sworn officer for 13 years, added that "pretty much every officer I speak to anymore, our chiefs and stuff, they're just politicians anymore. So they're going to throw you under the bus any chance they get to keep their position." He followed this comment with the added rebuke that "you used to have a lot more trust" in your supervisors having your back. While not all officers argued that this decrease in department support made them doubt their leadership, Rose, a white officer from the Mid Atlantic, had a different opinion. She shared that in the face of scandal, the chief tends to share "a politically correct answer, which hurts the officer." Brennan specifically addressed the effects of this perceived lack of support saying, "Officers want to feel like they're supported...sometimes things go wrong... and what officers wanna know is that they're gonna be supported when they happens" he thinks that this lack of support is leading to changed "selection and application of force" as well as "a growing number of people walking away from this profession."

This perceived structural decrease in support led to changes in discretionary behaviors including a move to deactive policing, the requirement to prove their behavior

was necessary, and a hesitation to act. As many officers talked about their behavior (and hence their discretion), they spoke of decisions not to act when they were unsure of potential support or if it would be worth the effort. A few called this deactive policing, a play on reactive policing, which is considered the "come after it's over" method of policing. Matthew spoke of deactive policing as a use of police discretion. In telling a hypothetical story about seeing "gang members hanging out on a corner that is an open air drug market…I have discretion of whether or not I set up surveillance on that corner." He continued by saying, "Officers are using that discretion to say, 'I'm not gonna make an arrest, I'm just gonna let them go,'" a decision he attributes to the increased scrutiny from the public which could lead to unsupportive supervisors. When the interviewer asked if this was an example of deactive policing, Matthew responded "right."

The changing system that leads to decreased support was in the minds of the officers also based on how the public sees their actions. Marco shared that there are potential discretionary decisions of deactive policing in reaction to the decreased support from supervisors because of potential public scrutiny. He said that discretionary actions are now "different if it's on camera 'cause is somebody on, on the other end of that camera gonna criticize for me doing that?" For Brad, deactive policing meant that officers are being less proactive. He stated that some officers may have sentiments of "I don't want to deal with that today" when put in a situation that might involve them putting themselves in the potential for use of force or public scrutiny. Deactive policing was most commonly mentioned in cases where the officer would have to infer that something criminal was happening or go into an unknown situation. Alexander added to

this conversation by sharing that "officers don't…don't want to get engaged" especially in actions that are happening in "that li- little gray area."

Another consistent theme in officers talking about the effects of reduced leadership support was an underlying need to prove their actions were necessary. For Richard, this change in needing to prove the necessity of actions was something that affected all officers no matter their quality. In the past, he said, "if you're like, a good officer, a good guy, then they'll [supervisory leadership] let you away with a little bit more…but currently, the way things are, even if you're a goof officer, you know, they may not be able to, you know, give you any cover." Richard's comment highlights that this change in policing is a thorough one and indirectly indicates that there used to be blind trust in the actions of the "good officers."

Specifically, when discussing use of force, Billy, a long serving officer, made many comments on the new rules surrounding policing and what was or was not acceptable. In terms of use of force, he shared that while "it's mostly a good change" that officers are more likely to watch their behavior, "some of these people can be turned around with a general good old fashioned ass whoopin'." An "ass whoopin" that he argued is no longer something the police can do because it won't be justifiable as necessary. Similarly, Brad commented on the restrictions on potential use of force saying, "I kinda wanna do it the way that we traditionally do it," which he says is not the "more acceptable… way of doing it." He continued by agreeing with the interviewer's summarized restatement of his comments that use of force is allowed, potentially even more force, as long as it is publicly acceptable use of force from a supervisor's

perspective. Finally, Billy talked about this change in a different way than others, adding that now it is harder to justify use of physical force. He added that this stricter requirement of justification "may make a particular officer pull their firearm quicker" as officers are less likely to use physical force and more comfortable going to the extreme to quell potential resistant behavior. For each of these officers, the new fear of having to justify their actions to their supervisors made them less effective in the field and weakened their ability to thoroughly do their jobs.

Combined with this hesitation to act due to a need to prove action was necessary was an occasionally mentioned sense of a need to second guess actions that was explained as being slow to act. Jerry shared that even in cases where he thought use of force was needed, some officers are "more hesitant to use force… if you sit in your car, you can't get in trouble." This sense of hesitation was also shared by Henry who said that the perceived decrease level of support may lead to officers who he "wouldn't say are slower to respond, but definitely second guessing use of force." Selena agreed that officers second guess their actions more now and added a time component saying that this new hesitation is "gonna cause many officers to lose their lives because now they have to second guess and think everything through before they take an action." While officers complain that a perceived lack of support from the upper ranks may lead them to act slower, they also comment that it forces them to evaluate if force is actually needed in the situation. While they describe this as a time that may endanger them, it could also be seen as a hesitation that may save the lives of those less who do not walk the street with a gun as part of their job.

As policing is only one part of the criminal legal system, these officers are embedded into a structure in which they represent only a part, because of this we felt it important to ask about the officers' perspectives on the rest of the system. Most officers commented that they did not believe the legal system was always right or always wrong, though there was variation in how views broke down. Seven officers said they thought the decisions of the rest of the system were generally rights versus 12 who said the decisions were generally wrong, while others did not share a strong feeling either way. Consistently frustration was expressed with how decisions were made and how those decisions affected officers on the street. Matthew summarized the views of officers as "officers think judges are way too lenient"-something that he sees in them "letting people off" and "getting lighter sentences", which for him leads to the repeat offenders that he interacts with on the street. Beth also shared this feeling, answering the question "where do you think the people you arrest end up?" with "bailed out, right away" as she laughed and commented on the frustration of repeat interactions with the same person. For Bart, those who are released are "probably right back wherever you got them the first time." While some officers pointed out that it frustrated them that the legal system made decisions like these, others added that they have given up on trusting the rest of the system. Jerry shared that, "I cannot control what happened in court. All I can do is pick up the facts." As officers commented on the potential for people to be let off when brought in for smaller charges, it can be assumed that some officers save themselves time and paperwork by not bringing those people in in the first place, putting distance between themselves and the larger system and constraining their actions due to the structure.

Officers were not just frustrated with the larger system for how their decisions affected police but also expressed views of inequities in the system independent of their work. Brad expressed frustration with how the legal system treats people based on wealth. He pointed out that the system was unfair, independent of the actions of police officers, because if "you have money you can mitigate…find these small, little things to throw out the entire thing and then you get away with what you committed." Brennan was also frustrated with the way the system treats different groups. Though he did not identify which groups he was talking about, he said "judges and prosecutors and even public defenders… tend to be more lenient toward one group than then the other." Bernie tied this difference in how the courts treat people into his work as an officer saying that as he sees it, victims of crime are often those who committed crimes earlier which could have been mitigated "if you would've address[ed] this earlier, by giving them the punishment they deserve, then, you know, this person… would not have been a victim." For Ralph, there is a bigger reason why these things are happening. The court "ran more like a business…It's frustrating on the police side, too." Ralph shared that the frustration doesn't end there because often "the kid is right back out in an hour on the same block that he was arrested on, laughing at the police." While no officer specifically said that the potential for quick release affected their decision making, a few commented that seeing people multiple times makes them more likely to arrest them, a potential result of the larger systems behavior.

As some officers explained, this distrust in the larger system sometimes meant taking things into their own hands. Marshall shared that officers "have a little bit of

influence" when they talk to the state attorney so can emphasize "whether to go a little lenient… or on the heavier side." Peony said that sometimes when making a report, to explain that action was necessary and motivate the courts to act "they exaggerate." Kenneth also commented on the potential for officers to adapt their reports to make their actions seem more necessary by sharing that sometimes officers will realize they did something unnecessary or wrong and to avoid getting in trouble or causing a problem later in the system "skew the facts, um, so that you appear correct."

8. Discussion

This work revisits the previously focused upon subject of discretion among police. Formerly one of the most intensely studied areas of police behavior, discretion has been largely ignored over the past about 40 years. The paper begins to remedy that by advancing sociological insights regarding discretion by interrogating first-hand accounts of the uses of discretionary actions and their internal and external constraints. In this exploration I ask, how do police officers view and use discretion and what forces can vary their use of it?

Initially simply focusing on attempting to create a definition of discretion, I highlight officer views on what they believe discretion is. In this review, I show that each officer interprets the ability to make a choice, something they believe is an inherent part of policing, differently, a finding supportive of historical work on policing discretion (Nickels, 2007). I show that officers report variation in where and how discretion is used as well as something relevant to the administrative aspects of their roles.

In addition to this exploration into what discretion is to police officers, I investigate the role of occupational position, status dynamics, and structural constraints on the use of discretion. Occupational position appears as both constraining and motivating factors, becoming relevant in officer mood and identity. Occupational position

in the role of controlling the public also becomes relevant in interactions with those the officers view as repeat offenders.

I find that officers perceive variation in who is allowed discretion dependent on status characteristics based on where they are in the system. Officers who are higher in rank or more connected to those with status are viewed as having more discretion. Additionally, those who are viewed as heavy handed bridge position and status constraints in having a new set of rules for discretion applied to them.

Structural constraints are also present in officers' minds in discussions of technological advancements and system organization. Officers discuss technological advancements in policing, specifically commenting that body worn cameras and the prevalence of cell phone cameras which have reduced their ability to use discretion in the field which qualitatively expanded previous literature on the impact of cameras (Taylor, 2016). I show that officers perceive a decreasing level of support from their supervisors and feel that it affects their behavior on the job. This lowered level of support leads officers to participate in deactive policing, potentially avoiding scenarios that could result in public attention. While officers' comment on their supervisor's responsibility to support them, they also comment that chiefs and leadership are often in elected or appointed political positions that may impact the way they handle controversy. For officers, this move to deactive policing is a bad one but for police reform advocates, the idea that officers are less likely to insert themselves in potential use of force situations is likely appreciated. These findings expanded on the literature on the Ferguson Effect by

showing that the reaction to criticism exists for both internal and external critiques (Shjarback et al, 2017; Wolfe & Nix, 2016).

I also find that officers think about the rest of the criminal justice system while making decisions, sometimes acting slower or taking matters into their own hands because of the potential responses of the system around them. As individuals embedded in a larger system, the officers shared this change in how they police due to a sense that the greater structure was ineffective or inefficient in supporting their role as police. Officers also commented on a distrust of the larger system that has yet to be interrogated in research.

My results indicate that policing scholars need to return attention to the nature and use of discretion in police action. The officers spoke of discretion in terms of any choice they had the opportunity to make, not just whether to arrest as some public literature sees discretion. Additionally, this paper shows that these choices are connected to the world outside of policing and that to understand the nature of police decision making we must also look at the way they interact with the system around them.

These findings remind policing scholars and the general public of the freedom of choice that police officers have in their daily work. I was surprised by the variation in definitions and explanations of discretion that persisted throughout the interviews. Additionally, I expected more direct ties between feelings about the larger system and police behavior. By revisiting this forgotten aspect of policing, I refresh the fields understanding of how modern officers see their right to discretion and their ability to use

it. I also expand on the previous work by showing the impact of internal and external system forces on how and when officers use their discretion.

A few constrains were present throughout the study. Though almost all officers thanked us for the opportunity to speak, there were a few that doubted our intentions through the entire process, which is reflected in short and hostile answers. It is possible that quality data was not able to be gathered from these officers. Also, due to the length of the interviews, there was interviewer and respondent fatigue through the process. Most of the questions that I used in my analysis came from the end of the interview so there is also the potential that these answers were particularly fatigued. Finally, because in most departments recruitment required some aspect of volunteering to be interviewed, there is the potential for a self-selection bias that left us with the officers most willing to speak to the public. This may have meant that we got the officers least hesitant to share their thoughts on policing, leaving us with those who represent the "good apples." This also meant that we had different numbers of respondents from each department, and for this reason I did not make comparisons across departments through the analysis.

Outside of academia, this research also has implications for how we view police actions and use of discretion. First, I establish that there is no universal understanding of discretion. This becomes an issue when policy makers argue for universal reforms to policing. Second, I show that occupational position, status dynamics, and structural constraints all have consequences on officer use of discretion. Perhaps most poignantly, this work shows that perceived internal support has important impacts on how officers act on the job. While some may argue that this means that there needs to be stronger internal

support, I disagree. The consequences of this reduced support that officers shared, especially being unlikely to act in situations that may not have criminal behavior and a hesitation to use violence, are positive changes in policing. Regarding the police perspectives on the larger system, I argue that the indication that the police do not approve of all judicial action shows an important need for reform in the system beyond just policing.

Overall, this exploratory research reinvigorates the policing literature on officer discretion and choice. I provide a modern base for the understanding that discretion varies and is varied by position, status, and structure. I find that each of the 35 officers view and explain discretion differently and that there is also no uniformity in how they view their right to use it. Most relevant for ongoing conversations of police reform, I find specifically that internal support and views of the larger system can have consequences for police decision making. Further research should continue to study the perspective on the larger system held by police officers to learn more about where officers disapprove of the system and how directly it affects their work. Additional research should continue this work by seeking to explore each of these avenues of police discretion, specifically focusing on what the effects of this variation based on support perceptions are. While this paper furthered the conversation on police discretion and its causes, including new conclusions about the impact of internal support and officer views on the rest of the system, there is still much to be learned about how and when officers make decisions.

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