Destabilizing Policing's Masculinity Project

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Abstract

 In the wake of national calls for police reform and nationwide protests of police killings of unarmed people of color, and unarmed Black men in particular, there is a renewed focus on the relationship between masculinity and police violence. This Article, prepared for a symposium on "Addressing the Crisis in Policing Today: Race, Masculinity, and Police Use of Force in America," evaluates how scholars inside and outside of law have approached issues of masculinity and police violence. The analysis places special emphasis on where these approaches leave us in terms of police reform. As discussed, how police-civilian encounters relate to the social construction of gender and the enactment of masculinity are major focal points of recent literature on masculinity and police violence. From this perspective, interventions are geared towards negating gender hierarchies through processes of professional resocialization and degendering that aim to replace dominant masculinist cultural norms with antimasculinist ones. When adopted for the specific purpose of changing masculinist police culture, antimasculinist officer training and enhanced diversity recruitment (especially aimed at enhancing gender diversity) are noteworthy examples of these professional re-socialization strategies.

 This Article aims to incite a conversation about moving discussions of masculinity and policing to a different plane. It evaluates the limits of social constructionist views of masculinity in policing contexts, and more specifically, the types of police reforms that follow from those views. To accomplish these goals, this Article looks outside the field of law to the discipline of criminology. As discussed, criminology is a useful comparative space to consider masculinity issues because for over a century the field has been concerned with its own "sex question" about crime, which revolves around the acknowledgment that most known criminal offenders, especially violent offenders, are men. Looking to literature outside of law, this Article argues that critical theoretical frameworks that move beyond the sex/gender distinction, such as those in postmodern feminism and queer theory, offer promise to dismantle gender hierarchies in policing on a deeper level through discursive and political strategies that challenge basic assumptions about the existing order and structure of contemporary policing. Although this Article is exploratory and invites further reflection and development, its analysis reveals the value in continually scrutinizing and reevaluating the discursive and political strategies in policing's masculinity project.

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INTRODUCTION

In the wake of national calls for police reform and nationwide protests of police killings of unarmed people of color, and unarmed Black men in particular, there is a renewed focus on the relationship between masculinity and police violence. Recent commentators have described problems of police violence in terms of "a "[c]risis of [m]asculinity"[1] and there being "[t]oo many men with badges."[2] These characterizations are by no means new,[3] but they reflect ongoing efforts to ascertain the role of masculinity in explaining police violence and envisioning police reform.

Statistics offer some insight into the problem. One estimate reports that men constitute approximately 95% of all individuals fatally shot by police for each year between 2017 and 2020.[4] According to a

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[1] *See, e.g.*, David Rosen, *Police Violence: A Crisis of Masculinity?*, COUNTERPUNCH (Nov. 5, 2020), https://www.counterpunch.org/2020/11/05/police-violence-a-crisis-of-masculinity/ [https://perma.cc/UPY9-MRF6] (discussing masculinity issues and policing).

[2] *See, e.g.*, Rosa Brooks, *One Reason for Police Violence? Too Many Men with Badges*, WASH. POST (June 18, 2020, 6:00 AM), https://www.washingtonpost.com/outlook/2020/06/18/wo-men-police-officers-violence/ [https://perma.cc/7L42-7W4B].

[3] *See infra* Parts I–II (discussing scholarly critiques).

[4] Specifically, this estimate reports that men comprised 96.28% of the 1,021 individuals fatally shot by police in the United States in 2020 (983 men, 38 women), 95.72% of the 1,004

recent study, police use of force is a leading cause of death for young men in the United States, especially Black men.[5] That study found that Black men face a 1 in 1,000 chance of being killed by police, and are 2.5 times more likely than white men to be killed by a police officer.[6] The gender composition of the police force is also relevant. According to the latest available data, men comprised 87.5% of all full-time U.S. law enforcement officers.[7]

This Article, prepared for *The George Washington Law Review* Symposium on "Addressing the Crisis in Policing Today: Race, Masculinity, and Police Use of Force in America," evaluates how scholars inside and outside of law have approached issues of masculinity and police violence, and turns a critical eye on where those approaches leave us in terms of police reform. In the past two decades, the contributions of legal scholars in particular have advanced our understanding of the role of masculinity in contributing to police violence and the importance of considering masculinity issues in police reform.[8] This literature calls attention to the complex ways in which the social construction of masculinity shapes police institutions and police-civilian

individuals fatally shot by police in 2019 (961 men, 43 women), 94.58% of the 996 individuals fatally shot by the police in 2018 (942 men, 53 women, 1 unknown), and 95.24% of the 987 individuals fatally shot by the police in 2017 (940 men, 45 women, 2 unknown). *Number of People Shot to Death by Police in the United States from 2017 to 2021, by Gender*, STATISTA (Oct. 1, 2021), https://www.statista.com/statistics/585149/people-shot-to-death-by-us-police-by-gender/ [https://perma.cc/5622-VAMN]. It is important to recognize that national statistics on police use of force have many limitations. *See* Andrew C. Gray & Karen F. Parker, *Race, Structural Predictors, and Police Shootings: Are There Differences Across Official and "Unofficial" Accounts of Lethal Force?*, 65 CRIME & DELINQUENCY 26, 27 (2019) (noting that "the United States does not have a national database that systematically collects" incidents of "the use of lethal force by police"); U.S. COMM'N ON C.R., POLICE USE OF FORCE: AN EXAMINATION OF MODERN POLICING PRACTICES 12–13 (2018), https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf [https://perma.cc/Z867-VGP8] (discussing national data sources on police use of force and their respective limitations).

5   Frank Edwards, Hedwig Lee & Michael Esposito, *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 PROC. NAT'L ACAD. SCIS. 16793, 16793 (2019), https://www.pnas.org/content/pnas/116/34/16793.full.pdf [https://perma.cc/TUR4-26T4].

6   *Id.* at 16793–94. The study's analysis relied on both official and unofficial sources of mortality data from Fatal Encounters, a journalist-led effort to document deaths involving police, and the National Vital Statistics System. *Id.* at 16796–97.

7   This estimate is based on the last reported police employee data by gender in the FBI's Uniform Crime Report. *See* U.S. DEP'T OF JUST., FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 2017, at tbl.74 (2018), https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-74 [https://perma.cc/X5EA-BK47]. In addition to dominating officer positions, men comprised 73.2% of all law enforcement employees nationwide. *Id.*

8   *See infra* Section II.B.

encounters.[9] These perspectives show that masculinity is not a static or one-dimensional concept, but rather is multiple and conflicting from various identity standpoints—for instance, race, gender, class, and sexuality.[10] Looking to ideas in sociology and criminology, a dominant thread in this area of legal scholarship argues that social, cultural, and historical relations enable certain masculinities—typically associated with whiteness, cis-maleness,[11] and heterosexuality—to inhabit positions of dominance and power in police institutions and police culture.[12] From this point of view, police violence stems from men attempting to negotiate, accomplish, or achieve masculinity.[13]

How police-civilian encounters relate to the social construction of gender and the enactment of masculinity are major focal points of this recent literature.[14] From this perspective, addressing police violence requires reform interventions that negate gender hierarchies in police culture through a process of professional resocialization and degendering that aims to replace dominant masculinist cultural norms with antimasculinist ones.[15] When adopted for the specific purpose of

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9   *See infra* Section II.B.

10   *See infra* Part II; *see also* BOB PEASE, RECREATING MEN: POSTMODERN MASCULINITY POLITICS 8 (2000) ("There are a range of masculinities in society reflecting the differences amongst men fluctuating over time and space and expressing men's ways of living and acting differently."); Ann C. McGinley & Frank Rudy Cooper, *Introduction*: *Masculinities, Multidimensionality, and Law: Why They Need One Another*, *in* MASCULINITIES AND THE LAW: A MULTIDIMENSIONAL APPROACH 1, 2 (Frank Rudy Cooper & Ann C. McGinley eds., 2012) ("The purpose of multidimensional masculinities theory is to investigate how concepts of masculinity interact with other categories of identity in varied legal contexts.").

11   Cisgender refers to individuals whose gender identity aligns with their assigned sex. *Cisgender*, MERRIAM-WEBSTER (2021), https://www.merriam-webster.com/dictionary/cisgender [https://perma.cc/T9KA-7WG6].

12   As discussed in further detail in Part II, the sociological concept of "hegemonic masculinity," first advanced by R.W. Connell in the 1980s and later reformulated in the criminology field, has had great influence in legal scholarly perspectives on masculinity issues and police violence. *See* R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC'Y 829, 830–32, 834 (2005) (discussing the origin and influence of the "hegemonic masculinity" concept). In describing early formulations of the concept of "hegemonic masculinity," Connell and Messerschmidt explain that hegemonic masculinity "embodied the currently most honored way of being a man, it required all other men to position themselves in relation to it, and it ideologically legitimated the global subordination of women to men." *Id.* at 832.

13   *See infra* Section II.B; *see, e.g.*, Frank Rudy Cooper, *"Who's the Man?": Masculinities Studies,* Terry *Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 691 (2009) [hereinafter Cooper, *Who's the Man?*] ("Because not all men can fully achieve the hegemonic brand of masculinity, a second manifestation of hegemonic masculinity is hypermasculinity."); Ann C. McGinley, *Policing and the Clash of Masculinities*, 59 HOW. L.J. 221, 261 (2015) ("In sum, male police officers accomplish masculinity by acting tough in arresting poor black male suspects.").

14   *See infra* Section II.B.

15   *See infra* Section II.B. *Cf.* R.W. CONNELL, MASCULINITIES 239 (2d ed. 1995) ("The im-

changing masculinist police culture, antimasculinist officer training and enhanced diversity recruitment, especially aimed at enhancing gender diversity, are noteworthy examples of these professional resocialization strategies.[16]

This Article aims to incite a conversation about moving discussions of masculinity and policing to a different plane. It evaluates the limits of viewing masculinity as a social construct in policing contexts, and, more specifically, the types of police reforms that follow from this view. Although valuable, perspectives that rely on social constructionist accounts of masculinity are not sufficiently far-reaching in disrupting the role of masculinity in shaping policing problems, including police violence.[17]

This Article argues that a key constraint of the current discourse in policing's masculinity project is a tendency to rely on concepts that embrace an asserted distinction between sex and gender—under which "sex" is defined as the biological structure of one's body and "gender" is defined as the social and cultural expectations associated with one's body.[18] As discussed, critical theoretical frameworks that move beyond the sex/gender distinction, such as those in postmodern feminism and queer theory,[19] offer promise to dismantle gender hierarchies in policing on a deeper level through discursive and political

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portance of education for masculinity politics follows from the onto-formativity of gender practices, the fact that our enactments of masculinity and femininity bring a social reality into being.").

16 *See, e.g.*, Cooper, *Who's the Man?*, *supra* note 13, at 732 ("If masculinist training is the problem, anti-masculinist training may provide an essential answer—adjusting the behavior of cadets and police officers."); McGinley, *supra* note 13, at 267 (recommending "[e]mpirical research on new models for police trainings that focus on de-gendering the police force, the reduction of masculine behaviors and reactions; . . . [c]reation of models for police trainings and continuing education that not only encourages community policing, but that also work to reduce efforts of police to prove masculinity through the use of excessive force; . . . [and] [a]ffirmative hiring and promotions of black and other minority men and women in police departments").

17 *See infra* Part III.

18 *See* Rhoda Kesler Unger, *Toward a Redefinition of Sex and Gender*, 34 AM. PSYCHOLOGIST 1085, 1085–86 (1979) (distinguishing between sex and gender). For a comprehensive historical critique of the conflation of sex, gender, and sexual orientation in Euro-American societies, see generally Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CALIF. L. REV. 1 (1995).

19 Nancy Levit and Robert Verchick describe that "[p]ostmodern feminism shares with critical feminist theories and with pragmatism a rejection of essentialism—the idea that all women share any single experience or condition." NANCY LEVIT & ROBERT R.M. VERCHICK, FEMINIST LEGAL THEORY 36 (2d ed. 2016). Moreover, "[p]ostmodern feminists use the tools of deconstruction to challenge the modernist idea of an unchangeable rule of law." *Id.* at 37. As Max Kirsch describes, "[a]s *theory*, queer's derivation from postmodernism and post-structuralism leads to the rejection of all categorizations as limiting and labeled by dominant power struc-

strategies that challenge basic assumptions about the existing order and structure of contemporary policing.[20] Although this Article is exploratory and invites further reflection and development, its analysis reveals the value in continually scrutinizing and reevaluating the discursive and political strategies in policing's masculinity project.[21]

To accomplish these goals, this Article looks outside the field of law to the discipline of criminology. Criminology is a useful comparative space to consider masculinity issues because for over a century the field has been concerned with its own *sex question* about crime.[22] That question revolves around the acknowledgment that most known criminal offenders, especially violent offenders, are men.[23] As criminologists have grappled with and problematized this *sex question* over time, they have invoked various discourses and knowledges of sex, gender, and masculinity.[24]

As this Article explains, approaches to masculinity in criminology can be roughly divided into three waves. The first wave dates back to the late 1800s and places primacy on sex as a biological concept and defines masculinity in positivist terms.[25] From this perspective, mascu-

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tures." MAX H. KIRSCH, QUEER THEORY AND SOCIAL CHANGE 33 (2001). For an overview on the development of queer theory, see *id.* at 32–45.

20   *See infra* Part III; KIRSCH, *supra* note 19, at 35 (identifying "the project of disassembling 'norms'" as a "major goal" of queer theory); PEASE , *supra* note 10, at 3 (noting that with regard to masculinity, "[t]he theoretical investigations and the reflections on practice influence each other").

21   This author uses the term "policing's masculinity project" to broadly describe the efforts of policing scholars, researchers, and advocates that intend to enhance knowledge about the relationship between policing and masculinity.

22   *See* Judith Allen, *Men, Crime and Criminology: Recasting the Questions*, 17 INT'L J. SOCIO. L. 19, 19–20 (1989).

23   *See* RICHARD COLLIER, MASCULINITIES, CRIME AND CRIMINOLOGY 1–2 (1998) (noting that the focus on men in "debates around the issue of crime . . . recognise[s] that men constitute the vast majority of all known offenders and that the crimes of men are ubiquitous" (footnote omitted)); John Hood-Williams, *Gender, Masculinities and Crime: From Structures to Psyches*, 5 THEORETICAL CRIMINOLOGY 37, 38 (2001) ("In criminology the novelty of observations regarding masculinity focused upon the fact that most crime was committed by men.").

24   *See* COLLIER, *supra* note 23, at 8–30 (summarizing the evolution of theoretical approaches to masculinity in the field of criminology); Stephen Tomsen, *Introduction* to CRIME, CRIMINAL JUSTICE AND MASCULINITIES, at xi–xii (Stephen Tomsen ed., 2016).

25   *See* COLLIER, *supra* note 23, at 9–11 (discussing positivist conceptions of masculinity in the criminology); Peter Cordella & Larry Siegel, *Introduction* to READINGS IN CONTEMPORARY CRIMINOLOGICAL THEORY 1, 6 (Peter Cordella & Larry Siegel eds., 1996) (noting that an element of the positivist tradition "is its embrace of the scientific method to solve problems"); JAMES TREADWELL, CRIMINOLOGY 36 (2d ed. 2013) (noting that positivist criminology "claimed to promote the scientific study of society, and replace philosophical judgement and opinion with empirically grounded fact and science"); IAN TAYLOR, PAUL WALTON & JACK YOUNG, THE NEW CRIMINOLOGY FOR A SOCIAL THEORY OF DEVIANCE 25 (40th anniversary ed. 2013) (ex-

linity is associated with a stable and measurable set of traits and characteristics assumed to be *naturally* associated with men—for instance, aggression, control, competitiveness, and rationality.[26] The second wave, which emerged in the 1970s and 1980s in the wake of feminist and lesbian and gay social movements, rejected positivistic definitions of masculinity and stressed a distinction between sex and gender in order to conceptualize masculinity, and gender more generally, as a social construction.[27] R.W. Connell's concept of "hegemonic masculinity"—which can be broadly defined as nonstatic societal patterns and practices that valorize one form of masculinity by subordinating the position of women, other genders, and other masculinities[28]—was especially influential in this new wave of criminological thought.[29] The third wave, which emerged in the 1990s, redefined the *sex question* in criminology by critiquing the limits of the sex/gender distinction and definitions of masculinity that rest on that distinction, including "hegemonic masculinity."[30] These criminologists looked to postmodern feminist paradigms in particular to advance new understandings of the social, cultural, and historical connection between the body, sexual difference, and sex/gender.[31]

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plaining that "[t]he positivist attempts the scientific explanation of crime" by relying on "three *premises* of the scientific method—measurement (quantification), objectivity (neutrality), and causality (determinism)"). See *infra* Section I.A, for a discussion of how positivistic definitions of masculinity in the field of criminology were consistent with the rise of positivistic attempts to study crime in the discipline between the late-nineteenth and mid-twentieth centuries.

26 JACK S. KAHN, AN INTRODUCTION TO MASCULINITIES 74 (2009) (noting that a positivist definition "portrays masculinity as an average or prototypical set of characteristics associated with men"); Martha K. Huggins & Mika Haritos-Fatouros, *Bureaucratizing Masculinities Among Brazilian Torturers and Murders*, *in* MASCULINITIES AND VIOLENCE 29, 30 (Lee H. Bowker ed., 1998) (noting that deterministic views of masculinity emphasize "aggressive, controlling, competitive, power-oriented, rationalistic, instrumental behaviors in men").

27 *See* COLLIER, *supra* note 23, at 13–14 (discussing the rise of social constructivist approaches to masculinity in criminological research); Tomsen, *supra* note 24, at xi (same).

28 *See* CONNELL, *supra* note 15, at 77. Connell's original formulation of "hegemonic masculinity" in the 1980s "attempted to locate all masculinities (and all femininities) in terms of a single pattern of power, the 'global dominance' of men over women." Connell & Messerschmidt, *supra* note 12, at 846. In 2005, Connell updated and reformulated the concept to "incorporate a more holistic understanding of gender hierarchy, recognizing the agency of subordinated groups as much as the power of dominant groups and the mutual conditioning of gender dynamics and other social dynamics." *Id.* at 848.

29 *See* Tomsen, *supra* note 24, at xi (discussing the influence of "hegemonic masculinity" on criminological studies of masculinity).

30 *See* COLLIER, *supra* note 23, at 23–30 (discussing feminist postmodern and poststructuralist scholarship involving sexed bodies, corporeality, and the sexed subject).

31 *See id.* at 23 ("[F]eminist postmodern and poststructuralist scholarship . . . has sought to rethink such key 'gender' concepts as identity, subjectivity, and the 'sexed' body."); David A. Rubin, *"An Unnamed Blank That Craved a Name": A Genealogy of Intersex as Gender*, 37 SIGNS

In connecting different bodies of literature, this Article shows that approaches to masculinity in law and social science research on police violence are largely consistent with the first two waves of criminological research on masculinity and crime sketched above.[32] The analysis illustrates that prior to the 1980s, positivistic views of masculinity were prevalent in law and social science research on policing.[33] Those perspectives explain police violence in terms of a drastic over-representation of male police officers who conduct themselves in dominant and aggressive ways, consistent with traits assumed to be "naturally" associated with men.[34]

After social construction theories of gender gained popularity in the 1980s, social scientists and legal scholars turned to sociological concepts to explain police violence in terms of masculinity contests, masculinity threats, and hegemonic forms of masculinity in law enforcement, both at the departmental and individual officer levels.[35] Not much scholarly attention, however, has been paid to the conceptual and political limits of the sex/gender distinction or concepts that embrace social constructivist views of masculinity in explaining and addressing police violence.[36] More robust accounts of what postmodern feminism and queer theory have to offer about connections between masculinity and police violence are needed.

This Article shows that the limited parameters of the current discourse in policing's masculinity project has significance for police reform and how researchers approach studying the police, including issues of police violence.[37] As discussed, postmodern feminist and queer theoretical perspectives open possibilities to employ masculinity concepts in ways that more deeply challenge the current scale, structure, and role of police than professional resocialization or degender-

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883, 903 (2012) ("[F]eminist and queer scholars have more recently pushed at the limits of gender constructionism, asking whether the very frame of binary gender naturalizes heteronormativity, sexual dimorphism, and the relations of power that underlie those structures.").

  32 *See infra* Parts I–II.

  33 *See infra* Section I.B.

  34 *See infra* Section I.B.

  35 *See infra* Part II.

  36 *See infra* Part III. *But see* Michael Kennedy & Philip Birch, *Changing the Perception of Police Culture: Recognizing Masculinity Diversity and Difference in a "Dirty Hands" Vocation*, 20 J. FORENSIC PRAC. 54, 56 (2018) ("Hegemonic masculinity does not accurately reflect the full spectrum of characteristics and behaviours displayed by police officers and/or within police culture. Nevertheless, hegemonic masculinity is a label that is constantly applied to police officers and their practice in order to explain their conduct.").

  37 *See infra* Part III.

ing strategies do.[38] In this regard, moving beyond the sex/gender distinction in policing's masculinity project connects to broader projects that seek to redefine how the relationship between civilians and the state manifests through policing.[39] It also creates space for researchers to explore alternative methodologies and research paradigms that further knowledge about the complex role of masculinity in shaping police violence,[40] especially against communities of color and other marginalized groups that are vulnerable to experiencing state violence through police actors.[41]

One caveat is useful at the outset. This Article does not attempt to advance a singular theory of police violence that considers masculinity at the exclusion of other important considerations, such as race, gender, class, and sexuality.[42] As discussed, recent theoretical work on masculinities and criminal justice in both law and the social sciences

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[38]   *See infra* Part III.

[39]   *See, e.g.*, Mathias Risse, *What to Say About the State*, 32 Soc. Theory and Prac. 671, 685 (2006) (stressing that "the legal aspect of the immediacy of the relationship between a state and its citizens consists in the directness and pervasiveness of its law enforcement"); Micol Seigel, Violence Work: State Power and the Limits of Police 10 (2018) ("[T]he police refract the power of the state.").

[40]   *See infra* Section III.C.

[41]   As Francisco Valdes has described, "[q]ueer legal critiques therefore must take the time and make the effort expressly to discuss and expose the role of race, ethnicity, and class in the (mis)fortunes visited by the law on Queer (and other) lives." Valdes, *supra* note 18, at 360. For sources documenting police violence against communities of color and other marginalized groups, see Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. Rev. 405, 423 (2018) (noting that the Department of Justice's "cross-cutting critiques" of the Ferguson and Baltimore Police departments "include[d] the police departments' violence and impunity in dealing with Black communities, especially poor, young, queer, trans, and otherwise intersectionally-vulnerable people"); Devon W. Carbado, *From Stop and Frisk to Shoot and Kill:* Terry v. Ohio*'s Pathway to Police Violence*, 64 UCLA L. Rev. 1508, 1510 (2017) (stressing that the "law *enables* police violence against African Americans (at the front end) and makes it difficult for them to *challenge* state violence when it has occurred (at the back end)"); Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 Harv. L. Rev. 1, 26 (2019) ("Black women, women of color, and queer women are especially vulnerable to gendered forms of sexual violence at the hands of police.").

[42]   For examples of models that explain the causes of police violence, see Charles Crawford & Ronald Burns, *Predictors of the Police Use of Force: The Application of a Continuum Perspective in Phoenix*, 1 Police Q. 41, 41 (1998) (finding based on logistic regression that "the strongest predictors of police use of force are length of time on the force, suspect race, chemical impairment, attempt to flee and possession of a weapon"); Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 Geo. L.J. 1479, 1479 (2016) (offering a theoretical model that explains the persistence of "blue-on-black violence"); Roland G. Fryer Jr., *An Empirical Analysis of Racial Differences in Police Use of Force*, 127 J. Pol. Econ. 1210, 1210 (2019) (exploring racial differences in police use of force and arguing that "patterns in the data are consistent with a model in which police officers are utility maximizers"); Gray & Parker, *supra* note 4, at 26 (evaluating macro-level predictors that influence race-specific police shootings); David Jacobs & Robert M. O'Brien, *The Determinants of Deadly Force: A Structural Anal-*

considers masculinities from a variety of intersectional standpoints.[43] Rather, the objective of this Article is more modest and attempts to show that to the extent masculinity is considered in the scholarly conversation about police violence, there is great value in pushing the discourse beyond its current frame. Lessons from the field of criminology offer insight to move policing's masculinity project in this direction.

This Article proceeds as follows. Part I examines parallels between positivistic approaches to masculinity in the first wave of masculinities research in criminology prior to the 1980s and the treatment of masculinity in law and social science research on policing during the same period. Part II explores parallels between social constructionist approaches to masculinity in the second wave of masculinities research in criminology, which primarily emerged in the late 1980s and early 1990s,[44] and the treatment of masculinity in law and social science research on policing from the same period until today. Part III discusses different critiques of social constructionist accounts of masculinity in criminology and other disciplines. It also analyzes the insight that those critiques offer for police reform and how researchers approach studying the police, including issues of police violence.

I. Positivism and Masculinity

This Part explores parallels between the first wave of masculinities research in criminology, which dominated the field until the 1970s,[45] and the treatment of masculinity issues in law and social science research on policing during the same period. As discussed, a dominant thread in these scholarly areas embraced positivist approaches that defined masculinity in terms of measurable physiological traits assumed to be "naturally" associated with men (for instance, strength, stamina, and aggressiveness).[46] In the wake of second wave

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ysis of Police Violence, 103 Am. J. Socio. 837, 841–46 (1998) (summarizing political and reactive theoretical explanations for police use of deadly force).

43 *See infra* Part III.

44 James W. Messerschmidt, *Men, Masculinities, and Crime*, *in* Handbook of Studies on Men & Masculinities 196, 196 (Michael S. Kimmel et al. eds., 2005) (noting that "[s]ince the early 1990s, numerous works have been published" that show "a new and growing interest in the relationship among men, masculinities, and crime").

45 *See infra* Section I.A.

46 Kahn, *supra* note 26, at 74 (noting that a positivist definition "portrays masculinity as an average or prototypical set of characteristics associated with men"); *id.* (describing that a positivist view of masculinity "assumes that masculinity can be defined by the way it is measured and the results of such measurement"); Daniel Tillapaugh, D. Chase J. Catalano & Tracy Davis, *Theoretical Complexities of College Men and Masculinities*, *in* Men and Masculinities 23, 28

liberal feminism in the late 1960s,[47] calls for greater inclusion of women in criminological research coincided with the mobilization for greater inclusion of women in law enforcement at all ranks.[48] In the context of these broader currents, police researchers shifted their focus to discounting biologically deterministic ideas that women were physically incapable of handling police work, and violent encounters with civilians in particular.[49] In countering these ideas, however, this research did little to counter the assumption that violence against civilians is an expected part of the job.[50]

A. *Early Positivist Approaches to Masculinity and Crime*

Prior to the 1970s, most criminological research focused on male subjects and very few criminologists discussed women's involvement in crime.[51] These male-centered perspectives stemmed from criminologists' explicit and implicit engagement with the discipline's own *sex question*, which revolved around the acknowledgment that criminal offenders, especially violent offenders, were predominantly men.[52] To the extent that criminological research discussed women, they were stereotypically depicted as "naturally" passive and docile based on biologically deterministic views that women were the "weaker sex."[53] Drawing on positivistic definitions of femininity, criminologists characterized female criminality as anomalous or irregular,[54] and female

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(Daniel Tillapaugh & Brian L. McGowan eds., 2019) ("The positivist perspective assumes a truth about gender as a quantifiable, biologically essentialist, and accepted reality.").

[47] *See* Nicola Lacey, Unspeakable Subjects: Feminist Essays in Legal and Social Theory 188–89 (1998) (describing "liberal feminism" as "one in which the analytic emphasis is on the implicit and explicit exclusion of women from the full status of legal subject, whilst the normative emphasis is on our inclusion via a strategy of sex-blind equality").

[48] *See* Carol A. Archbold & Dorothy Moses Schulz, *Research on Women in Policing: A Look at the Past, Present and Future*, 6 Socio. Compass 694, 696 (2012) (explaining how the rise in feminism in the 1960s and 1970s supported women's demands for full participation in policing).

[49] *See infra* Section I.B.

[50] *See infra* Section I.B.

[51] *See* Claire M. Renzetti, Feminist Criminology 16 (2013) (noting that prior to the 1970s "women were largely ignored by criminologists who assumed that women simply do not commit crimes").

[52] *See* Carol Smart, Women, Crime, and Criminology 1 (1976) (noting that the understudy of women and crime "seems to be in part a consequence of the pervasiveness of the belief in the relative insignificance of female criminality").

[53] Renzetti, *supra* note 51, at 16.

[54] *See id.* ("There were, to be sure, a few books and articles written about 'the female offender' before the 1970s, but the emphasis of these criminologists was on the anomalous nature of female offending." (citation omitted)); Smart, *supra* note 52, at 1; *see also* Allen, *supra* note 22, at 21 (noting "the handful of biogenic and psychogenic theorists attempting to explain

offenders as biologically defective for violating women's "true" nature.[55]

With men at the center of criminological inquiry, most criminologists between the late-nineteenth and mid-twentieth century embraced biological positivism to distinguish (male) criminal offenders from law-abiding civilians based on physical and mental characteristics.[56] The dominance of biological positivism is most pronounced in research at the birth of the discipline in the 1860s, when a group of Italian physicians first used the scientific method to explain crime.[57] Most notably, Cesare Lombroso's early biological theory of crime applied methods of phrenology and anthropometry[58] to distinguish law-abiding civilians from different classes of criminal offenders based on measurements of skulls, brains, facial features, and other body parts.[59] Lombroso's biological theory argued that external physical features reflected a person's internal moral state, and in turn, the causes of crime were connected to the physical features of criminal offenders.[60]

In the early twentieth century, criminologists continued to define masculinity through the physiology of male bodies, but in different ways. Specifically, these thinkers looked to heredity and body type to explain crime in terms of the biological constitutions of male offenders.[61] For instance, in his influential 1913 work, *The English Convict*,

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women's low rates of criminality and non-criminality in terms of biological and related psychological endowments").

[55] Renzetti, *supra* note 51, at 16 ("Women who broke the law were portrayed as physically or psychologically defective at best, as monsters at worst. Their criminality was evidence of their failure as 'true' women, for a 'true' woman is passive, nurturing, and physically and intellectually weak *by nature* . . . .").

[56] C. Ronald Huff & Frank R. Scarpitti, *The Origins and Development of Containment Theory: Walter C. Reckless and Simon Dinitz*, *in* 16 The Origins of American Criminology 277, 277 (Francis T. Cullen et al. eds., 2011) ("Prior to World War II, etiological explanations of crime often focused on biological and psychological variables . . . ."); Suzette Cote, Criminological Theories, at xix (2002) ("By the 1930s, many of the biological and psychological theories had begun to wane . . . . [B]y the middle of the 20th century, the sociological approach had begun to monopolize the study of crime and criminality.").

[57] *See* Reece Walters, Deviant Knowledge: Criminology, Politics and Policy 15 (2003).

[58] "Phrenology is the study of the shape of the skull and its relation to character traits." Cooper Ellenberg, *Lie Detection: A Changing of the Guard in the Quest for Truth in Court?*, 33 Law & Psych. Rev. 139, 140 (2009). "Anthropometry is the measurement of body parts for the purpose of understanding human variation." Cary Federman, *A "Morphological Sphinx": On the Silence of the Assassin Leon Czolgosz*, 2 J. Theoretical & Phil. Criminology 100, 125 (2010).

[59] *See* Mary Gibson & Nicole Hahn Rafter, *Editors' Introduction* to Cesare Lombroso, Criminal Man 9 (Mary Gibson & Nicole Hahn Rafter trans., Duke Univ. Press 2006) (1876).

[60] Jordan Blair Woods, *LGBT Identity and Crime*, 105 Calif. L. Rev. 667, 683 (2017).

[61] *See* Stephen E. Brown, Finn-Aage Esbensen & Gilbert Geis, Criminology: Ex-

Charles Goring compared the physical and mental characteristics of 2,348 English male convicts to a large group of law-abiding civilians.[62] Goring found that the male offenders were physically "inferior" in height, weight, and mental capacity.[63] Based on his research findings, Goring claimed that criminality was an inherited trait and the most important causal factor of crime.[64] As another example, in the 1940s, William Sheldon advanced a three-part typology that looked to body types to differentiate law-abiding civilians from (male) criminal offenders.[65] Sheldon's later studies reported that "mesomorphs"—one of the three body types in the typology—are more likely to possess traits associated with aggression, delinquency, and crime.[66]

Although the specific methods used in these early biological theories of crime lost popularity over time,[67] the discipline's focus on male subjects persisted.[68] That focus shifted in the 1970s with the emergence of feminist criminology.[69] Inspired by the emergence of second wave liberal feminism in the 1960s, feminist criminologists began to apply feminist philosophies to call attention to the historical neglect and mistreatment of women in the field.[70] Broadly speaking, early feminist criminologists advocated for the full inclusion of women in

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PLAINING CRIME AND ITS CONTEXT 225–29 (8th ed. 2015) (summarizing criminological theories of biological determinism advanced during the early twentieth century).

62 CHARLES GORING, THE ENGLISH CONVICT 43 (1913).

63 *Id.* at 196.

64 *See id.* at 372 ("[F]rom these facts the conclusion seems inevitable that the genesis of crime, and the production of criminals, must be influenced by heredity.").

65 *See* W.H. SHELDON, S.S. STEVENS & W.B. TUCKER, THE VARIETIES OF HUMAN PHYSIQUE: AN INTRODUCTION TO CONSTITUTIONAL PSYCHOLOGY 29 (1940) ("[W]e undertook at the University of Chicago to classify 400 male undergraduate students on the basis of Kretschmer's threefold morphological typology."). Sheldon's ideas were grounded in what he called "constitutional psychology," which, Sheldon described, "questions the wisdom of studying mental function in isolation from morphology." *Id.* at 2.

66 *See* WILLIAM H. SHELDON, EMIL M. HARTL & EUGENE McDERMOTT, VARIETIES OF DELINQUENT YOUTH: AN INTRODUCTION TO CONSTITUTIONAL PSYCHIATRY 729 (1949) ("As a generalization, then, the 200 delinquent youths are decidedly mesomorphic."); *id.* at 805 ("Among the 200 boys mesomorphy is the predominant component to a conspicuously greater degree, apparently, than in the general population.").

67 *See* RONALD L. AKERS, CRIMINOLOGICAL THEORIES 40 (2d ed. 1999) ("By the 1950s, biological theories in criminology had been thoroughly discredited.").

68 *See* RENZETTI, *supra* note 51, at 16 (noting that prior to the 1970s "women were largely ignored by criminologists").

69 *See* Allen, *supra* note 22, at 31 ("Since 1968 feminists have criticised [sic] criminology's misogyny and inadequate analyses of the causes of criminalities.").

70 Frances Heidensohn & Loraine Gelsthorpe, *Gender and Crime*, *in* THE OXFORD HANDBOOK OF CRIMINOLOGY 381, 383 (Mike Maguire et al. eds., 4th ed. 2007) (summarizing early feminist critiques of criminology after the emergence of second-wave feminism in the 1960s).

criminological research and challenged biologically deterministic ste-
reotypes of women in criminological research as the "weaker sex."[71]

Although early feminist criminological critiques paved the way
for greater inclusion of women in the field, future feminist criminolo-
gists argued that merely inserting women into existing criminological
paradigms did little to disrupt male-centered and patriarchal assump-
tions that are embedded in those paradigms.[72] As this Article later
discusses, police researchers lodged similar critiques of relying too
heavily on greater recruitment of female officers as an adequate
means to disrupt male-centered and patriarchal assumptions in law
enforcement.

B. Early Positivist Approaches to Masculinity and Policing

Although women held sworn police officer positions dating back
to 1910, policing has historically been and remains a male-dominated
profession.[73] In the 1960s and 1970s, Congress enacted several pieces
of landmark legislation that promoted women's equality in the work-
place.[74] In addition, foundational decisions from the U.S. Supreme
Court paved the way for litigants to challenge sex discrimination in
employment as violations of the U.S. Constitution's Equal Protection
Clause.[75] These legal developments, in combination with the rise of

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[71]   *See, e.g.*, Kerry Carrington, *Postmodernism and Feminist Criminologies: Fragmenting the
Criminological Subject*, *in* THE NEW CRIMINOLOGY REVISITED 76, 80 (Paul Walton & Jock
Young eds., 1998) (noting that feminist criminological perspectives in the 1970s "criticised both
the omission of women from the discipline as well as the misogynist representation of women
within it"); Heidensohn & Gelsthorpe, *supra* note 70, at 383 (noting that a major theme in early
feminist critiques of criminology "is that, even when women were recognized, they were de-
picted in terms of stereotypes based on their supposed biological and psychological nature");
RENZETTI, *supra* note 51, at 16 ("[T]he inclusion of women and girls in criminological re-
search . . . was especially salient in the early development of feminist criminology in the
1970s . . . .").

[72]   *See* Heidensohn & Gelsthorpe, *supra* note 70, at 383 (describing the focus of early femi-
nist critiques of criminology as "limited" and explaining that "[s]ome writers assumed that a
remedy to criminological and criminal justice deficiencies could be sought by appropriating ex-
isting criminological theories and 'inserting' women").

[73]   *See* SUSAN EHRLICH MARTIN, BREAKING AND ENTERING: POLICEWOMEN ON PATROL
21 (1980) ("In 1910 Alice S. Wells became the first sworn policewoman with the powers of ar-
rest."); *id.* at 19 ("Since its inception in the early nineteenth century, policing has been and
remains a male-dominated occupation, closely associated with masculinity."); *see also* U.S. DEP'T
OF JUST., *supra* note 7 (noting that men comprised 73.2% of all law enforcement employees
nationwide in 2017).

[74]   Jack M. Balkin, *Framework Originalism and the Living Constitution*, 103 NW. U. L.
REV. 549, 574 (2009) ("During the 1960s, Congress passed a series of acts promoting gender
equality, including the Equal Pay Act, Title VII of the Civil Rights Act of 1964, and the 1972
Amendments to Title VII . . . .").

[75]   *See* Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination*

the civil rights and women's liberation movements, assisted in removing barriers to women's inclusion in law enforcement,[76] and patrol work in particular.[77]

In 1967, President Johnson's Commission on Law Enforcement and Administration of Justice specifically recommended increasing the number of women in the police service at all levels.[78] As women

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Law, 85 N.Y.U. L. Rev. 83, 85 (2010) ("[A]t the start of the 1980s, sex discrimination no longer fell outside the scope of the Fourteenth Amendment."); *id.* at 119–42 (discussing antistereotyping theory in foundational sex-based equal protection cases in the 1970s); Joanna L. Grossman, *Pregnancy, Work, and the Promise of Equal Citizenship*, 98 Geo. L.J. 567, 598 (2010) ("The legal landscape for working women did not begin to change until passage of Title VII of the Civil Rights Act of 1964 . . . and the Supreme Court's adoption of heightened scrutiny under the Equal Protection Clause for sex-based classifications in a series of cases in the early 1970s.").

[76] *See* Archbold & Schulz, *supra* note 48, at 696 (discussing the role of lawsuits, the 1963 Equal Pay Act, 1964 Civil Rights Act, and the Crime Control Act of 1973 in supporting "women's demands for the end of sex-based distinctions in work titles and assignments and for full participation in policing"); Joseph Balkin, *Why Policemen Don't Like Policewomen*, 16 J. Police Sci. & Admin. 29, 29 (1988) ("Legal decisions have been made and official policies established which give women equal status with men in police work."); Daniel J. Bell, *Policewomen: Myths and Reality*, 10 J. Police Sci. & Admin. 112, 114 (1982) ("With the emphasis of the civil rights and women's liberation movements in the 1960s, women demanded equal employment opportunity in the police profession."); Eric D. Poole & Mark R. Pogrebin, *Factors Affecting the Decision to Remain in Policing: A Study of Women Officers*, 16 J. Police Sci. & Admin. 49, 49 (1988) (discussing the "need to comply with federal guidelines on hiring . . . as well as with various court orders to establish hiring quotas to increase female representation or to rewrite entrance exams and requirements to encourage the employment of women" in policing); Martin, *supra* note 73, at 35 ("The new phase in the history of women in police work is the result of social changes in the 1960's and early 1970's."); *see also id.* at 39–47 (discussing the role of social movements and legal changes in the 1960s and 1970s that led to an increasing number of women in law enforcement).

[77] *See* Archbold & Schulz, *supra* note 48, at 700 ("[F]emale police officers . . . first began to patrol the streets in the 1970s . . . ."); Lewis J. Sherman, *A Psychological View of Women in Policing*, 1 J. Police Sci. & Admin. 383, 383 (1973) ("[W]omen have rarely been assigned to general patrol operations."); Darrell J. Steffensmeier, *Sex Role Orientation and Attitudes Toward Female Police*, 2 Police Stud.: Int'l Rev. Police Dev. 39, 39 (1979) (noting recent programs "to recruit and integrate women into police work, and particularly those involving use of female officers on patrol duty").

[78] The President's Commission on Law Enforcement and Administration of Justice stressed:

> Policewomen can be an invaluable asset to modern law enforcement, and their present role should be broadened. Qualified women should be utilized in such important staff service units as planning and research, training, intelligence, inspection, public information, community relations, and as legal advisors. Women could also serve in such units as computer programming and laboratory analyses and communications. Their value should not be considered as limited to staff functions or police work with juveniles; women should also serve regularly in patrol, vice, and investigative divisions. Finally, as more and more well-qualified women enter the service, they could assume administrative responsibilities.

President's Comm'n on L. Enf't & Admin. of Just., Task Force Report: The Police 125

made inroads on police forces, however, they often confronted skepticism and opposition by male peers, especially with regard to women's abilities to perform the physical aspects of the job.[79] Stereotypes that branded women as the "weaker sex"[80] and lacking the "strength, stamina, and aggressiveness necessary to handle a violent confrontation"[81] animated these concerns.[82]

Two key assumptions underlying this skepticism were that police violence is an expected component of police work,[83] and that only men could handle this violence.[84] The dearth of scientific research on female police officers prior to the 1970s enabled the stereotypes underlying both assumptions to thrive.[85] Moreover, the limited research

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(1967), https://www.ncjrs.gov/pdffiles1/Digitization/147374NCJRS.pdf [https://perma.cc/VU5C-GUXK] (citations omitted).

79 Michael T. Charles, *Women in Policing: The Physical Aspect*, 10 J. POLICE SCI. & ADMIN. 194, 195 (1982) ("Women have . . . found themselves frequently confronted with skepticism from within the police ranks . . . especially with regard to the physical aspects of policing."); Esther J. Koenig, *An Overview of Attitudes Toward Women in Law Enforcement*, 38 PUB. ADMIN. REV. 267, 270 (1978) ("Policemen also felt that large numbers of women on patrol would make their jobs more difficult."); MARTIN, *supra* note 73, at 91 ("One of the objections to policewomen most frequently voiced by policemen is that because women are physically smaller and weaker than men, they are less able to perform the job."); Sherman, *supra* note 77, at 383 ("Almost all policemen and most police departments stand firm in the belief that women are inherently unfit for police work.").

80 Bell, *supra* note 76, at 117 (noting that one of the myths perpetrated about female officers is that "[w]omen are the weaker sex and therefore need to be protected by men from the dangers in the world").

81 Sean A. Grennan, *Findings on the Role of Officer Gender in Violent Encounters with Citizens*, 15 J. POLICE SCI. & ADMIN. 78, 79 (1987).

82 *See* Balkin, *supra* note 76, at 34 ("The leading reason given by policemen for their negative attitudes towards policewomen is the women's relative lack of physical strength, which could be a problem in dangerous and violent situations. The fact is that incidents involving physical force are rare."); Charles, *supra* note 79, at 196 ("[T]he crux of the problem with regard to physical strength centers around those infrequent critical incidents requiring a large reserve of strength and fitness on the part of the individual officers, such as chasing and wrestling suspects into submission, intervening in physical disputes, and pulling the victims from wrecked vehicles.").

83 Some research explicitly acknowledged the assumption that violence was an expected part of policework. *See* Bell, *supra* note 76, at 116 ("[C]itizens have been conditioned to expect violence from police officers."). These expectations were connected to assumptions about the dangerous nature of police work, despite research suggesting that the overwhelming majority of police officer time is spent on noncriminal or service activities. *See* Koenig, *supra* note 79, at 270 (noting that the image of policework involving violence is "almost universal" but "totally inaccurate, as approximately 90 per cent of a police officer's time is spent in noncriminal or service activities").

84 MARTIN, *supra* note 73, at 91–92 ("Women are viewed as unacceptable for patrol not only because they provide less 'muscle' to a partner but because the men feel that they cannot be relied on to behave appropriately during a physical confrontation.").

85 Grennan, *supra* note 81, at 84 ("[A]llegations that female officers could not handle vio-

on women's physiology and workplace issues more generally did not help to defeat those stereotypes.[86] That research concluded that physical differences required women to "work harder to perform the same physical task[s]" as men, and that women were "unable to reach as high a workload as men."[87]

New laws and policies promoting women's equality in the workplace in the 1960s and 1970s renewed research interest in women's work experiences, including in law enforcement.[88] In the 1970s, a growing number of social science studies relied on methods in anthropometry and physiology to debunk the notion that women were incapable of meeting the physical demands of police work.[89] This research helped to discount the specific idea that women were physically incapable of handling patrol assignments.[90]

In focusing on the purported physical differences between men and women, however, this research did little to challenge the assumption that violence against civilians was an expected part of police work. To the extent that research on women in law enforcement challenged this assumption, it drew on stereotypes of women and

lent conflicts with the public . . . were acceptable to most police personnel because there was no available research to dispute them.").

86   *See* Charles, *supra* note 79, at 197 ("[A]t this time, research on women in the area of work physiology is limited.").

87   *Id.* at 197–98 (summarizing studies).

88   *See id.* at 194 ("With the advent of recent rulings granting women parity in the labor market, there has been a renewed interest among practitioners and scholars to study women under various working conditions and to evaluate women from a variety of sociological and psychological points of reference."); *id.* ("[I]ncreased concern among police agencies regarding the impact and performance of females in traditionally male-dominated police roles, such as patrol . . . has resulted in a variety of female police-related experiments designed to determine whether women could perform police officer duties satisfactorily.").

89   *See* Balkin, *supra* note 76, at 30–32 (summarizing studies); Bruce L. Berg & Kimberly J. Budnick, *Defeminization of Women in Law Enforcement: A New Twist in the Traditional Police Personality*, 14 J. Police Sci. & Admin. 314, 315 (1986) ("Throughout the 1970s many studies on police officers included a focus on females as line officers. Most of these studies concluded that women, in general, performed patrol duties comparably to their male counterparts."). Researchers also conducted public opinion research to examine whether communities would accept an expanded role of women in law enforcement. The concern that women would be unable to handle potentially violent encounters emerged even in studies where participants viewed women as equally or more capable than men in conducting many police tasks. *See, e.g.*, Kenneth W. Kerber, Steven M. Andes & Michele B. Mittler, *Citizen Attitudes Regarding the Competence of Female Police Officers*, 5 J. Police Sci. & Admin. 337, 344 (1977) (reporting study results finding that "the majority of respondents perceived male and female officers to be *equally* competent in eight of thirteen areas of police work," perceived female officers as "more competent than male officers in two categories of police work," but preferred male officers "for the performance of the role concerned stopping a fist fight").

90   *See* Berg & Budnick, *supra* note 89 and accompanying text.

gendered expectations of female officers. For instance, police researchers described that people "expect females to be mild, lenient, perhaps even indulgent; we associate femininity with sympathy, understanding, [and] compassion."[91] Drawing on these gendered expectations, researchers concluded that female officers would do their jobs with less physical force and elicit less violence than policemen.[92] As discussed in the next Part, perspectives that emphasized sex roles and gendered expectations of male and female officers became more prominent in law and social science research on policing after social constructionist views of gender became more popular across academic fields in the 1970s and 1980s.[93]

II.   Social Constructivism and Masculinity

This Part explores parallels between the second wave of masculinities research in criminology, which largely emerged in the late 1980s and early 1990s,[94] and law and social science research on masculinity and police violence from that period until today. The analysis shows that a common thread in these literatures rejects positivistic definitions of masculinity in favor of theories that conceptualize masculinity, and gender more broadly, as a social construct. From this perspective, scholarly examinations of crime and police violence focus less on physical and psychological differences between men and women and pay much greater attention to gendered hierarchies of power in society. These literatures also place greater emphasis on political strategies that attempt to change masculinist behaviors through professional resocialization and degendering trainings.

A.   *Social Constructivist Approaches to Masculinities and Crime*

The second wave of masculinities research in criminology, which primarily emerged in the late 1980s and early 1990s, rejected positivis-

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91   Sherman, *supra* note 77, at 392.

92   *Id.* at 384 (noting that female officers "would precipitate less violence than policemen because of the change in social perception occurring between policewomen and citizens" and would perform "their jobs with less physical force"); *see* Peter B. Bloch & Deborah Anderson, Policewomen on Patrol: Final Report 4 (1974), https://files.eric.ed.gov/fulltext/ED102369.pdf [https://perma.cc/JC8Y-J3WG] ("A department with a substantial number of policewomen may be less aggressive than one with only men. Women act less aggressively and they believe less in aggression."); *see also* Katharine van Wormer, *Are Males Suited to Police Patrol Work?*, 3 Police Stud.: Int'l Rev. Police Dev. 41, 42 (1981) ("That male police officers are more likely than female officers to generate complaints or provoke violence is commonly mentioned in the literature.").

93   *See infra* Section II.B.

94   *See* Messerschmidt, *supra* note 44, at 196.

tic methods and conceptualized masculinity and gender more broadly as a social construct instead.[95] In invoking a distinction between sex and gender,[96] this new wave of research on masculinities and crime shifted the focus of criminological inquiry away from the physical and psychological characteristics of individual offenders to the structural power of men in society that enabled crime.[97] Overlapping with the growth of masculinities studies in the humanities and other social sciences, criminologists underscored a need for more sophisticated accounts of men's criminal involvement that avoided monolithic portrayals of men as potential aggressors and instead accounted for men's different identities and social positions (for instance, race, gender, class, and sexuality).[98] From this perspective, criminologists characterized violence as a means for men to negotiate their masculinity in gendered hierarchies of power within society and its institutions.[99]

R.W. Connell's social theory of gender, first articulated in the late 1980s, laid the groundwork for criminologists in this second wave to offer more nuanced accounts of the relationship between masculinities and crime.[100] Although Connell's initial social theory of gender did not seek to provide a comprehensive theory of crime, it identified

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95 *See* COLLIER, *supra* note 23, at 13–14 (discussing the rise of social constructivist approaches to masculinity in criminological research); Tomsen, *supra* note 24, at xi (discussing a "new masculinities" approach emerging in the 1980s in criminology and criminal justice research); *see also* Heidensohn & Gelsthorpe, *supra* note 70, at 387–88 (noting that literature on masculinity and crime increased "with the introduction of a gender paradigm based on the idea that gender was socially constructed and where encultured sex roles were ascribed to bodily difference").

96 As noted above, the sex/gender distinction characterizes "sex" as the physical "biological" structure of one's body whereas "gender" refers to the social and cultural expectations associated with one's body. *See* Unger, *supra* note 18, at 1085.

97 *See* COLLIER, *supra* note 23, at 13 ("Whereas a methodological individualism had marked the 'pre-history' of masculinity theory . . . within the range of feminist texts which began to impact on the discipline during the 1970s and 1980s the question of power—specifically, the structural power of men—was to be accorded a central status.").

98 *See* JAMES W. MESSERSCHMIDT, MASCULINITIES AND CRIME 45 (1993) ("The radical and cultural feminist focus on alleged differences between men and women acted to obscure differences among men."); Elizabeth A. Stanko, *Challenging the Problem of Men's Individual Violence*, *in* JUST BOYS DOING BUSINESS?: MEN, MASCULINITIES, AND CRIME 32, 35 (Tim Newburn & Elizabeth A. Stanko eds., 1994) (discussing the limitations of feminist criminological perspectives in accounting for the connections between crime, men, and masculinity); Robyn Wiegman, *Unmaking: Men and Masculinity in Feminist Theory*, *in* MASCULINITY STUDIES AND FEMINIST THEORY 31, 42–43 (Judith Kegan Gardiner ed., 2002) (discussing the rise of masculinities studies in the late 1980s and early 1990s).

99 *See, e.g.*, Stanko, *supra* note 98, at 44 ("Men use violence between each other as [a] mechanism for negotiating the hierarchies of power.").

100 *See* David Duriesmith, *Masculinity*, *in* HANDBOOK ON GENDER AND VIOLENCE 77, 79 (Laura J. Shepard ed., 2019) (discussing the importance of Connell's work on criminological

widespread violence against lesbians and gays as a reflection of the social positions of men and women, and the subordination of homosexuality as a form of masculinity.[101] Connell's concept of "hegemonic masculinity"—which, as noted previously, can be broadly defined as nonstatic societal patterns and practices that valorize particular forms of masculinity by subordinating the position of women, other genders, and other masculinities[102]—was especially influential in this new wave of criminological thought.[103]

James Messerschmidt's influential 1993 book, *Masculinities and Crime*,[104] is instructive to discuss because it is the most comprehensive application of Connell's concept of "hegemonic masculinity" to the study of crime.[105] In his analysis, Messerschmidt relied on Connell's work to argue that power among men was unequally divided on the basis of class, race, and sexual preference, stating that "[h]eterosexual men exercise greater power than gay men, upper-class men greater power than working-class men, and white men greater power than men of color."[106] Based on this idea, Messerschmidt argued that one way to understand crime is to view it as a means of accomplishing masculinity.[107] Further, in viewing crime through this lens, researchers could explore why men from different identity and social standpoints engage in different types of crime in specific social contexts.[108]

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research on masculinities after the late 1980s); Connell & Messerschmidt, *supra* note 12, at 830–32 (discussing the origin and influence of the concept of "hegemonic masculinity").

[101] *See* Connell, *supra* note 15, at 40 ("Straight men's hostility to gay men involves real social practice, ranging from job discrimination through media vilification to imprisonment and sometimes murder . . . . The point of these practices is . . . to draw social boundaries, defining 'real' masculinity by its distance from the rejected.").

[102] Connell & Messerschmidt, *supra* note 12, at 846 (defining the concept of "hegemonic masculinity").

[103] *See* Tomsen, *supra* note 24, at xi (discussing the influence of "hegemonic masculinity" on criminological studies of masculinity).

[104] Messerschmidt, *supra* note 98.

[105] *See* Heidensohn & Gelsthorpe, *supra* note 70, at 389 ("Messerschmidt's (1993) analysis has been the most extensive attempt to apply Connell's framework to the study of crime.").

[106] Messerschmidt, *supra* note 98, at 72.

[107] *Id.* at 85 ("[C]rime by men is a form of social practice invoked as a resource, when other resources are unavailable, for accomplishing masculinity.").

[108] *Id.* ("By analyzing masculinities, then, we can begin to understand the socially constructed differences among men and thus explain why men engage in different forms of crime."). As an example, Messerschmidt applies his theory to examine youth offending and its relation to the "making" of masculinity in the public domains of school, youth groups, and the street. *See id.* at 87–117. Specifically, his analysis looks to how class, race, and gender relations in society constrain and enable the social activity of different groups of male youth both at school and in youth groups, which Messerschmidt argues in turn, shapes the types of crime that youth in those respective groups commit. *See id.* at 87–88.

At the conclusion of his influential work, Messerschmidt discusses the implications of his theory for the state and gender politics, including the role of masculinity in law enforcement.[109] Messerschmidt argues that the "gender[ed] division of labor in [law enforcement]" embodies and reproduces "gender relations of power" in society.[110] Specifically, this division of labor legitimizes the power of men in law enforcement by cloaking them with greater authority and defining the "essential nature" of police work as masculine.[111] Recognizing that most officers are recruited from working-class backgrounds, Messerschmidt further contends that the existing "focus [of police] on lower-working-class street crime rather than on men's domestic violence against women" captures both "working-class conceptions of law-and-order" and "street-cop conceptions of masculinity."[112] In short, policemen are "doing" masculinity when they are "doing" police work.[113] As the next Section discusses, there are meaningful parallels in how Messerschmidt conceptualizes the role of masculinity in law enforcement and how legal scholars have theorized the relationship between masculinities and police violence.[114]

B. *Sex Roles, Hegemonic Masculinities, and Police Violence*

During the late 1970s and 1980s, the idea that gender is a social construction became increasingly popular in various academic disciplines.[115] In line with this trend, social scientists who studied the police paid greater attention to "sex roles"[116] and gendered expectations in law enforcement.[117] For instance, research discussed the prevalence of

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109 *See id.* at 174–87.

110 *Id.* at 175.

111 *Id.*

112 *Id.* at 178.

113 *Id.* at 176.

114 *See infra* Section II.B.

115 *See* Unger, *supra* note 18, at 1085 (providing an early view in feminism on distinguishing sex and gender); *see also* HILARY M. LIPS, SEX AND GENDER 7 (7th ed. 2020) (discussing the influence of Unger's distinction between sex and gender in the field of psychology); Marie-France Pichevin & Marie-Claude Hurtig, *On the Necessity of Distinguishing Between Sex and Gender*, 17 FEMINISM & PSYCH. 447, 448 (2007) ("Unger opened the door for studying *gendering* and the *processes* that generate differences, thereby shifting the research focus."); Steffensmeier, *supra* note 77, at 39 (providing an empirical assessment of "the effects of sex-role orientation on reactions to women doing police work").

116 PEASE, *supra* note 10, at 19–20 ("The sex-role approach to masculinity utilizes the theoretical ideas underlying liberal feminism, wherein women's disadvantages are said to result from stereotyped customary expectations, internalized by both men and women.").

117 *See, e.g.*, Jennifer C. Hunt, *The Logic of Sexism Among Police*, 1 WOMEN & CRIM. JUST. 3, 4 (1990) (using "role theory" to "explain male opposition to women in" law enforcement); MARTIN, *supra* note 73, at 88 ("An examination of masculinity and its particular meaning for

masculine stereotypes of police in society that emphasized "rugged-ness, toughness, hardness, and, most important, . . . the ability to act violently whenever 'necessary.'"[118] Research also described how soci-ety placed opposite expectations on women "to be mild, lenient, per-haps even indulgent," and associated femininity with "sympathy, understanding, [and] compassion."[119] Looking to sex role concepts, some police researchers surmised that increased recruitment of female patrol officers might negate masculine expectations that attached to police encounters, and, in turn, decrease violence against officers dur-ing those encounters.[120]

Social scientists during this period further described how sex role concepts and masculine stereotypes shaped the internal culture of law enforcement and the work experiences of female officers in particu-lar.[121] For instance, their research showed how masculine stereotypes of police work permeated police culture in ways that put female of-ficers in a bind.[122] If female officers attempted to emulate male of-ficers by behaving in ways traditionally defined as masculine, then female officers risked being viewed as a career threat to male of-ficers.[123] Conversely, if female officers behaved in ways traditionally defined as feminine, then they risked losing the respect of male peers

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policemen is necessary because of the close association of police work with masculinity, and the manner in which occupational role norms and sex role norms overlap and mutually reinforce one another."); Mark Pogrebin, *The Changing Role of Women: Female Police Officers' Occupational Problems*, 59 POLICE J. 127, 128 (1986) ("Of all the male dominated occupations, police work ranks among the highest for the public's perception of gender related tasks.").

[118] Sherman, *supra* note 77, at 391; *see also, e.g.*, Berg & Budnick, *supra* note 89, at 315 (noting that "law enforcement falls squarely in the realm of a masculine occupation" and that "[m]asculine occupations are commonly associated with high levels of competency, competition, assertiveness, managerial skills, and technological proficiency"); James F. Scott, *Racial Group Membership, Role Orientation, and Police Conduct Among Urban Policemen*, 31 PHYLON 5, 12 (1970) (noting that because the police role "is defined by the police organization and to some extent by the larger community, there is a distinct connotation of masculinity, virility, aggressive-ness, and all of the qualities considered worthy of being a man").

[119] Sherman, *supra* note 77, at 392.

[120] *See id.* ("Policewomen will have a greater calming effect on aggressive behavior and will also elicit less violence and abuse than policemen in their routine patrol operations.").

[121] *See* Steffensmeier, *supra* note 77, at 41 ("It is clear from our findings that existing sex role conceptions, especially as reflected in the responses of male subjects, remain a severe obsta-cle to those women seeking careers in law enforcement.").

[122] Berg & Budnick, *supra* note 89, at 317 (describing the dilemma that female police of-ficers experience while working in law enforcement); Susan E. Martin, *Sexual Politics in the Workplace: The Interactional World of Policewomen*, 1 SYMBOLIC INTERACTION 44, 46 (1978) ("Policewomen face interactional dilemmas because they are both police officers, expected to behave according to the norms governing relations among peers, and women who are expected to adhere to the norms governing male-female interaction.").

[123] Berg & Budnick, *supra* note 89, at 317 ("[F]emale officers who . . . emulate male officers

and jeopardizing their career advancement.[124] Researchers argued that this bind enabled and sustained masculine norms in police work and police culture.[125]

In the 1990s, social scientists started to apply Connell's concept of "hegemonic masculinity" to formulate alternative accounts of masculinity in policing.[126] For instance, sociologist and criminologist Nigel Fielding argued that the stereotypical values of police subculture are "an almost pure form of 'hegemonic masculinity.'"[127] Fielding described that values in police subculture emphasize

> (i) aggressive, physical action; (ii) a strong sense of competitiveness and preoccupation with the imagery of conflict; (iii) exaggerated heterosexual orientations, often articulated in terms of misogynistic and patriarchal attitudes towards women; and (iv) the operation of rigid in-group/out-group distinctions whose consequences are strongly exclusionary in the case of out-groups and strongly assertive of loyalty and affinity in the case of in-groups.[128]

Fielding further discussed how researchers at the time were starting to trace parallels between the "macho" elements in police subcultures and the "macho" elements in criminal offender subcultures.[129]

In the 2000s, police researchers embraced the concept of hegemonic masculinity to explore connections between masculinity and professional socialization through police training.[130] Conceptualizing gender as a social construction,[131] these researchers drew on partici-

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are frequently seen as a career threat by these male officers . . . ."); *cf.* Hunt, *supra* note 117, at 10 (explaining how "femininity can be seen as a threat to the policeman's cultural worlds").

124 Berg & Budnick, *supra* note 89, at 317 ("[B]y accepting these female law enforcement roles, women effectively limit their careers and virtually rule out the likelihood of either a patrol or, later, a command position.").

125 *See* Martin, *supra* note 122, at 58 (stressing how addressing the interactional problems that women face in law enforcement requires "a change in the cultural values and social order on which the interactional ceremonies rest").

126 *See* Nigel Fielding, *Cop Canteen Culture*, *in* JUST BOYS DOING BUSINESS?: MEN, MASCULINITIES, AND CRIME 46, 47 (Tim Newburn & Elizabeth A. Stanko eds., 1994).

127 *Id.*

128 *Id.*

129 *Id.* (discussing Richard Ryder, *The Cult of Machismo*, 9 CRIM. JUST. 12 (1991)).

130 *See, e.g.*, Norman Conti, *Weak Links and Warrior Hearts*: *A Framework for Judging Self and Others in Police Training*, 12 POLICE PRAC. & RSCH. 410 (2011) (examining connections between police training and the internalization of masculinist normative orders); Anastasia Prokos & Irene Padavic, *'There Oughtta Be a Law Against Bitches': Masculinity Lessons in Police Academy Training*, 9 GENDER, WORK & ORG. 439 (2002) (examining connections between police training and the encouragement of hegemonic masculinity in police recruits).

131 Prokos & Padavic, *supra* note 130, at 442 ("Masculinity is a social construction reproduced through everyday interactions.").

pant observation and interview data to examine how formal and informal lessons in the police academy encourage hegemonic masculinity among police recruits.[132] The studies found that training in the academy teaches both male and female recruits that masculinity is an essential requirement of the job and that officer recruits internalize those lessons when forming and enacting their professional identities.[133]

As social scientists continued to use the concept of "hegemonic masculinity" in the 2000s to evaluate the role of masculinity in law enforcement,[134] legal scholars also started to invoke the concept to theorize police violence.[135] As discussed below, this thread of legal scholarship has made significant contributions in furthering knowl-

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[132] Conti, *supra* note 130, at 410 ("[F]ormal and informal structures within the training environment . . . promote traditional notions of masculinity and police work, within an incoming cohort of recruits."); Prokos & Padavic, *supra* note 130, at 440 ("[I]n addition to the formal curriculum, which covers the procedures, policies, and practices of being an officer, police academies also teach the lessons of an informal 'hidden curriculum' about masculinity." (citation omitted)).

[133] *See* Conti, *supra* note 130, at 419–21; Prokos & Padavic, *supra* note 130, at 440–42; *see also* Cara Rabe-Hemp, *Survival in an "All Boys Club": Policewomen and Their Fight for Acceptance*, 31 POLICING: AN INT'L J. POLICE STRATEGIES & MGMT. 251, 257 (2008) ("[H]egemonic masculinity, inherent in the police culture, was established through training academy and field training experiences . . . .").

[134] *See, e.g.*, Michael F. Aiello, *Policing the Masculine Frontier: Cultural Criminological Analysis of the Gendered Performance of Policing*, 10 CRIME MEDIA CULTURE 59, 60–61, 63 (2014) (using qualitative content analysis to evaluate gender performance in policing); Prokos & Padavic, *supra* note 130, at 439–42; Jesse Wozniak & Christopher Uggen, *Real Men Use Nonlethals: Appeals to Masculinity in Marketing Police Weaponry*, 4 FEMINIST CRIMINOLOGY 275, 275 (2009) (examining how "manufacturers are employing ideals of masculinity as both physical dominance and technical expertise in marketing" nonlethal weapons to law enforcement officers); *see also* Erica Scharrer, *Tough Guys: The Portrayal of Hypermasculinity and Aggression in Televised Police Dramas*, 45 J. BROAD. & ELEC. MEDIA 615, 619, 629–31 (2001) (using content analysis to examine levels of hypermasculinity in televised police dramas between the 1970s and the 1990s).

[135] *See, e.g.*, Cooper, *Who's the Man?*, *supra* note 13, at 679–701 (applying the concept of "hegemonic masculinity" to articulate a theory of police officer masculinity that gives rise to sometimes violent "masculinity contests" in police-citizen encounters); Frank Rudy Cooper, *Masculinities, Post-Racialism and the Gates Controversy: The False Equivalence Between Officer and Civilian*, 11 NEV. L.J. 1, 15–28 (2010) [hereinafter Cooper, *Masculinities and Post-Racialism*] (discussing the arrest of Professor Henry Louis Gates Jr. in terms of masculinity contests and hegemonic forms of police masculinity); Leigh Goodmark, *Hands Up at Home: Militarized Masculinity and Police Officers Who Commit Intimate Partner Abuse*, 2015 BYU L. REV. 1183, 1208–13 (discussing connections between hegemonic masculinity and violence perpetrated by police in their private lives); Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 782–88, 793–99 (2000) (discussing connections between hegemonic masculinity, hypermasculinity, and "doing gender" though violence and describing how those connections manifest in policing). For a more recent example of legal scholarly reliance on "hegemonic masculinity" to theorize police violence, see Dara E. Purvis & Melissa Blanco, *Police Sexual Vio-*

edge about how masculinity issues from various identity and social positions, especially along the lines of race and class, shape police culture and problems in policing.[136] These important perspectives, many of which fuse masculinity theories with intersectional and critical race perspectives, have also enhanced analytical accounts of how masculinity conflicts between male officers and male civilians—and white male officers and Black male civilians in particular—contribute to police violence.[137]

To trace the trajectory of this important work, it is useful to start with Angela Harris's groundbreaking essay, *Gender, Violence, Race, and Criminal Justice*.[138] In that essay, Harris examines the connections between violence, race, and masculinity.[139] Harris first looks to sociological literatures and the concept of hegemonic masculinity to trace

the instability of masculine identity along the lines of race and class.[140] In her view, this instability "makes violence in defense of self-identity a constant possibility."[141] Drawing on criminological and sociological work, Harris conceptualizes police violence, particularly against people of color, as the product of the convergence of two elements: honor culture and hypermasculinity.[142] Harris describes policing as a type of honor culture in which men perceive insults as a threat to their social standing and view violence as a way to restore that standing.[143] Referencing James Messerschmidt's criminological work on masculinities and crime described above, Harris defines hypermasculinity in terms of a masculine identity that subordinates femininity and homosexuality and valorizes physical strength and aggressiveness.[144] Her analysis traces how qualifications for police employment emphasize hypermasculinity (for instance, through an emphasis on military background or physical size) and how law enforcement agencies favor hypermasculinity as a police style.[145]

In considering possibilities for reform, Harris explicitly rejects biologically deterministic ideas, arguing that the "question is not how to alter men's nature . . . but what can be done to alter the connections between masculinity and violence."[146] What could be interpreted as a point of tension in future legal scholarship, Harris argues that addressing connections between masculinity and police violence requires a fundamental "disruption of the entire gendered culture of policing."[147] On this point, Harris hints at the promise of restorative models of justice[148] to heal communities and disentangle the state from practices

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140 *See id.* at 781–88.

141 *Id.* at 780.

142 *See id.* at 789–99.

143 *See id.* at 790; *id.* at 795 (explaining that "[t]he everyday practices of law enforcement officers reflect [the] logic" of honor culture).

144 *Id.* at 793, 795–96.

145 *See id.* at 793–94.

146 *Id.* at 802. It is important to note here that Harris recognized some of the practical limits of social constructivism. *See id.* at 803 ("The bad news is that, as social constructionists have come to realize, the fact that something is conventional rather than innate does not necessarily make it any easier to change.").

147 *Id.* at 804. *But see* Cooper, *Who's the Man?*, *supra* note 13, at 728 (distinguishing Harris's restorative justice proposal from proposals to address masculinity issues in policing through new forms of police training).

148 Harris specifically invoked John Braithwaite's definition of restorative justice:

[A] process of bringing together the individuals who have been affected by an offense and having them agree on how to repair the harm caused by the crime. The purpose is to restore victims, restore offenders, and restore communities in a way that all stakeholders can agree is just. . . . "Crime hurts; justice heals": This captures

of gender violence.[149]

Since the publication of Professor Harris's article, legal scholarship has advanced other important theories of masculinity and policing and emphasized different directions for possible reform.[150] Frank Rudy Cooper's leading theory looks to masculinities studies, and Messerschmidt's criminological work on masculinities in particular,[151] to describe how hegemonic patterns of masculinity in the United States are in "perpetual crisis."[152] Cooper draws on this foundation to characterize law enforcement as "a paradigmatically masculine field" and distinguishes two key components of a police officer's masculine identity that contribute to police violence: (1) command presence and (2) punishing disrespect.[153]

Considering these components in turn, Cooper identifies several aspects of an officer's command presence, including projecting "an aura of confidence" and showing that the officer is "in charge and decisive."[154] Cooper describes that "requiring a dominating presence . . . emphasizes the masculine nature of the job" and that "enacting a command presence facilitates officers' adherence to hegemonic masculinity's admonition not to act feminine."[155] Most importantly in Cooper's view, "the desire to exhibit a command presence leads many

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the essence of the paradigm shift. It involves rejection of a justice that balances the hurt of the crime with proportionately hurtful punishment.

Harris, *supra* note 135, at 804 (quoting John Braithwaite, *A Future Where Punishment Is Marginalized: Realistic or Utopian?*, 46 UCLA L. Rᴇᴠ. 1727, 1743 (1999)).

149   *See id.* at 804.

150   *See, e.g.*, Cooper, *Who's the Man?*, *supra* note 13, at 728–29 ("Although I am in favor of a move from a punitive model of policing toward a restorative model, I am not sanguine about the likelihood of accomplishing that shift in the short term."); McGinley, *supra* note 13, at 266–67 (discussing antimasculinist training, diversity recruitment, and data collection reforms to address masculinity issues in policing). This point connects to broader trends that place primacy on police training to counteract problematic aspects of police culture. *See* Shannon L. Rawski & Angela L. Workman-Stark, *Masculinity Contest Cultures in Policing Organizations and Recommendations for Training Interventions*, 74 J. Sᴏᴄ. Issᴜᴇs 607, 608 (2018) ("Training interventions, such as sexual harassment training and diversity training, are often recommended as potential remedies for the problematic cultures that develop in policing organizations . . . .").

151   *See* Cooper, *Who's the Man?*, *supra* note 13, at 693 n.120, 698 nn.152–53 (first citing Mᴇssᴇʀsᴄʜᴍɪᴅᴛ, *supra* note 98, at 179; and then citing James W. Messerschmidt, *Becoming "Real Men": Adolescent Masculinity Challenges and Sexual Violence*, 2 Mᴇɴ & Mᴀsᴄᴜʟɪɴɪᴛɪᴇs 286, 298, 303, 305 (2000)). More frequently, Cooper cites R.W. Connell's expanded revision of the concept of "hegemonic masculinity" in a coauthored work with James Messerschmidt. *See id.* at 685 nn.65 & 67, 686 nn.69–72 & 75, 687 n.76 (citing Connell & Messerschmidt, *supra* note 12, at 831, 832, 835, 838, 841, 844, 846).

152   *Id.* at 686.

153   *Id.* at 693.

154   *Id.* at 694.

155   *Id.* at 695.

policemen to engage in practices associated with hypermasculinity."[156] With regard to punishing disrespect, Cooper argues that the desire of police officers to punish disrespect has more to do with defending officers' status and masculinity than enforcing the law.[157] In punishing disrespect, Cooper posits that officers go beyond enacting a command presence and resort to the use of force.[158] On this point, Cooper argues that officers may go out of their way in the communities they are policing to stage "masculinity contests."[159] In these contests, male officers and male civilians are both subject to masculinity challenges and officers use violence as a means to win those challenges.[160]

Regarding potential interventions, Cooper questions the political feasibility of adopting restorative justice solutions to police bullying in the here and now, and proposes antimasculinist police training as a more practical and immediate solution.[161] Informed by his theory of masculinity and policing, Cooper argues that the "basic problem" of police bullying is "the need for police officers to distinguish situations requiring command presence from those that do not."[162] In Cooper's view, antimasculinist police training would help officers to make this distinction,[163] and, Cooper argues, such training should occur at multiple points in an officer's career (for instance, in academy training, initial field training, and in-service training of supervisors).[164]

In another leading perspective on masculinities and policing in legal scholarship, Ann McGinley recommends improved police training and data collection as possible directions for reform.[165] Relying on intersectionality and the concept of "hegemonic masculinity," McGinley frames the problem of police violence against men of color in terms of a "clash of masculinities."[166] Drawing on the work of Harris, Cooper and Messerschmidt,[167] McGinley argues that male officers ac-

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[156] *Id.*

[157] *See id.* at 697.

[158] *See id.*

[159] *Id.* at 698–99.

[160] *See id.* at 700.

[161] *See id.* at 728–29.

[162] *Id.* at 726.

[163] *See id.* at 732–33.

[164] *See id.* at 734–40.

[165] *See* McGinley, *supra* note 13, at 266–67.

[166] *See id.* at 225–26, 238–42.

[167] *See id.* at 242–44 (discussing Harris); *id.* at 246–47 (discussing Cooper); *id.* at 251–53 (discussing Messerschmidt).

complish their masculinity through policing men of color, especially Black men in poor communities.[168]

McGinley's recommendations for reform include "[e]mpirical research on new models for police trainings that focus on de-gendering the police force," as well as the creation of police training models that "work to reduce efforts of police to prove masculinity through the use of excessive force."[169] McGinley further recommends improving data collection on police use of force, including the creation of a comprehensive "national database on police killings," empirical research into the role of masculinity in police use of force, and empirical research on new methods of effectively "supervising and investigating police use of force."[170] Finally, McGinley stresses affirmative hiring and promotions of men and women of color in police departments and holding supervisors accountable for reducing racism and masculinist policing methods.[171]

In sum, mapping the second wave of masculinities research in criminology onto more recent masculinities research on policing in law and social science reveals a growing tendency over the past few decades to explain crime and policing in terms of the social construction of masculinity, and the concept of "hegemonic masculinity" in particular. This view of masculinity leads to police reforms that place primacy on professional resocialization and degendering strategies, including antimasculinist police training and diversity recruitment.[172] Although valuable, the next Part of this Article turns to explore the limitations of centering the discourse and political strategies in policing's masculinity project on social constructivist approaches to masculinity.

III. Harnessing New Discursive and Political Strategies in Policing's Masculinity Project

Although social constructivist approaches to masculinity are prevalent in both criminological studies of crime and law and social science research on policing, these approaches have also been subject to robust critique.[173] Section III.A discusses critiques of the social con-

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[168] *See id.* at 261 ("In sum, male police officers accomplish masculinity by acting tough in arresting poor black male suspects.").

[169] *Id.* at 267.

[170] *Id.*

[171] *See id.*

[172] *See, e.g.*, Cooper, *Who's the Man?*, *supra* note 13, at 728–40; McGinley, *supra* note 13, at 265–67.

[173] *See infra* Section III.A.

struction of gender and the concept of "hegemonic masculinity," with a special emphasis on critiques in disciplines outside of law from postmodern feminist and queer theoretical perspectives. Sections III.B and III.C then build on that critical analysis to examine the implications of postmodern feminist and queer theoretical perspectives for police reform and how researchers approach studying the police, including issues of police violence.

A. *Critiques of Masculinity Studies and the Sex/Gender Distinction*

Some of the most forceful critiques of "hegemonic masculinity" and the sex/gender distinction emerge from postmodern feminist thought and queer theory.[174] One important thread of scholarly critique from these perspectives argues that "hegemonic masculinity" is "too neat" in some respects, and imprecise in others.[175] Specifically, the concept is too neat because it does not capture the "complex and conflicting discursive positions that men take up in society."[176] At the same time, the concept is imprecise because it offers "no concise explications of subordinated, complicit, or marginalized masculinities."[177]

In the criminological context, Richard Collier has called attention to the internally inconsistent ways in which criminologists have employed "hegemonic masculinity" as a concept.[178] As Collier notes, the concept "has been used both as a primary and underlying *cause* (or source) of particular social effects (in this case, crime) and, simultane-

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174 *See, e.g.*, COLLIER, *supra* note 23, at 20–23 (critiquing the concept of "hegemonic masculinity"); MARK MCCORMACK, THE DECLINING SIGNIFICANCE OF HOMOPHOBIA: HOW TEENAGE BOYS ARE REDEFINING MASCULINITY AND HETEROSEXUALITY 37–46 (2012) (same); Margaret Wetherell & Nigel Edley, *Negotiating Hegemonic Masculinity: Imaginary Positions and Psycho-Discursive Practices*, 9 FEMINISM & PSYCH. 335, 351–54 (1999) (same); MOIRA GATENS, IMAGINARY BODIES: ETHICS, POWER AND CORPOREALITY (1995) (critiquing the sex/gender distinction); ELIZABETH GROSZ, VOLATILE BODIES: TOWARD A CORPOREAL FEMINISM (1994) (same); *see generally, e.g.*, Demetrakis Z. Demetriou, *Connell's Concept of Hegemonic Masculinity: A Critique*, 30 THEORY & SOC'Y 337 (2001) (critiquing the concept of "hegemonic masculinity"); Jeff Hearn, *From Hegemonic Masculinity to the Hegemony of Men*, 5 FEMINIST THEORY 49 (2004) (same); RICHARD HOWSON, CHALLENGING HEGEMONIC MASCULINITY (2006) (same). *But see* JAMES W. MESSERSCHMIDT, HEGEMONIC MASCULINITY: FORMULATION, REFORMULATION, AND AMPLIFICATION (Rolf Janke ed., 2018) (responding to critiques and amplifying the concept of "hegemonic masculinity").

175 MCCORMACK, *supra* note 174, at 40 (quoting Wetherell & Edley, *supra* note 174, at 352).

176 *Id.*

177 *Id.*

178 *See* COLLIER, *supra* note 23, at 20–23 (critiquing the concept of "hegemonic masculinity").

ously, as something which is seen as *resulting from* or which is 'accomplished' through" those social effects.[179] Criminologist Sandra Walklate argues that this tension can be "read as tautological."[180]

Tensions surrounding the concept of "hegemonic masculinity" are symptoms of a larger problem that pervades academic literature: a tendency to conceptualize masculinity in terms of the sex/gender distinction.[181] Postmodern feminists and queer theorists argue that the sex/gender distinction inappropriately embraces a dualism between the body and consciousness.[182] Under this binary, the body is "understood as the passive mediator" and the mind is "a blank slate on which are inscribed various social 'lessons.'"[183] From this theoretical vantage, a dualistic view of the mind and body encourages overly simplistic, and arguably ineffective, political solutions that center on resocialization and degendering strategies.[184]

Philosopher and feminist scholar Moira Gatens describes that resocialization and degendering strategies involve "the unlearning of patriarchy's arbitrary and oppressive codes and the relearning of politically correct and equitable behaviours and traits which will, in turn, lead to the whole person: the *androgyn*."[185] Gatens argues that these degendering strategies rest on a number of problematic assumptions that are grounded in sex/gender and body/consciousness binaries.[186] Notable examples are the assumptions that "the body is neutral and passive with regard to the formation of consciousness" and that "one can definitely alter the important effects of the historical and cultural specificity of one's 'lived experience' by consciously changing the material practices of the culture in question."[187]

To destabilize sex/gender and body/consciousness binaries, an important strand of postmodern feminist thought stresses the impor-

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179 *Id.* at 21.

180 Sandra Walklate, Gender, Crime and Criminal Justice 80 (2d ed. 2004).

181 Collier, *supra* note 23, at 22 ("Ultimately, the use of the concept of hegemonic masculinity within recent accounts of men and crime serves to illustrate the more general uncertainty which surrounds a reductive conception of masculinity. This problem relates . . . to the way in which 'masculinity' has itself been conceptualized in terms of the sex/gender distinction.").

182 *E.g.*, Gatens, *supra* note 174, at 7 ("The sex/gender distinction was understood, by socialization theorists, to be a body/consciousness distinction.").

183 *Id*. at 4.

184 *See id.* (rejecting the sex/gender and body/conscious dualisms); Grosz, *supra* note 174, at 18–19.

185 Gatens, *supra* note 174, at 4 (emphasis added).

186 *See id.* at 7.

187 *Id.*

tance of bringing bodies back into focus.[188] As an example, rather than viewing bodies as neutral and passive mediators, Gatens argues that bodily experiences and events are sites of social significance.[189] Gatens further claims that embedding social practices and behaviors in the subject's body rather than consciousness leads to at least two types of "sexed" bodies: the male body and the female body.[190]

Rejecting potential critiques of essentialism,[191] perspectives in postmodern feminism and queer theory argue that the significance attached to bodies is not fixed,[192] but rather "culture marks bodies and creates specific conditions in which they live and recreate themselves."[193] From this standpoint, it is possible to recognize sexual difference without resorting to essentialist ideas or biological "facts."[194] Rather, viewing sexual difference in this way brings the social and cultural processes and practices through which bodies become recognized as different or "other" into focus, including in the policing context.[195] It also opens possibilities for considering multiple body types in ways that "assist in freeing up the normative dualism of two bodies, two sexes and two genders."[196] As the remainder of this Article turns to discuss, these critical perspectives open new possibilities for expanding the discourse and political strategies in policing's masculinity project.[197]

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188   *See, e.g.*, *id.* at 8–10 (describing the "sexed body" perspective); Grosz, *supra* note 174, at 19 ("The specificity of bodies must be understood in its historical rather than simply its biological concreteness."); *id.* at 17–18 (describing that new feminism's conception of sexual difference understands that "the body is crucial to understanding woman's psychical and social existence").

189   Gatens, *supra* note 174, at 9; *see id.* at 6 (rejecting as "naive" societal resocialization tactics that stem from the social constructionist view that bodies are neutral and that "[p]sychosexual personality is . . . learned").

190   *Id.* at 8–9.

191   For an explanation of the concept of "essentialism" in the context of gender and bodies, see Jane Pilcher & Imelda Whelehan, 50 Key Concepts in Gender Studies 41 (2004) ("Essentialism was originally identified by second wave feminists as the mode of thinking that assumes that all manifestations of gender difference are innate and transcultural and historical. Essentialism in this formulation makes constant reference back to biological differences between the sexes, using this logic to explain wider manifestations of sexual difference.").

192   *See* Gatens, *supra* note 174, at 9; Teemu Ruskola, *Raping Like a State*, 57 UCLA L. Rev. 1477, 1481 (2010) ("Queer theory provides a method for analyzing how queer and normative subject positions are constituted in relation to one another and how they are secured, but also how they remain necessarily unstable and provisional.").

193   Gatens, *supra* note 174, at 71; *see also* Grosz, *supra* note 174, at 18 (stressing that "the body is no longer understood as an ahistorical, biologically given, acultural object").

194   Gatens, *supra* note 174, at 71.

195   *See id.* at 73.

196   *Id.* at 43.

197   *See* Steven Seidman, *Introduction* to Queer Theory/Sociology 1, 12 (Steven Seidman ed., 1996) ("Approaching identities as multiple, unstable, and regulatory may suggest to

B. *Implications for Police Reform*

Postmodern feminist and queer theoretical perspectives offer significant insight for new approaches to police reform.[198] To begin, the critiques above prompt important questions about placing too much faith in reform proposals that address police violence through professional resocialization and degendering strategies at both the agency and individual officer levels. When adopted for the specific purpose of changing masculinist police culture, antimasculinist officer training and enhanced diversity recruitment (especially aimed at enhancing gender diversity) are potential examples of these strategies.[199]

To be clear, officer training and enhanced diversity recruitment might serve other important goals, such as earning the public's trust and changing negative perceptions of law enforcement.[200] The critiques above, however, prompt meaningful questions about the extent to which such initiatives, when deployed for the specific purpose of changing masculinist police culture, rest on the contested assumption that substituting one set of cultural practices for another can change police behavior.[201] In this regard, postmodern feminist and queer theoretical perspectives underscore a need to consider whether and when police reforms embrace a distinction between sex and gender that characterizes the mind as "a blank slate"[202] on which "social 'lessons'"[203] are ascribed.

In addition, professional resocialization and degendering strategies arguably miss how the corporeal aspects of police work shape the lived experiences and subjectivities of individuals who are policed, especially from intersectionally marginalized positions of race, class, sexuality, and gender. Postmodern feminist and queer theoretical perspectives demonstrate why bodies matter when approaching policing

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critics the undermining of gay theory and politics, but, for Queer theorists, it presents new and productive possibilities.").

198   This discussion connects to a broader dialogue about the role of critical theory, and queer theoretical perspectives in particular, in approaching law reform. For a more comprehensive discussion, see generally LIBBY ADLER, GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM (2018).

199   *See, e.g.*, McGinley, *supra* note 13, at 267 (calling for "[e]mpirical research on new models for police trainings that focus on de-gendering the police force").

200   *See generally* U.S. DEP'T OF JUST. & U.S. EQUAL EMP. OPPORTUNITY COMM'N, ADVANCING DIVERSITY IN LAW ENFORCEMENT 7–9 (2016), https://www.justice.gov/crt/case-document/file/900761/download [https://perma.cc/4AL8-YRR9] (discussing why diversity in law enforcement matters).

201   *See supra* Section III.A.

202   GATENS, *supra* note 174, at 4.

203   *Id.*

problems involving overpoliced and marginalized communities.[204] Specifically, these perspectives underscore the necessity to critically interrogate the social, cultural, and historical underpinnings of how differences are ascribed to bodies in policing contexts.[205] From this approach, it is possible to understand the position of police institutions and police conduct within broader systems of social, cultural, and historical signification that valorize certain bodies (for instance, male, white, cisgender, and heterosexual) and subordinate others through the exercise of state power, including police violence.[206]

In challenging sex/gender and body/consciousness dualities, the critiques above offer a theoretical basis to challenge police/civilian dualities in ways that move beyond professional resocialization and address more fundamental concerns about what police do and how police institutions are structured and scaled. Put concretely, destabilizing the power of masculinity in policing contexts might require destabilizing the police power to act. In making corporeality a larger focus of the inquiry, the critical perspectives above invite renewed thinking about how police interact with the bodies of the subjects they police and whether the power to decide how that interaction unfolds better resides with policed communities as opposed to the state.[207]

In these respects, destabilizing policing's masculinity project could have meaningful alignments with scholarship and social movements seeking transformational change in policing, whether through rethinking the police function[208] or police abolition.[209] Postmodern

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204   *See supra* Section III.A; Angela Dwyer, *Policing Queer Bodies: Focusing on Queer Embodiment in Policing Research as an Ethical Question*, 8 QUEENSLAND U. TECH. L. & JUST. J. 414, 426 (2008) ("[E]thical policing practices can be better supported when criminological and social researchers 'bring the body back in' to research about how queer communities are policed." (footnote omitted)).

205   *Cf.* Valdes, *supra* note 18, at 371 (calling "for [q]ueer legal theory to help nurture positionality, relationality, and (inter)connectivity, and thereby to help build social and legal empowerment and reconstruction out of intersectionality, multiplicity, and coalition").

206   *See* Dwyer, *supra* note 204, at 420 ("[T]o be a proper police officer means doing embodiment in thoroughly masculine and heterosexual ways, and marginalising those bodies that fail to align with these norms.").

207   For a more comprehensive analysis of movements to shift the power in police governance at both the local and national levels, see generally Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778 (2021).

208   For work critiquing the scope of the police function, see ALEX S. VITALE, THE END OF POLICING 27 (2017) ("[W]hat we really need is to rethink the role of police in society."), and Barry Friedman, *Disaggregating the Policing Function*, 169 U. PA. L. REV. 925, 930 (2021) ("If we truly want to achieve public safety, we need to look beyond minimizing the harms of policing and focus on what it is exactly the police do daily, asking whether the police are the institution best suited to the panoply of societal needs they confront regularly.").

209   For some examples of literature on abolition in the criminal justice space, see generally

feminist and queer theoretical perspectives provide conceptual support for the kinds of local politics[210] that are embodied in these movements, which are advancing new meanings of public safety based on the pragmatic concerns of overpoliced and overcriminalized populations.[211] Principles in postmodern feminism and queer theory recognize these new meanings as historically continent and justified based on normative commitments to empower marginalized communities.[212]

C. Implications for Police Research

Postmodern feminist and queer theoretical perspectives also have meaningful implications for how researchers study the police and police violence. Since the 2010s, queer studies in particular have undergone what scholars have described as a "methodological

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Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 Calif. L. Rev. 1781 (2020); Angela Y. Davis, Are Prisons Obsolete? (2003); Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. Rev. 1156 (2015); Roberts, *supra* note 41, at 3 (offering a constitutional perspective); Dorothy E. Roberts, *Democratizing Criminal Law as an Abolitionist Project*, 111 Nw. U. L. Rev. 1597, 1599–1600 (2017); Dean Spade, *The Only Way to End Racialized Gender Violence in Prisons is to End Prisons: A Response to Russell Robinson's "Masculinity as Prison,"* 3 Calif. L. Rev. Cir. 182, 186–90 (2012).

210 As Shane Phelan describes, local politics "is a politics that eschews universal narratives of oppression that base all oppressions on one 'most basic' one, that posit the same mechanisms of oppression in all times and places, or that prescribe unitary or homogeneous ideals for all times and places." Shane Phelan, *(Be)Coming Out: Lesbian Identity and Politics*, 18 Signs 765, 783 (1993).

211 *See id.* at 766 (arguing that "widespread social and political change requires interaction with and intervention in . . . 'the dominant social text'"). This point of view is consistent with what scholars have described as "radical pragmatism" and adopting the perspective of the oppressed. *See* Daria Roithmayr, *"Easy for You to Say": An Essay on Outsiders, the Usefulness of Reason, and Radical Pragmatism*, 57 U. Miami L. Rev. 939, 947 (2003) ("[R]adical pragmatism finds it more useful to consider the disempowered community separately from the dominant group in order to focus on differing needs, political commitments, and preferred measures of usefulness."); Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. Cal. L. Rev. 1699, 1711 (1990) ("[W]e should understand the perspective of the oppressed as making possible an understanding that coherence can be plural.").

212 *See* Nancy Fraser & Linda Nicholson, *Social Criticism Without Philosophy: An Encounter Between Feminism and Postmodernism, in* Universal Abandon? The Politics of Postmodernism 83, 101 (Andrew Ross ed., 1988) (noting that postmodern-feminist critiques "would be explicitly historical, attuned to the cultural specificity of different societies and periods and to that of different groups within societies and periods"); *see also* Phelan, *supra* note 210, at 784 (arguing that "[l]ocal politics and the theories that sustain them . . . open space for a multiplicity of claims and struggles" on behalf of those lacking the "privilege" of an established "power base"); Roithmayr, *supra* note 211, at 947 ("[R]adical pragmatism acknowledges that sometimes, maybe even often, something outside reason—be it political and/or ethical commitments of varying sorts, intuitions, passions, experiences, or sentiments—may drive the constructive answer to that question [of 'What works for the community?']. At other times, and in other circumstances, reason may be useful.").

renaissance."[213] Recent discussions have called attention to the limitations of traditional quantitative deductive methods in social science research and the ways in which those methods fail to capture people's lived experiences.[214] Queer scholars have also critiqued the tendency of social science research to rely on and reify rigid categories, including categories of sexuality and gender, to construct generalizable and universal assumptions about people's lived experiences.[215]

The field of criminology has also recently experienced its own queer "renaissance."[216] The growth of "queer criminology" in the 2010s has generated an influx of new ideas and methodological paradigms to study criminal justice issues and populations.[217] In addition to bringing the experiences of LGBTQ people to the fore of criminological thought, researchers connected to queer criminology have embraced queer theory as a means to conceptualize and study criminal justice spaces and problems.[218]

In rejecting universality and recognizing that truths are multiple and provisional,[219] postmodern feminist and queer theoretical perspectives create space for research perspectives and methods that differ from traditional quantitative deductive and positivistic approaches

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[213] Matt Brimm & Amin Ghaziani, *Introduction: Queer Methods*, 44 WOMEN'S STUD. Q. 14, 14 (2016).

[214] *Id.* at 16 ("[Q]ueer social research methods question the origins and effects of concepts and categories rather than reify them in an allegedly generalizable variable-oriented paradigm, because these categories do not always align with lived experiences.").

[215] *See id.*

[216] MATTHEW BALL, CRIMINOLOGY AND QUEER THEORY: DANGEROUS BEDFELLOWS? 5 (2016) ("It is only in the last few years that researchers have begun explicitly representing their work *as* (or having a relation to something called) 'queer criminology.'").

[217] For works discussing or exemplifying the growth of queer criminology, see generally *id.*; CARRIE L. BUIST & EMILY LENNING, QUEER CRIMINOLOGY (2016); Vanessa R. Panfil & Jody Miller, *Beyond the Straight and Narrow: The Import of Queer Criminology for Criminology and Criminal Justice*, CRIMINOLOGIST, July/Aug. 2014, at 1; Jordan Blair Woods, *"Queering Criminology": Overview of the State of the Field*, *in* HANDBOOK OF LGBT COMMUNITIES, CRIME, AND JUSTICE 15 (Dana Peterson & Vanessa R. Panfil eds., 2014).

[218] *See* Carrie L. Buist, *LGBTQ Rights in the Fields of Criminal Law and Law Enforcement*, 54 U. RICH. L. REV. 877, 879–80 (2020) ("Queer criminology has been and may be applied theoretically and practically through examining the differences from the mainstream in the research itself, as well as examining the experiences of LGBTQ+ persons in the criminal legal system as victims, offenders, and professionals working in the fields that are typically related to police, courts, and corrections.").

[219] LEVIT & VERCHICK, *supra* note 19, at 36 ("Postmodern feminist legal theorists . . . reject notions of single truths and recognize instead that truths are multiple, provisional, and thus linked to individuals' lived experiences, perspectives, and positions in the world."); *see also* Phelan, *supra* note 210, at 778 ("[I]t has been part of the ideological function of the universalized 'subject' to remove individuals from their social locations and to present them as equal, autonomous agents, when in fact they are unequal and usually dominated.").

underlying most social science research on policing.[220] For instance, through critical and qualitative research methods, researchers can discover and explore new meanings about the role of masculinity in shaping police violence and the lived experiences of marginalized people who are vulnerable to police violence.[221] These approaches can enhance police research by ensuring that studies capture relevant phenomena involving masculinity and police violence that traditional deductive methods might not capture on their own.[222]

To illustrate these points, consider traffic stop data collection. To address problems of racial profiling during traffic stops, many states have enacted legislation requiring data collection on all police-initiated traffic stops.[223] Common types of collected data include: stop date, stop time, stop location, driver race, driver sex, driver age, whether a search was conducted, whether contraband was found, whether a citation was issued, whether a warning was issued, whether a frisk was performed, whether an arrest was made, the reason for the stop, and the traffic violation at issue.[224]

From these data collection efforts, researchers have discovered important racial disparities in traffic settings and publicly disseminated that knowledge. For instance, a recent study conducted by re-

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220 *See* Rebecca Campbell & Sharon M. Wasco, *Feminist Approaches to Social Science: Epistemological and Methodological Tenets*, 28 AM. J. CMTY. PSYCH. 773, 779 (2000) ("Social science research begins with often unstated assumptions about objectivity and subjectivity.").

221 For a general discussion of how postmodern feminist and queer methodologies in social science research can expand research horizons to capture new meanings and understandings, see generally Kath Browne & Catherine J. Nash, *Queer Methods and Methodologies: An Introduction*, *in* QUEER METHODS AND METHODOLOGIES: INTERSECTING QUEER THEORIES AND SOCIAL SCIENCE RESEARCH 1–24 (Kath Browne & Catherine J. Nash eds., 2016) (discussing possibilities for "queering" methodologies and methods in social science research), and Joey Sprague & Mary K. Zimmerman, *Overcoming Dualisms: A Feminist Agenda for Sociological Methodology*, *in* THEORY ON GENDER/FEMINISM ON THEORY 255–80 (Paula England ed., 1993) (discussing critiques of positivist methodologies and charting an agenda for critical epistemologies in sociology). For a more specific discussion of how the use of narrative can supplement social science data in queer legal theory, see Valdes, *supra* note 18, at 366 ("By capturing the humanity, complexity, and diversity of Queer lives and Queer legal issues, the use of narratives can dramatize in concrete, compelling, and undeniable ways the injustice of heterosexism to help inform and guide the actions of legal decisionmakers.").

222 *See* Valdes, *supra* note 18, at 366 ("[E]ven though social science data is critical to the advancement of sex/gender equality, by itself it simply cannot be, and is not, enough.").

223 *It's Time to Start Collecting Stop Data: A Case for Comprehensive Statewide Legislation*, NYU SCH. L.: POLICING PROJECT (Sept. 30, 2019), https://www.policingproject.org/news-main/2019/9/27/its-time-to-start-collecting-stop-data-a-case-for-comprehensive-statewide-legislation [https://perma.cc/YEL7-5TLD] ("Currently there are 19 states that (for the most part) mandate collection of data on every law enforcement initiated traffic stop . . . .").

224 *Data*, STAN. OPEN POLICING PROJECT, https://openpolicing.stanford.edu/data/ [https://perma.cc/W5WY-XWUY] (listing variables in available databases on traffic stop data).

searchers affiliated with the Stanford Open Policing Project investigated approximately 95 million traffic stops from 21 state patrol agencies and 35 municipal police departments between 2011 and 2018.[225] Their findings revealed that, on average, Black drivers were pulled over more often than white drivers for stops conducted by state patrol agencies at a rate of 0.10 compared to 0.07, and at a per capita rate of 0.20 compared to 0.14 for stops by municipal police departments.[226] On average, Black and Hispanic[227] drivers were also searched about twice as often as white drivers.[228] For state patrol agencies, the search rates were 4.3% for Black drivers, 4.1% for Hispanic drivers, and 1.9% for white drivers.[229] For municipal police departments, the search rates were 9.5% for Black drivers, 7.2% for Hispanic drivers, and 3.9% for white drivers.[230]

To be clear, turning a critical eye to policing research based on traditional social science methods is not intended to undermine the potential of this research to enhance knowledge of policing problems. Rather, the purpose of this inquiry is to show that these traditional methods might not always tell the full story or capture important issues and context. Revisiting the traffic stop context as an example, traditional quantitative methods can miss how stopped drivers, especially Black and Latinx drivers who are vulnerable to overpolicing in the traffic space, experience these roadside encounters with the police.[231]

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[225]   Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 737 (2020).

[226]   *Id.* The study found that Hispanic drivers were stopped at lower rates for both state patrol stops (0.05 compared to 0.07 for white drivers) and municipal police stops (0.09 compared to 0.14 for white drivers). *Id.*

[227]   The term "Hispanic" is used in the study.

[228]   *Id.* at 739. To examine racial disparities in searches, the researchers considered search rates for Black, Hispanic, and white drivers in eight state patrol agencies and six municipal police departments. *Id.* at 738.

[229]   *Id.* at 738.

[230]   *Id.*

[231]   A long line of scholarship documents how traffic stops, and especially pretextual stops, enable racial profiling on roads and highways and disproportionately target poor people and people of color. *See* FRANK R. BAUMGARTNER, DEREK A. EPP & KELSEY SHOUB, SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELL US ABOUT POLICING AND RACE 25–26 (2018); CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP 2 (2014); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 130 (2017); Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 946, 1030–31 (2002); Devon W. Carbado & Cheryl I. Harris, *Undocumented Criminal Procedure*, 58 UCLA L. REV. 1543, 1578–88 (2011); Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. MIAMI L. REV. 425, 427–32 (1997); Samuel R. Gross & Katherine Y. Barnes,

The traffic stop and subsequent arrest of Sandra Bland demon-strate these points.[232] Bland, a twenty-eight-year-old Black woman, was pulled over in the middle of the day by a male Texas state trooper for failing to signal.[233] The trooper asked Bland for her driver's license and registration and walked to his patrol car with the documents.[234] Several minutes later, the trooper—intending to give Bland a warn-ing—approached the driver's window.[235] Sensing that Bland was irri-tated, the trooper asked if she was okay.[236] Bland responded that she was unhappy about being pulled over.[237] After Bland explained why she was upset, the trooper asked, "Are you done?" and then re-quested she put out her cigarette.[238] Bland responded, "I'm in my car. Why do I have to put out my cigarette?"[239]

Irritated that Bland would not comply, the trooper then ordered Bland out of the car.[240] Bland refused, expressing that she did not have to step out.[241] The trooper then opened the driver's door and, after some further verbal sparring, the trooper tried to pull Bland from the car.[242] Bland again refused and expressed that she did not

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Road Work: Racial Profiling and Drug Interdiction on the Highway, 101 MICH. L. REV. 651, 687–95 (2002); David A. Harris, *"Driving While Black" and All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544, 546 (1997); Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land:* United States v. Brignoni-Ponce *and* Whren v. United States *and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005, 1007 (2010); Tracey Maclin, *Race and the Fourth Amendment*, 51 VAND. L. REV. 333, 336 (1998); David A. Sklansky, *Traffic Stops, Minority Motorists, and the Future of the Fourth Amendment*, 1997 SUP. CT. REV. 271, 272; Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 957–59 (1999).

232   The following facts regarding the traffic stop and subsequent arrest of Sandra Bland were captured on a released dashcam video. *Dashcam Footage of Sandra Bland's Arrest During a Traffic Stop Before Her Death in Police Custody—Video*, GUARDIAN (July 21, 2015, 9:40 PM), https://www.theguardian.com/us-news/video/2015/jul/22/dash-cam-sandra-bland-arrest-video [https://perma.cc/AXN2-832B]. For a critical analysis of issues surrounding "lawful orders" in the Sandra Bland traffic stop, see Belén V. Lowrey-Kinberg & Grace Sullivan Buker, *"I'm Giving You a Lawful Order": Dialogic Legitimacy in Sandra Bland's Traffic Stop*, 51 LAW & SOC'Y REV. 379, 400–02 (2017).

233   *See* Raoul Ranoa, Priya Krishnakumar, Lorena Elebee & Christina Littlefield, *Sandra Bland's Arrest Video: What It Shows*, L.A. TIMES (July 22, 2015), https://graphics.latimes.com/ sandra-bland-arrest [https://perma.cc/Q439-BJTA].

234   *Id.*

235   *Id.*

236   *Id.*

237   *Id.*

238   *Id.*

239   *Id.*

240   *Id.*

241   *Id.*

242   *Id.*

want to talk to the trooper other than to identify herself for the purposes of the traffic ticket.[243] The officer then grabbed Bland, at which point she states "Don't touch me, I'm not under arrest."[244] The trooper then yelled that she was under arrest.[245] Bland asked, "For what?"[246] The trooper continued to order her out of the car, yelling "I will light you up!" while pointing a Taser at her.[247] Bland yelled, "You're doing all of this for a failure to signal?"[248] After exiting the car, the trooper put Bland's hands behind her back, handcuffed her, allegedly slammed her head on the ground, and told her that she was being arrested for failure to comply.[249] The trooper told Bland that he was initially going to give her a warning, but was now throwing her in jail.[250] Three days later, Bland was found hanging in her jail cell in an apparent suicide.[251]

The facts surrounding the traffic stop on Sandra Bland reveal the complex dynamics between Bland and the officer, including the salience of gender and race in shaping the interaction.[252] The facts also illustrate the psychological harm that traffic stops can impose on driv-

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243 *Id.* (characterization taken from an audio recording of the encounter).

244 *Id.* (quotation taken from an audio recording of the encounter).

245 *Id.* (characterization taken from an audio recording of the encounter).

246 *Id.*

247 *Id.*

248 *Id.*

249 *See id.*

250 *Id.*

251 *See id.*

252 *See, e.g.*, I. Bennett Capers, *Criminal Procedure and the Good Citizen*, 118 Colum. L. Rev. 653, 701–08 (2018) (discussing how Sandra Bland contested the trooper's authority); Camille A. Nelson, *Frontlines: Policing at the Nexus of Race and Mental Health*, 43 Fordham Urb. L.J. 615, 676–81 (2016) (discussing intersections of race, gender, and mental health in the context of the traffic stop of Sandra Bland); Andrea J. Ritchie, Invisible No More: Police Violence Against Black Women and Women of Color 10 (2017) ("In many ways, Sandra Bland came to stand for every Black woman who has ever changed lanes without using a turn signal, expressed frustration at getting a traffic ticket, or experienced depression . . . ."); Josephine Ross, A Feminist Critique of Police Stops 90 (2021) ("One might read the confrontation between Trooper Encinia and Sandra Bland as a masculinity contest."); Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 Wake Forest L. Rev. 611, 656 (2016) ("As the Sandra Bland traffic stop and arrest demonstrates, an unnecessarily aggressive or domineering attitude can put officers and civilians alike at risk in individual encounters in which a different approach may have avoided a physical altercation altogether."); *see also* Erick A. Paulino, *Deconstructing the Arrest of Sandra Bland*, Feminist Wire (Aug. 4, 2015), https://www.thefeministwire.com/2015/08/deconstructing-the-arrest-of-sandra-bland [https://perma.cc/T8NC-SG5Z] (noting that the traffic stop of Sandra Bland "raises issues that highlight the connection between race and gender and why the movement for #BlackLivesMatter must continue to expand to defend the lives of women of color in the vein of activist campaigns like #SayHerName").

ers, especially upon those from marginalized communities that are vulnerable to overpolicing, overcriminalization, and police mistreatment.[253] The types of data typically collected under racial profiling data collection systems, however, reduces the traffic stop on Bland to a set of simple variables that do not capture these complexities.[254]

CONCLUSION

With renewed attention to the relationship between masculinity and police violence, this Article incites a conversation about moving discussions of masculinity and policing to a different plane. The analysis evaluated the limits of social constructionist views of masculinity in policing contexts, and more specifically, the types of police reforms that follow from this view. Invoking different discourses and knowledges of sex, gender, and masculinity offer promise for reimagining the contemporary police order beyond professional resocialization and degendering strategies. Looking to literature outside of law, this Article described how critical frameworks that move beyond the sex/gender distinction, such as those in postmodern feminism and queer theory, provide insights for achieving those goals. Although this Article is exploratory and invites further reflection and development, its analysis reveals the value in continually scrutinizing and reevaluating the discursive and political strategies in policing's masculinity project.

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[253] *See* Charles R. Epp, Steven Maynard-Moody & Donald Haider-Market, *Beyond Profiling: The Institutional Sources of Racial Disparities in Policing*, 77 PUB. ADMIN. REV. 168, 174 (2017) (noting that with investigatory stops on people of color that "[e]ven when the driver is let go from such an experience with no physical harm, psychological pain endures"); Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 739 (2015) (noting that traffic stops "pose serious dignitary and psychological harms to motorists, and especially stigmatize motorists of particular social groups who are identified as 'suspicious' based on vague cues, such as their race/ethnicity or the neighborhoods in which they are driving"); *see also* Nelson, *supra* note 252, at 680 ("[T]hose who recognize racism and seek to minimize its effects may be even more precariously situated as more vulnerable to its abusive psychological consequences.").

[254] As noted previously, common types of collected data include: stop date, stop time, stop location, driver race, driver sex, driver age, whether a search was conducted, whether contraband was found, whether a citation was issued, whether a warning was issued, whether a frisk was performed, whether an arrest was made, the reason for the stop, and the traffic violation at issue. *Data*, *supra* note 224.