Police brutality: case study of Philadelphia/move

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POLICE BRUTALITY:
CASE STUDY OF PHILADELPHIA/MOVE

A DISSERTATION
SUBMITTED TO THE FACULTY OF ATLANTA UNIVERSITY
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BY
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DEPARTMENT OF POLITICAL SCIENCE

ATLANTA, GEORGIA
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The exploitation of Black labor is the cornerstone of the prosperity of Western capitalism. From slavery's inception, violence has been used to sustain not only the economy but also the ideological superiority of a dominant race. In order to ascertain the status of violence on Blacks, constitutional issues are examined giving particular attention to police brutalization. It was determined that Blacks are currently caught in the contradiction of being victimized by crime and further abused by their designated protectors.

These theoretical assertions are tested through the case study of Philadelphia, Pennsylvania. This constitutional city has been a citadel of violence towards Blacks throughout its history. The limited efforts to thwart such has lent tacit approval to police violence. Philadelphia was the target of two unprecedented federal suits involving police brutality and the forerunner of innovative techniques to address that concern. However,
negligible results of such litigation and the absence of clear guidelines governing police actions led to the unscrupulous manner in which MOVE was forced from their homes in 1978 and again in 1985. It was concluded that the reluctance of the courts to prosecute violators, coupled with the expansion of police discretion, is that lawful repression has taken precedence over human justice.
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CHAPTER I
INTRODUCTION

The countless atrocities committed against Blacks from slavery to the present era have yet to witness systematic prosecution of the perpetrators and atonement to the victims. Racism, as a consequence of the political economy of capitalism, has fostered a negative portrayal of Blacks which warranted a tradition of physical oppression. The police, as an agent of the repressive apparatus of the state, have been given full discretion in the use of force in the apprehension of one suspected of wrong doing. The ideological goal, maintenance of the status quo coupled with racism, has precipitated a historical legacy of police abuse, i.e., the excessive use of unnecessary force. Since police misconduct has been one of the major concerns to Blacks throughout the Diaspora, these excesses are no longer considered "alleged" but accepted as fact.¹

The purpose of this study is to examine the present status of police oppression and/or abuse of minorities, legal sanction of such systematic abuse, and the

effectiveness of grievance measures when such abuse occurs, i.e., civil litigation, lawsuits, and grass root efforts. It is hoped that this work will add to Black political studies in police relations and form a basis in the area of police brutality for organized activity outside the confines of the system.

The present executive in office, Ronald Reagan, has based his platform on economic activity in the United States to the extent that freedom is equated to material well being. The new polity is guided by the needs of a corporate-dominated economy which, by necessity, defines all other relationships. Therefore, one's politicalness, i.e., "capacity for developing into beings who know and value what it means to participate in and be responsible for the care and improvement of our common and collective life," is determined by one's place in the economic order. Citizenship thus becomes an economic equation based on employability as opposed to one's birthright in order to be a true part of the polity. This era has thus witnessed the depoliticalization of the poor through anti-inflation strategy of decreases in social spending and increase of capital intensive production, i.e., computer technology.

The Reagan administration would like us all to experience "collective amnesia" by relinquishing the past and starting anew to recapture equality through the
elimination of barriers to equal opportunity.\textsuperscript{2} The subsequent attack is on ". . . civil rights because of the recognition of the linkage between it and human rights or welfare resource objectives of Blacks and other dispossessed peoples of color."\textsuperscript{3} Chisman holds that the present ideology is a breeding ground for fascism in which the call for law and order, accompanied by violent suppression, are the means to further the interest of business by inducing a social climate favorable for exploitation.\textsuperscript{4}

This present trend is ahistorical as it negates the evolution of societies and dismisses injustices of the past thereby abrogating responsibility for the corrections of such wrongs. Secondly, it is a frontal attack on the liberal paradigm which insinuates redress of grievances regardless of one's economic or social status. Finally, if the economy is determinate, the theoretical basis that has been critiqued and dismissed by liberals and conservatives alike becomes relevant in explaining present political phenomenon, i.e., historical materialism.


The ideological use of racism has historically served to provide enormous rates of profit return through the institution of slavery by utilizing Africans as property to finance the underpinnings of this society. In order to justify and continue the exploitation of Blacks, subordination was made legitimate in the Constitution, thus consolidating the political apparatus of capitalism. Finally, oppression required physical control of that segment of the population upon which the wealth of this country rests, through the police as the repressive tool of the state.

Methodology

In this study, the dualistic role of the state as protector of individual rights and as repressor is tested through a case study of Philadelphia/MOVE. The researchable problem is the investigation of police brutality as a consequence of the violent function of the state for system maintenance. The hypothesis is that the politico-legal structure has sanctioned violence towards Blacks through its reluctance to protect, prosecute violators, and minimal provision of redress to victims. Descriptive-historical examination of the origin and nature of violence is presented and its legitimation is inferred through inductive analysis. The legal parameters are drawn from an examination of federal litigation and legal
codification that is then illustrated by the Philadelphia experience. MOVE, although an aberration, is recapitulated as climatic to the legacy of abuse and an exemplification of police excesses resultant from an absence of restraints on operations and use of weaponry. The synthesis of this holistic analysis of legitimated violence on minorities in America culminates in the present trend towards nullification of protections from expanding police power.

Due to the dialectical nature of police work as enforcer and protector of the law, conceptualization of brutality is problematic. Throughout the literature the terms "misconduct," "brutality," "abuse," and "excesses" are used interchangeably to refer to police officers' overzealous behavior during law enforcement. As a result, the police give cursory acknowledgment to its existence thereby delimiting a professional definition and offer a barrage of justifiable terminology such as "police discretion," "self-defense," "resistance to arrest," and any general failure to respect authorities. The premise indicates that since the majority of the victims are Black, in proportion to the general population, there is little need for concrete codification of this phenomenon.\(^5\) Subsequently, the challenge to social scientists is to

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devise indices to ascertain necessary and excessive uses of force. As of now, the concept of deadly force, i.e., use of weaponry to kill assailants, is the primary indicator to make that distinction. However, this delineation obfuscates the different degrees of brutality that range from abusive language, unwarranted search, seizure and arrest to and inclusive of death. For purposes here, the referents of abuse will be as follows: physical abuse during apprehension, brutalization of persons unrelated to criminal activity, questionable use of firearms, and torture of persons in custody.

Such violence as directed towards minorities has been allowed to exist and continue by the economic system of capitalism. The writer hypothesizes that police brutality is sanctioned through legal mechanisms that ideologically appear to provide punitive and preventive measures to end systemic abuse. The extent to which police brutality is sanctioned is determined by nonpolicy, i.e., the absence of clear guidelines to regulate police behavior, to prosecute violators, and to provide redress to victims. Sanction becomes a measurable variable through the identification and categorization of requisites that are examined as to their respective influence on police violence. The mechanisms that were measured by their punitive and preventive properties are: United States case laws, nature of litigation to prosecute violators, and the
status of municipal liability. The extra legal indices to check police behavior are police internal affairs and organizational efforts by the community.

The examination of the legalities involved in the phenomenon of brutality and the logic used to avoid systematic prosecution seemed to indicate that the police are virtually immune from being reprimanded. The justification offered centers on the nature of their work and the lack of legislation to restrain enforcement officers. It was then surmised by the writer that there was a need to explore the manner in which violators have been protected through examination of United States case laws. Particular attention was paid to Title 42, U.S.C. 1983, which compensates victims for "deprivation of any rights, privileges or immunities secured by the Constitution and law." The status of municipal liability and responsibility, i.e., respondeat superior, the third mechanism, can also be inferred through U.S.C. 42.

The rule of law for police brutality is as outlined through litigation indigenous to Philadelphia, Rizzo v. Goode7 a case in which local citizens charged Philadelphia with police brutality and United States v. Philadelphia8


8United States v. Philadelphia, 482 F.Supp. 1248
which exemplifies an attempt by the then United States Attorney General to bring an abuse charge against the city. These cases serve to make Philadelphia an ideal case study to test the hypothesis through the functional requisites of the given mechanisms. Philadelphia has had a high number of alleged police incidents and was one of the first cities to create a civilian review board to investigate allegations, and to establish a number of police community organizations to improve relations.  

Also, Philadelphia gave birth to one of the most notoriously famed police officers, later commissioner and eventually a very popular mayor of the city, thereby crystalizing the relationship between City Hall and the police. A major question under scrutiny is whether or not Frank Rizzo condoned the police's abusive behavior towards Blacks by his analogies of the latter with crime. His continual defense of the police and his denial of police records to investigating federal officials had apparently resulted in an increase of brutality. The inextricable relations of Rizzo/police misconduct and the political infrastructure were substantiated through brutality charges and extensive investigations by the government. Finally, the Philadelphia police received international attention


9 The Police Advisory Board was dissolved in 1969 by Mayor Tate.
for the manner in which it forced MOVE members from their homes in 1978 and 1985. 10

Furthermore, the police actions toward MOVE exemplified the contradicting restraints, which the Black community exists under in Philadelphia. Although unrepresentative of daily police violence within the Black community, it did exemplify the extent to which the repressive apparatus will employ deadly force to silence dissidents. Regardless of the fact that MOVE ingested inordinate amounts of garlic and other items, built a pillbox on top of their home, used profanity over a bullhorn, and carried weapons, the police were not justified in its use of military tactics in a democratic urban setting. Certainly, since the sixties, police agencies have increased their military might and displayed esprit de corps with the fire department to support its repressive tactics. A greater emphasis is placed upon the manner in which the legal system channeled the MOVE members to prison and commended the officers who openly abused Delbert Africa on national television. If these officers were not prosecuted, what is the fate of the Black person abused in private? The police's handling of the Delbert Africa incident is indicative of their tactics to clear

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10 The following comments are based on personal observations, interviews, and reports on MOVE activities by journalists.
themselves of the charge of police brutality.

In examining the structures designed to address the problem of police abuse one must bring into focus the community; for, the extent to which the mechanisms are utilized for eradication or redress, is largely determined by the area residents. In order to gauge the prevalence of police violence and if, in fact, MOVE is a part of this concern, a survey was conducted, the purpose of which was to extract the views of Philadelphians on police abuse, Rizzo and MOVE in relation to the methods used in their apprehension.

Probability sampling was used to estimate the viewpoint of the community at large through an area cluster.\textsuperscript{11} In devising the sampling scheme, voter registration lists that provide: wards, divisions, ethnic breakdown, and party affiliation were used.\textsuperscript{12} Philadelphia has sixty-six political wards, each sixth ward was systematically chosen and the rest discarded. The third and twenty-fourth wards housed MOVE members and the latter was disqualified on the basis that the opinions of those residents have been codified through journalistic pursuits.


The remaining eleven wards were compared in order to identify four wards with a majority of Blacks to whites (excess of 80%) and vice versa. The rationale in using ethnic distinction is that Philadelphia is a race-oriented city with areas reflective of one dominant ethnic grouping. The importance of race in opinions and political behavior was evidenced by the last mayoral election in which the city was practically split in half by race.\(^\text{13}\) The location of the four areas represent distinct neighborhoods in the city which correspond more so to ethnic as opposed to economic status, the location of each area was determined by a political map. Out of the eight wards, area duplication was found; ergo, the map was further used to identify two distinct sections of the city and the statistics isolated areas with a high disproportionate ratio of Blacks to whites. Beginning from the first ward down, the first and sixth wards were selected.\(^\text{14}\)

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<tr>
<th>WARD</th>
<th>BLACK</th>
<th>WHITES</th>
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<tr>
<td>1</td>
<td>787</td>
<td>10,899</td>
<td>South Philadelphia</td>
</tr>
<tr>
<td>6</td>
<td>9,210</td>
<td>157</td>
<td>West Philadelphia</td>
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To determine the desired number of respondents, the number of divisions made up of approximately six hundred

\(^{13}\)In general the Black precincts supported the Black candidate W. Wilson Goode and white precincts for Frank L. Rizzo.

\(^{14}\)Voter registration report.
registered voters, eighteen for the sixth ward and twenty-one divisions in the first ward, was divided into total population of each ward. It has been found that five households per block would reflect the overall consensus; therefore, five was then divided into the ward population to get a desired number of respondents which was 111 for the first ward and 152 for the sixth ward.

Prior to distribution, a pretest of the questionnaire was given to five randomly chosen residents of each area, based on their response and comments, the final questionnaire was then drafted. Five households on twenty-five blocks were chosen in each ward and surveyed by taking the questionnaire to each home. Self-addressed envelopes were given to those respondents that needed more time to complete them. The findings are based on a 70 percent return date, which were tallied by questions. A conversion program was used to retrieve percentages. Multivariate analysis, i.e., simultaneous examination of more than one variable was used in order to interpret data more efficiently. The normal information solicited was age, sex, education, ethnic background, and political affiliation. The respondents were questioned on the existence of police abuse, the extent, and the strata of the population most affected. The perception of MOVE is the major criterion in gauging how the group was treated by officials. For example, one respondent referred to the
group as terrorists, therefore the procedures used were not extreme based on the connotations of terrorism. An attempt was then made to parallel the means used to silence the group to their actual infractions by questioning respondents as to why MOVE was forced from their home in 1978. The follow-up was on the nature of infractions as they relate to the tactics used in terms of being too extreme, wasteful of city funds, too weak, or if the police and fire officials acted appropriately under the circumstances. The next two questions focused on the manner in which Delbert Africa was apprehended. The major problem here was response, based not only on memory of incident, but their initial opinion of televised account. Further clarification was inferred on whether respondents believed the officers involved should have been prosecuted.

The construction of the survey stemmed from accounts of the incidents and information gathered on Philadelphia. Certain predisposed generalizations were made on type of responses based on areas and recent election returns. However, the majority of the responses did not conform to any preconceived notions and served to add a new dimension to the interpretation of the incidents.

Data Collection

The major source of information on specific cases of abuse, the role of city government and of course the
MOVE incidents is the media. The compilation of periodical accounts by the writer, encompasses a thirteen year span of events in Philadelphia involving Blacks. Interest in this area was spawned in an effort to infer a causal relationship between Rizzo and police violence through recapitulation of events that came to fruition with MOVE.

Rizzo's antics and activities were more than adequately covered by the Philadelphia newspapers; however, shifts in the press's stance towards Rizzo are evidenced. For example, the Bulletin was pro-Rizzo during the seventies when the newspaper was published under the auspices of Walter Annenberg, a friend of the former Mayor. When Rizzo was Commissioner he befriended the press and was portrayed as the epitomizing suppressant of crime. The views of the major dailies will be juxtaposed to the one hundred year old Black paper, the Tribune, which presents the minority perception of the Rizzo regime.

As of this date only two works have been published on MOVE, 15 Burning Down MOVE is a detailed journalistic account of the 1985 siege of the MOVE home. Harry offers a comprehensive analysis in "Attention MOVE" of that incident and she holds that it was a planned, concerted effort by

the police and the federal government to annihilate the
group. Further, it gave rise to questions about the
accountability of Black elected officials to their Black
constituents. The periodical accounts of MOVE
characterized them as "savages" as justification of police
excesses. It thereby became necessary to supplement data
by interviews with MOVE members, television, and radio
accounts to present a total viewpoint. Actual trial
experience is imperative in establishing a factual base.
The trial of the three officers involved in the beating of
Delbert Africa was witnessed by the author and the
proceedings from MOVE trials were examined.

To devise a format upon which police brutality in
Philadelphia could be substantiated, the accounts and
records of organizations aimed at combating police violence
were analyzed. The compendium of the grass root efforts
were housed within the police component of the Public
Interest Law Concern of Philadelphia (PILCOP). The
strategy and results of their activities were fully
examined through their publications, personal records and
interviews of the coordinators.

Limitations of the Study

The major problematic in the study of police
brutality is ontological which makes finding an acceptable,
theoretically based definition, an arduous task. Although
brutalization can be operationalized, its indices are still subjected to definition by situational exigimes. Violence by police is viewed in police studies as isolated, fragmented phenomena that unfortunately occurs in the dispensing of law enforcement. In this sense, the role of violence as an integral part of the capitalist system to oppress people of color becomes obfuscated.

Due to an absence of theoretical coherence, the nature of policing itself still awaits questioning. The current trend is towards technological sophistication of methods to repress, professionalization that further isolates the police, and expansion of criminal justice services, all of which are increasing the problem as opposed to curtailment. Also, the rising level of vice in the Black community makes such a query appear frivolous on face. Crime and the nature of the criminal is readily used to justify such activity; therefore, when the innocent become targets of abuse it is seen as anomalous, easily rectified by monetary award. The problem thus becomes making this study relevant to the average lower-to-middle income person in that no one is immune from police violence.

Disorder in the social milieu will worsen as capitalist production becomes more technologically advanced. The police as a tool of the state to maintain an environment conducive to exploitation are becoming more
powerful which is sanctioned by the people in their call for law and order. An empirical analysis of rates of brutality, crime, and levels of employment would have further illuminated the deterministic relationship of violence to the economy. Yet, history has evidenced periods of high yields of profit accompanied by massive oppression; however, this work is only a small effort towards recognition of the trend towards a police state.

Literature Review

Violence towards Blacks as an integral part of the capitalist economy has a legacy unsurpassed by any ethnic group. Prior to the thirteenth century, economic relations between Europeans and other nations were based on trade, with the discovery of cotton and sugar these relations were altered to conquest for the purpose of exacting laborers to harvest crops. It was during the era of European expansion that the African society was underdeveloped, i.e., robbed of all resources needed to cultivate and nurture a self-supporting community accompanied by the relegation of Blacks to an ideological inferior status.16

Physical abuse of Blacks was preferred in that they were attributed animalistic characteristics in which brute

force was needed for control. It is unnecessary here to
detail the sadistic atrocities committed during the
transportation of Africans to the "new world," seasoning in
the West Indies and slavery which would not have survived
"... without an overt, brutal policing mechanism designed
not just to protect whites but to dehumanize Blacks."17

The point that needs to be made here is the depth of
legitimization of such practices to the extent that any
common Caucasian could violate a Black person with little
concern for reprisal. Reminiscences of such condoned
practices are exemplified by lynchings throughout the
Reconstruction era and the twentieth century. Official
abuse can be inferred from inaction of officers such as
"... exposing a victim to mob violence, prior knowledge
of lynchings, [and] failure to remove persons to [a] safe
place."18

The Jim Crow era up to the aftermath of the
sixties witnessed the enforcement of laws by white citizens
supported by the local police forces. Drake and Cayton
noted that "... policemen and other 'civil servants'
often resorted to enforcing segregation as the most
convenient way of keeping the peace."19

17 Terry Jones, "The Police in America: A Black

18 Julius Cohen, "The Screws Case: Federal
Protection of Negro Rights," Columbia Law Review 46

19 St. Clair Drake and Horace R. Cayton, Black
It has been argued that violent acts have been representative of another dimension of slavery. Berry purported that violence against Blacks has been the resultant need of a segment of whites to "... preserve their belief in the inferiority of Blacks" for the maintenance of "social and political subordination of an historically outcast group by any means, including violence." Eighty percent of the 3,830 people lynched between 1889-1940 were Black. During the 1950s-1960s, of the 6,000 people killed by police, 45 percent were black. If the killings of Blacks are totaled over the last few decades "... they would amount to a massacre." The colonial model as expounded by Tabb is best suited to theorize the current existence and purpose of repression in the Black community. This model compares the colonization of the Third World to the United States ghettoization of Blacks as they were prevented from moving into other areas. The cities became labor reservoirs and


reflected the shape of a class society in that the boundaries of ethnic-economically homogeneous neighborhoods grew progressively sharp. The cities are also representative as the hub of industrialization thus profiting from closer proximity to its workers. The capitalists merely relinquished a portion of their function in socialization of the reproduction of labor to municipal government because the latter "... could accomplish the same result, at public expense, far more efficiently and more legitimately than (they) themselves." This function of institutionalized racism made it possible for the dominant power to manage a community which was underdeveloped and made dependent on the society it created for sustenance. The paradox of the Black community is that it is administered by outsiders, the inhabitants are denied control and are excluded from full participation in the system; yet, they are still forced to finance their own oppressive police force, welfare system, and also to "... lend their approval to laws which potentially contribute to [their] alienation."


The capitalist class is backed by high levels of violence but emphasizes nonviolent cooperation through other institutions, i.e., education, welfare, health, recreational, and public works. The failure of social services in general is that "... they operate in conjunction with and in support of the major economic and social forces of society."  

It is more legitimately functional, however, to control the labor force through ideological socialization and it is when such mind control meets its limitations that repressive means are instituted and used.

Historically, the interests of the workers have become identical to those of the capitalists, even to the extent of physically defending the latter's economic endeavors through war. Today there exists little delineation between employment and social contexts for commodification has become the level of consciousness, in which one perceives life. Through consumption of commodities one's being is actualized, television becomes reality in which fantasy becomes the preference.  

Harring, Policing a Class Society, p. 31.

media is also utilized as an ideological weapon, note the increase in police series and other specials aimed at workers who do not want to cooperate.

Fanon notes the role of the educational system, traditional moral reflections, and the work system which instill honesty that is rewarded with a medal after a lifetime of service. "(T)hese aesthetic expressions of respect for the established order serve to create around the exploited person an atmosphere of submission which lightens the task of policing considerably." 

Role of Police in Capitalist Society

The basic problem identified by the colonial model is that the Black community as an integral part of the political economy of capitalism is ideologically and socially isolated. The result is a disgruntled Black community struggling against the impoverished subordination thrust upon them for the most part and realization of themselves as full citizens. Poverty and resultant crime served as the cause and effect of police presence in the ghetto; however, it has been found that regardless of the economic level, Blacks are affected by fear and despising

Marx found that "... the capitalist state 'employed the police to accelerate the accumulation of capital by increasing the degree of exploitation of labor.'" The police perform a critical function in reproduction of capital—the repression and disciplining of the working class, resulting in "... more work with less resistance." The police also serve as a wedge to separate those in power from the exploited. As an intermediary agent of the government he "... does not lighten the oppression nor seek to hide the domination; he shows them up and puts them into practice with the clear conscience of an upholder of the peace; yet he is the bringer of violence. ..."  

Within a conservative nation-state, the police are obligated to "combat 'internal subversion' ... and act, wherever required, as the coercive agents of the existing social order, particularly in periods of strife and open class conflict." The police have a "hired gun" function to repress workers' movements against capital. In essence, 

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33 Fanon, Wretched of the Earth, p. 38.  
the police serve not only to protect property interests of capitalists but also supervise subclasses to ensure continued exploitation and control.\(^{35}\) Although the state as an instrument of the capitalist class utilizes the police as a repressive tool, they are not free to do anything they wish; for this assumption would negate the role of class struggle and the state's constant effort at legitimization.

**Crime**

Poverty and crime are inextricably linked throughout the literature. The supposition is that Blacks are more inclined to criminality due to their disadvantaged economic position. The instrumentality of crime in police studies is two-pronged: justification of police presence and authorization of subsequent physical abuse. The origin of crime and its applicability to police repression in the manner in which a suspect is handled is the foundation of police brutality studies.

Most historians view crime as the cause of police institutions; however, crime and disorder are effects of the haphazard development of capitalism. The unfettered material quest produces not only impoverishment, decay, and turmoil, but a series of sociological and psychological dysfunctions as one becomes alienated from humanistic

values and identifies more with the acquisition of wealth.

Technological sophistication of the productive processes has precipitated a whole range of social problems unique to contemporary urban society. The level of societal derangement has become contingent upon the organization of labor such that the nature of man reflects automated machines as the latter becomes more humanistic. This is the basis of Marx's philosophy and its transformation into revolutionary theory. The value of the worker is only realized in the product created, thus work becomes a means of existence as opposed to the actualization of one's own mental and physical abilities. The feeling of misery from one's alienation in production coupled with exhaustion leads the worker to only experience freedom in the satisfaction of natural instincts. Thus the more the worker produces, the less one has to consume: the more value that is created, the more civilized the product, the more barbarous the worker. Alienation of labor in the productive process and society has created frustration and anxiety with reality causing subjective excesses


evidenced in the call for law and order and a return to religion.\textsuperscript{38}

In addition to alienated labor, capitalist production has also formulated dual societies represented not only by extreme poverty and wealth but the distinction of race. Racism among police officers is the underlying foundation of violence. The reaction of most academicians to this charge is to offer explanations as opposed to denial.\textsuperscript{39} The consensus suggests that police merely reflect the values and sentiments of society at large and are no more prejudiced than their fellow citizens.\textsuperscript{40}

Studies have been conducted to identify the extent of racism and its effects on law enforcement. Lipset inferred extreme "conservatism" by the rate of membership in organizations such as the Ku Klux Klan, John Birch Society, and the Fraternal Order of Police endorsements of ultra-right candidates.\textsuperscript{41} Reiss found in an attitudinal survey of police that as many as three-fourths of the officers made negative comments about Blacks but did not

\textsuperscript{38}Chisman, "Subjective Factors," p. 18.


\textsuperscript{40}Pierce, "Brutality Reduction," p. 49.

treat them uncivilly in observed interactions.42

The sociological and psychological force of racism impugns Blacks as subhumans, that need to be monitored by police as in a colonial situation. The inhabitants of the Black areas are portrayed as the "... quintessence of evil... insensible to ethics; ... the negation of values ..." the logical conclusion being dehumanization ". . . or to speak plainly, it turns him into an animal."43 The ideological crime-fighter role thus becomes the most important of police in maintenance of the status quo as it has a "civilizing effect."44

Crime has become a euphemism for the ghetto by academicians who began pointing out the high rate of crime among Blacks as compared to whites. Gordon argues that crimes are perfectly logical responses to the structures of institutions in which capitalist society are based. Ghetto crime is thus committed by people choosing the profitable economic opportunities available to them.45 Black crime implies a commentary on the dangerous nature of Blacks


43Frantz Fanon, Black Skin, White Masks (New York: Grove Press, 1968), pp. 41-42.

44Harring, Policing a Class Society, p. 15.

which makes them responsible for their own problems of crime, disorder, and police brutality.\textsuperscript{46} This argument typifies the "white man's burden theory" which allows whites to feel superior to Blacks who need guidance and supervision since they are incapable of being responsible for themselves. Therefore, "... it's incumbent upon whites to govern the social apparatus and social interaction between Blacks and Whites if they both should have their best chance of survival."\textsuperscript{47} It also leads one to believe that Blacks accept crime in their communities and work against its reduction particularly through the protection of criminals.\textsuperscript{48} The aforementioned is an age-old belief about the Black community. Jackson, writing in response to this charge in 1903, noted "... the dominant race of this country is largely responsible for whatever criminal tendencies the colored race has inherited ... " and that it is necessary to protect some Blacks from the throes of whites before due process can be adjudicated.\textsuperscript{49}

\textbf{Police Brutality}

The connotation of Blacks with crime coupled with

\textsuperscript{46} John Cooper, \textit{The Police and the Ghetto} (New York: Kennihat, 1980), pp. 6, 15.

\textsuperscript{47} Cooper, \textit{Police and the Ghetto}, p. 21.

\textsuperscript{48} Ibid., p. 17.

\textsuperscript{49} Ida Joyce Jackson, "Do Negroes Constitute a Race of Criminals?" \textit{Colored American Magazine} 12 (1903):252.
the police officer's role in protection of property of the dominating interests has led to rampant police abuse which often

serves as the ultimate weapon for keeping the negro in his place. . . . They may do it merely by turning their backs on private lawlessness, or by more direct involvement. Trumped up charges, dragnet roundups, illegal arrests, the "third degree" and brutal beatings are all part of "white supremacy." 50

The objective here is to move towards concretization of legitimate police violence on Blacks through analyzing its manifested indices of: police discretion, apprehension of suspects, interrogation, and deadly force.

The tension between the police and Blacks was evidenced in the 1960s when police action precipitated rioting in Black areas. 51 "The talk of revolution in the ghetto further isolated Blacks from the normal white community, and made it more of an object for the new program of domestic control." 52 In labeling the ghetto, agents for social control shifted emphasis from civil rights to institutions of law enforcement. The same force that aggravated conditions to the point of revolt were assigned the task of preventing further social outbreaks.

52 Cooper, Police and the Ghetto, p. 9.
The police responded to the sixties with stricter enforcement and rougher treatment of Blacks.\textsuperscript{53} Means to deal with crime and increasing alienation of Blacks were accompanied by increases in police budgets for improved technology and manpower. This solution along with other social programs provided further social mobility of whites through provision of employment and intensified the subjugation of Blacks.\textsuperscript{54}

The environment for police brutality is exacerbated by the negative perception of police by Blacks. The police are basically mistrusted in the ghetto because they are perceived as having failed in their basic responsibility of protection.\textsuperscript{55} Blacks are prone to regard crime as a result of police inefficiency or ineptitude as opposed to social conditions.\textsuperscript{56} The effect of prejudice is that Blacks become "sensitive," "defensive," and "develop strong self-protective reactions" resulting in antagonism toward police. As social conditions worsen, such as unemployment, Blacks are being pushed into increasingly hostile responses.


\textsuperscript{54}See Francis Fox Piven, \textit{Regulating the Poor: The Functions of Public Welfare} (New York: Vantage, 1971).


\textsuperscript{56}Kinnane, \textit{Policing}, p. 107.
with the police on the other end reacting with renewed hostility. The challenge thus becomes that a large proportion of complaints are from ethnic minorities and economically marginalized groups who are already underprivileged. This segment of society becomes trapped in a contradiction of victimization of crimes thus needing added police protection and abuse by their protectors. Block conducted a national survey in 1966 and found that Blacks demanded increased police protection in direct correlation with increased protection from the police. He also found that fear of crime in Black areas has little effect on support for police. Police brutality is now routine and so rampant that the concern of the average officer to growing public criticism has not been to curtail his use of violence or find ways to avoid violence but to concentrate on not getting caught and not being subject to punishment if he is caught. Until the use of force is clearly defined, police brutality will not move beyond its present impasse and the desire to eliminate it will remain an impotent concert.


Towards a Definition

Police misuse of authority to abuse citizens should be a major crime issue in a democratic political system, yet it is treated as a mere consequence in the adjudication of justice. Police brutality is defined as a judgment that one has not been treated with full rights and dignity afforded to citizens of a democracy.60 "The legality of official violence is often a matter of judgment by prosecutor, grand jury and the judiciary."61 Police are authorized to use force while making an arrest and are acting in an official capacity if: they are not unreasonable, make provisions to comply with law, and only utilizes force after all other means have failed.62

The analytical problematic of police brutality is the result of the nebulosity of police functions. The role of the police can be viewed as a distributor of "non-negotiably coercive force" in that the officer decides when the use of force is necessary and within the confines of


the situational exigimes, is not accountable to anyone. The legality of this rule depends on citizens' opposition to the officer's modus operandi. The term police brutality is charged with emotion therefore authorities on police prefer "violent force' both authorized and unauthorized. (they) also agree, despite a lack of concrete evidence, that today's policemen resort to more unnecessary violence than they used to. Since there does not exist codified statistical data on the extent of police violence, this debate revolves around violence as a continuum throughout history that has only been recently magnified or as a current phenomenon.

The major difficulty in the critique of police activity is in delineating where their role of protector ends and enforcer begins. When one refers to brutality this term can cover verbal harassment to homicide and the extenuating circumstances become the determinate between "necessary" and "unnecessary" use of force. The next problem is perception, for what a citizen may deem brutal the officer may consider necessary for effective law enforcement.

Many writers have concluded that open defiance of

\footnote{Bittner, Policing Society, p. 97.}

police authority is the major precipitator of violent confrontations. Toch concluded that violence becomes probable when issues of self-esteem are involved. ". . . [V]iolent suspects often tend to be counterparts of violent officers . . . police obsessed with danger, a public in fear of police, produce polarization and distance.  

Police also use violence as personal means to persuade the public to respect them. Police officers responded in a survey that their major problem was lack of respect.  

There also exists peer support of violence among some police. The normal premise being that disrespect makes the officer appear weak if this is translated literally it may equate violence.  

Violence is also protected through a code of silence based on the belief ". . . that a brother-officer can do no wrong. . . ."  

Many police organizations lobby to legitimate the

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66 Lipset, "Why Cops Hate Liberals," p. 188.

67 Toch, Peacekeeping, p. 19.

use of violence only in that they reject the moral and legal standards by which this behavior is judged brutal.\(^{69}\)

Some writers hold that police brutality is based upon a value system that for "extra legal reasons . . . condones the rough treatment of cop-fighters and sexual criminals."\(^{70}\) This belief is legitimated and physically transformed by police discretion.

The police have the discretion to make decisions and exercise a wide range of choices as to when and by what means the law is enforced. Police discretion has become an area of major contention in that it tends to act to the distinct disadvantage of the minority offender.\(^{71}\) All government agencies have flexibility in making decisions within the bounds of legislative determinations; however, the statutes pertaining to police impose unrealistic and often conflicting responsibility.\(^{72}\) The inability of legislative bodies to fashion rules to govern much discretionary justice and the mistaken belief that individualized justice produces a more equitable result have meant increased oppression to Blacks.\(^{73}\)


\(^{70}\) Niederhoffer, *Ambivalent Force*, p. 54.


\(^{73}\) Taunya Banks, "Discretionary Justice and the Black Offender," in *Blacks and Justice*, ed. Charles E.
Overall, the police are concerned with social dissidents who challenge the values and traditions of society add the variable racism and every Black citizen becomes a suspect. There does not exist a training manual in the United States which presents the idea that Blacks should be treated differently in the criminal process from whites; however, "'for the police the Negro epitomizes the slum dweller and in addition he is culturally and biologically inherently criminal'" The police view their work in Black areas as constant combat. This "conflict approach" further asserts that police work in protection of the stratification system will more likely make members of disadvantaged groups the "target of law enforcement efforts."

The effects of police discretion are evident in the number of incidents that are handled in the streets without arrest. This commonplace practice is rationalized by the policy theory that the victim would refuse to prosecute because violence has become the accepted way of life for his community. The presence of bystanders does not work

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74 Pierce, "Brutality Reduction, p. 49.


to curb abuse nor presence of other police who do not restrain police.\textsuperscript{77} In fact some police encourage beatings.\textsuperscript{78}

Street corner justice is also administered through verbal assault, improper searches, and false arrest which are the most frequent abuses by police.\textsuperscript{79} The judiciary has tacitly supported police field interrogations through their rulings of \textit{Terry v. Ohio}\textsuperscript{80} in which probable cause became the prime activator of "stop and frisk." In \textit{Adams v. Williams},\textsuperscript{81} police power was extended in that any evidence found during this procedure may be used for convictions. Therefore, ". . . innocent citizens may be stopped, searched and arrested at the whim of police officers who have only the slightest suspicion of improper conduct."\textsuperscript{82}

The court had made legal strides in decreasing these infractions through their rulings in Mapp, Escobedo, and Miranda. The decisions in these cases have recently been under attack by Attorney General Edwin Meese as aiding

\textsuperscript{77}Niederhoffer, \textit{Behind the Shield}, p. 61.
\textsuperscript{78}Reiss, "Police Brutality," p. 338.
\textsuperscript{80}\textit{Terry v. Ohio} 392 U.S. 1 (1968).
\textsuperscript{81}\textit{Adams v. Williams} 407 U.S. 143 (1972).
\textsuperscript{82}Long et al., \textit{American Minorities}, pp. 120-22.
and abetting criminality. Particular emphasis has been put on reversing the Miranda decision which advises a suspect of his rights. Malone found that the effect of Miranda in decreasing the number of illegal confessions has been slight. As a matter of fact, the police use Miranda to justify their unorthodox methods of ascertaining information.

The police have violated civil liberties through interrogations by sophisticated means to extract and create incriminating information. It has been found that they use falsified evidence, physical violence, and "psychological coercion" to produce true and false confessions. Sandra Day O'Connor, the leading advocate in reversal of rights established by the Warren Court held "... confessions 'are essential to society's compelling interest in finding, convicting and punishing those who violate the law." The court's "good faith" test which allows the police to justify the most irate activities and provides immunity

87 Ibid., p. 379.
exemplifies the priority of crime control at the expense of human rights.\textsuperscript{88}

Deadly Force

The use of weaponry to subdue an assailant is a distinct subfield in police brutality research codified as deadly force. However, this concept has little utility in elucidation of police violence nor does it add contour for its use is not clearly defined. The police can use any amount of necessary force to effect an arrest and are authorized to use deadly force if: the suspect may cause bodily injury or death particularly in relation to the crime, has firearm which is employed or threatens to employ to escape arrest, and in self-defense.\textsuperscript{89} Standardization of the use of deadly force on a national level does not exist. Police manuals are not even clear on when force should be used, and some make no mention of the problem at all. Most rookies learn by watching their superiors in action as opposed to what they have been taught.\textsuperscript{90} “Today, virtually all jurisdictions allow police to use deadly


\textsuperscript{89}A. Leonard, The Police, the Judiciary and the Criminal (Springfield: Charles Thomas, 1969), pp. 28-32.

\textsuperscript{90}Wayne R. LaFaue, Arrest, the Decision to Take a Suspect Into Custody (Boston: Little, Brown & Co., 1965), pp. 209-10.
force to stop a suspected felon who committed a violent crime or who appears dangerous."\textsuperscript{91}

Since deadly force is always permissible in self-defense, police officers prone to abuse are afforded the technique of planting weapons on abused suspects in the cover-up or destruction of incriminating evidence.\textsuperscript{92} "It is also argued that [the] coroners' courts, criminal courts, and the attached legal-medical professionals afford a protective shield which justice finds virtually impenetrable."\textsuperscript{93}

Deadly force may also be used to subdue one suspected of committing a felony, of course the gray area becomes how does one determine if in fact a felon has been committed, a petty theft is not a felon but running in an attempt to escape becomes felonious.\textsuperscript{94} The courts have subscribed to the rule that it is better to let one guilty suspect of a misdemeanor escape than to take their life,\textsuperscript{95} and has recently ruled that escape does not justify deadly

\textsuperscript{91}Ann McDaniel, "When Should Cops Shoot?" Newsweek, November 5, 1984, p. 69.


\textsuperscript{93}Steven Box, Power, Crime, and Mystification (New York: Tavestock, 1983), p. 86.

\textsuperscript{94}LaFaue, Arrest, p. 215.

\textsuperscript{95}Reneau v. State, 70 Tennessee 720, 721 (1879), in Leonard, Police and Criminal, p. 28.
force just because the police arrive late or the suspect is faster than they are. 96 If the suspects killed during escape were brought to trial in many instances their offenses may not have earned them a prison sentence. 97 Surely in the instances of escape an officer's life is not threatened to the point of justifying homicide. In a study done by a police foundation there was no link between lethal captures and lower crime rates. Actually, deadly force statutes work against the police officer's responsibility to enforce law since it increases tension between Blacks and police, especially "... when the police take the lives of persons who present ... no danger. 98 LaFaue has purported that the police limit the use of deadly force to those instances where they believe such action would receive public approval since "... the police department justifies its existence by the apprehension of the dangerous professional criminal." 99

The use of deadly force is a result of organizational laxity and flagrant abuse of lethal


97 Steven Box, Power, p. 29.

98 McDaniel, "When Should Cops Shoot?" p. 69.

99 LaFaue, Arrest, p. 215.
Some writers have prescribed teaching alternative methods in apprehension and use of the gun as a final result. Most lend their prescriptive remedies towards clear statutory requirements on use coupled with stringent supervision and discipline since all legal boundaries are violated. However, "... it is exceedingly rare that police actions involving the use of force are actually reviewed and judged by anyone at all."

The Police Problematic

The current trends in police study are management efficiency and professionalization for overall improvement in response to police misconduct, i.e., fraud, bribery, etc., and their use of violence. It is widely believed by police studies that attitudes can be held in check through professionalism. "Segments of the community confronting major economic adversity, such as unemployed Black youths, were generally viewed as the principal objects of police

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100 Toch, *Peacekeeping*, p. 33.


104 Toch, *Peacekeeping*, p. 36.
mistreatment.°5 In defense of their brutality tactics, police say they are only human and become tired, fearful, and angry like anyone else. A United States District Court held that "... the police need not be any more imperious to abuse than any layman." However, as a professional, we must expect more of a police officer in terms of his capacity to perform his critical functions with competence and expertise. Police as professionals cannot afford to lose their temper as the average citizen.°6 This becomes a function of increasing professionalization as a method to increase police efficiency and decrease excesses of authority.

The sixties also spurred academic inquiry into the role and function of the police. The pluralist notion of a neutral state balancing and addressing the interests of all resulted in research on the police as an institution within itself. The police institution is fraught with major contradictions: public servant, crime fighter, maintenance of order and control, selective distributor of violence with human contacts varying from intimacy to coercion. Only a small percentage of policing is dedicated to law enforcement. The major task in this field is defining the

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role of the police officer within the confines of a
standardized context as opposed to abstractions of symbols,
words, and gestures. 107

Psychosocial analysis of police is now in vogue
with occupational indices suggesting that the types
attracted are lower to middle-class high school graduates,
type of training becomes of utmost concern. It has been
found that the average officer only receives a minimum
requirement of two hundred hours of training. 108 In an
attempt to curtail police violence, some remedies suggested
are: put emphasis on law abiding citizens as opposed to
apprehension of criminals, training to decrease use of
weaponry, and psychological screening of applicants. 109 On
the final point, there are police officers who enjoy
hurting people and the police force tends to attract those
men that like to use it. 110 The police hold that it is
difficult to "weed out the sadists" from potentially able
law enforcers. 111 Yet the police agencies are responsible
for the mental fitness of officers.

Schlossberg, a New York cop turned psychologist,
holds that "... unfortunately, the only thing some lawbreakers respect is force." He also noted that youth is a major contributor, after being closely supervised in the first year they move into the adolescent phase. These "young bucks" are put together on the night shift where they reinforce one another's dangerous tendencies.\textsuperscript{112} Promotion is slow and the seniority system further isolates rookies from older cops.\textsuperscript{113}

The police internally reflect class struggle and they are becoming increasingly alienated from society at large.\textsuperscript{114} The police function with a subculture that reinforces negative behavior through peer pressure and retards social development by keeping them from growing up and being committed to their families. There is also a high rate of suicide, alcoholism, and shortened life expectancy. Police agencies are now turning to psychology for stress reduction. The police are therefore caught in between internal procedures and practices, also the common enemy, i.e., the community at large as contributors to stress with resultant violence. There are also a number of police killed by citizens which heightens their paranoia and sensitivity. One author suggested that killing of


\textsuperscript{113}\textit{Ibid.}, p. 23.

\textsuperscript{114}Harring, \textit{Police Classes}, p. 19.
Police Reform

All classes receive some, though not equal, crime control services in which the amount of police protection is determined by property held. In working class communities, the police have been the most visible representative of the state as a resource person for social services, medical care, and resolution of small scale disputes. Yet the myth that police can prevent and control crime and their lethal force has fueled their already increasing power. The tension in the Black community coupled with the aforementioned dualistic view of police makes being a complainant against police problematic. Other than litigation, the channels to redress complaints of police misconduct have been internal affairs of the police, civilian review boards, and programs targeted at improving police community relations.

Most urban police forces house internal affair bureaus to handle alleged police misconduct in the areas of corruption and abuse. Blacks are dissatisfied with internal review procedures in that the officers are rarely reprimanded for their behavior. Most law officials agree

115 Curry and King, Race Tensions and the Police, p. 52.
116 Harring, Policing a Class Society, p. 237.
that police must police themselves since ". . . they are the only ones who can discharge this task effectively for an agency functioning outside a police department does not have the capacity to substitute for the numerous echelons of supervising officers. . . . "  

The civilian review board is unique to the American experience; however, it has shown to work against minimization of abuses since it has increased alienation of police.  

The civilian review board in Philadelphia was riddled with problems from organizational to results. The board usually reported, "' . . . no general pattern of officially condoned police brutality or discrimination based upon race, creed or national origin.'"  

The Black Panthers referred to the boards as civilian fronts to continue the police control of police, their remedy was community policing of our own areas.  

Moss conducted a study examining the extent to which Black communities could

117 Berkeley, Democratic Policeman, p. 135.


translate political potential into control of the policing function.\textsuperscript{121} He found that the increase in Black elected officials has a negative effect on the communities' desire to control police. It has been assumed that BEO's would be able to control the police and decrease abuse.

Another area that has received considerable attention is the improvement of police-community relations. PCR units were created nationally to present a favorable image to the public through services such as recreation, education, and support of community affairs.\textsuperscript{122} The PCR units were of questionable effectiveness, if officers took the job lightly, they were pictured as exiles, if serious, they risked contempt by peers. "The community impact was largely on middle-class publics who already favored its police."\textsuperscript{123} However, one plan was implemented in Philadelphia called the "North City Congress" which was a training program in relations between the police and the community. The effect was increased politicalization of the community that began pressuring governmental agencies. A little while later, the program was abandoned.\textsuperscript{124}

\textsuperscript{121}Larry Moss, Black Political Ascendancy in Urban Centers and Black Control of the Local Police Function: An Exploratory Analysis (Saratoga: R & E Research Associates, 1977) for a discussion.

\textsuperscript{122}Toch, Peacekeeping, p. 37.

\textsuperscript{123}Ibid., p. 38.

\textsuperscript{124}Niederhoffer, Ambivalent Force, pp. 232-33.
The consensus seems to be that the police are relatively autonomous from public accountability.

If, as the police frequently allege, the increase in recorded crimes of violence is proof that our society is becoming more and more dangerous and in need of a more determined and strengthened police force, then by the same logic, the increase in recorded allegations of police brutality is proof that the police are becoming more violent and that we need better institutionalized methods of deterrence and accountability.  

In 1968 Congress created the Law Enforcement Assistance Administration to provide local and state criminal justice systems with financial and technical aide to improve services. The intention of the program was not to solve any of the nation's social problems, but to support the "imprint of state and local criminal justice system."  

Black Police

Over the last ten years the recruitment of Blacks has been a major preoccupation of law enforcement agencies to solve the problems of police/community relations. Even with the recruitment efforts, the proportion of Blacks on police forces is still not reflective of the population. Because of low recruitment only moderate improvement has

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125Box, "Police," p. 88.


been shown in: the portrayal of the police department as nonracist, decreased hostility of the Black community, and more effectiveness in relations with the ghetto. However, the Black officers are policemen first and are more prone to show they are not favoring Blacks. They are extremely conscientious as victims of marginal status, oscillating between two roles.\textsuperscript{128} It has been found that they may be quicker to arrest and use force because they demand a higher standard.

Since the police subculture is reflective of society at large there does exist polarization between Black and white officers. The 1960s witnessed the emergence of Black police organizations which now exist in virtually every major city with a large Black population. These Black Fraternal Orders represent Blacks in many areas, inclusive of racial incidents such as demeaning orders and police violence on Blacks.\textsuperscript{129}

It has also been argued that individual social mobility coupled with indoctrination is a form of tokenism and neocolonialism in that the oppressed become an integral part and proponent of the very system that oppresses


them. One also cannot assume that since a person is Black that they will exhibit more compassion or behave differently towards their race. Ideological subjugation is so deep that most Blacks inculcate and exude the myths from society about themselves to the extent of being more oppressive than their oppressor. For example, the Blacks in South Africa "... do military duty on equal terms ... the loyalty of [this] military unit—given the right leadership can be directed at itself, regardless of color differences."131

Constitutional Issues

The police as a legal institution within itself legitimates repression and their practices are designed to maintain a degree of order, not conformity to law. The courts are not overly concerned with legality nor do they go to great lengths to correct abuses. There are, however, adherence to standards of justice for they must have some "... quality of mercy ... to preserve the stability of and to legitimize a harsh, repressive, class-biased legal order."132

In this section the historical development of the

130 Fanon, Wretched of the Earth, for a full discussion of this phenomenon.
132 Harring, Policing a Class Society, p. 17.
Constitution in the protection of Blacks through provision of punitive and preventive mechanisms as a vehicle for redress to victims of violence will be examined. Particular emphasis will be made on the Supreme Court's utilization of the Fourteenth Amendment and the Civil Rights Acts passed after emancipation. It is hoped that this analysis will serve as a basis of present legislation as it relates to the elimination of police violence.

Here we are in the "hallowed hall" celebrating the codification of a two hundred year old document landmarking constitutional government to examine one of its major tenets left unresolved. The major contradiction on which this constitution rests is the status of Blacks that is inextricably tied to a larger concern--federalism, i.e., the mode of political organization that unites separate polities by means of a covenant or partnership.\textsuperscript{133} Slavery was one of the major leverages used politically and economically by the founding fathers to be in the union; however, the inability to balance those interests led to the eruption of the Civil War.\textsuperscript{134}

In an effort to solidify the tenuous relationship between the Federal government and individuals in the post-


\textsuperscript{134}Charles A. Beard, An Economic Interpretation of the Constitution of the United States (New York: Free Press, 1941).
Civil War era, a number of constitutional amendments were passed which upgraded the status of slaves to full citizens with the privileges and protections thereof. This proved to be symbolic mobility in its early years of enactment as evidenced by the extension of slavery through the Black codes, crop-lien system, prison labor, etc.\textsuperscript{135} It was unnecessary to codify individual rights in the original constitution as it was assumed that states' rights were congruent with individual rights.

James Madison warned that the states would violate the rights of citizens and even suggested granting the legislature veto power over the states' laws. The Civil War made it evident that the states' interests were antithetical to the well-being of some of its citizens.\textsuperscript{136} The rights of individuals were evidenced gradually through the Bill of Rights and other amendments which merely focused on the relationship between the Federal government and the individual, the states still reserved residual power to define individual rights within their boundaries.

The purpose of the Fourteenth Amendment was to provide citizenship status to newly freed slaves but it was instrumental in other areas. It has been a vehicle since

\textsuperscript{135} Owens, \textit{Blacks and Justice}, p. 10.

1868 to incorporate the Bill of Rights and make them applicable to the states, which has illuminated the unresolved issue of Federal encroachment of states' rights.137 The Fourteenth Amendment has also been used to effect a turning point in economic development by the advancement of corporate interests through its "conspiracy theory," which interprets "person" as a corporate entity. This meant a death knell to "'Negro-race theory'" beginning with the Slaughterhouse cases which signaled the court's use of "... discretionary powers over social and economic legislation."138 The aforementioned advances would not have been made without the mandate to provide rights to Black citizens. However, the efficacy of the Fourteenth Amendment in safeguarding that objective has been slight.

In addition to the passage of amendments conferring freedom and citizenship, civil rights acts were formulated to promote the well-being of Blacks. Congress understood that equal rights were empty without measures to secure an economic foothold and protection of one's person and property.139 The federalist question of balance became

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instrumental in providing a way for the national government to sidestep their responsibility to assure equal citizenship which was the original intent of the Fourteenth Amendment.

The primary impetus of the Fourteenth Amendment was fear that the confederate states would deny the newly freed slaves their rights to protection of life, liberty, and property. Congress left the definition and enforcement of its protections and prohibitions to the federal judiciary. The courts, in an effort to safeguard federalism, restricted their interpretations in opposition to the object of its intent. Also, the balance of power in favor of the states, through court decisions, has had an adverse effect on the political, economic, and social status of Blacks, particularly evidenced through rulings concerning violence on Blacks.

In the Civil Rights cases of 1883, the court made state action a "prerequisite" for involving the amendments' protection. The court then established the parameters in which police officers could be indicted for brutality in the Screws Case. Screws was the first case in which

\[\text{Brennan, "Bill of Rights and the States," p. 3.}\]
\[\text{R. Walters, "Federalism," p. 224.}\]
\[\text{Dick Howard, "The States and the Supreme Court:" (State and local government issues before the Supreme Court) Catholic University Law Review 31 (Spring 1982):377.}\]
\[\text{Screws v. United States, 325 U.S. 91, 65S. Ct.}\]
Section 52 from the Civil Rights Act of April 9, 1866 (14 Stat. 27, C 31) and its present form in Criminal Code of 1909, was used in a nonelection case.\textsuperscript{144} A Black man had been arrested and beaten to death by a sheriff who claimed the victim resisted arrest and had reached for a gun. His death was deemed "inconsequential" to the administration of justice. The court held that the officers did not act in accordance with state law, thereby invalidating the "color of law" test which insinuates state action.\textsuperscript{145} In Ex Parte Va. 100 U.S. 339, 347 (1879), the court held, if an agent of the state deprives one of property, life, or liberty without due process, his act becomes that of the state.\textsuperscript{146} Section 52 was rendered vague and further that it failed to provide an ascertainable standard of guilt. The determinator was added that one was "willfully" deprived of their rights, in this case life.\textsuperscript{147} This case was returned to the state for retrial in which the sheriff was acquitted. This case points to two difficulties in prosecuting police: one, the burden of proof is one the


\textsuperscript{145}Ibid.


\textsuperscript{147}Carr, "Screws," p. 51.
defense in ascertaining state action, and as the Solicitor General of Georgia noted, the incumbence of attempting to prosecute depending on police authorities to release evidence vital to the case.\textsuperscript{148}

In Monroe v. Pape,\textsuperscript{149} the court used 42 U.S.C. Section 1983 as a vehicle to redress those victimized by the police and other officiates of the state in deprivation of equal liberties. This case established the "good faith" test in which police are given leeway in justification of their actions based on suspicion of criminal activity. The court held that individuals may "seek redress of claims based on federal statutes" if a series of interpretations are met inclusive of: who can be sued, liability of states and municipalities; the forum in which they may be sued; immunities; vindication of federal rights and the nature of the relief to be granted.\textsuperscript{150}

In U.S. v. Price, a case involving the murder to three members of the Student Nonviolent Coordinating Committee, the court utilized 18 U.S.C. 241 and 242 to reverse a District Court's decision.\textsuperscript{151} The three members were released from jail at night and picked up by the

\begin{footnotesize}
\textsuperscript{148} Ibid., p. 52.
\textsuperscript{149} Monroe V. Pape, 365 U.S. 167 81 Supreme Court 473, 5 L.Ed. 2d 492 (1961).
\textsuperscript{150} Howard, "States and Supreme Court," p. 384.
\end{footnotesize}
sheriff's office and met by eighteen defendants, including the police. The defendant "" did willfully assault, shoot and kill each of the three."" \(^{152}\)

The court held in Rizzo v. Goode \(^{153}\) that superior officers are liable in Section 1983 only if they ""... participated in, encouraged or ordered the unconstitutional conduct of lower officials."" \(^{154}\) In general, Section 1983 has been held inapplicable in respondent superior suits. There is again a problem in providing supervisory liability which can be easily masked as duty. The standard of proof required for criminal prosecution is more exacting then civil trials as ""intent"" to deny constitutional rights must be shown. \(^{155}\)

The former Attorney General initiated charges of brutality against the City of Philadelphia for broad declaratory and equitable relief against unconstitutional practices and policies of the Philadelphia Police Department. The suit alleged a ""pervasive pattern of police abuse that denied basic federal constitutional rights."" \(^{156}\) His efforts were thwarted on the basis that

\(^{152}\) Long et al., American Minorities, p. 57.


\(^{154}\) ""Suing the Lawbreakers,"" p. 782.

\(^{155}\) Ibid.

\(^{156}\) Long et al., American Minorities, p. 57.
the Attorney General lacked standing and that the Civil Rights Act of 1964, Section 601 42 U.S.C.A. does not contain a grant of authority to sue for enforcement of civil rights laws. 157

Overall, the efforts of the court to enforce its decisions on the states through the incorporation theory has to have struck a blow to the tenacious balance of power. 158 Currently, there is a methodological debate on this theory which Attorney General Edwin Meese terms "intellectually shakey" and "constitutionally suspect." 159 The object of attack has primarily been on civil liberties such as due process of law, suspects' rights, and affirmative action. Meese has charged that the judiciary has read their personal views into constitutional interpretations and calls for a return to "original intent." 160

If the court took heed to Meese's attack and returned not only to the intent of the founding fathers but


158 Howard, "States and Supreme Court," p. 384.


160 Rakove, "Mr. Meese Meet Mr. Madison," p. 77.
decisions of their predecessors, it would be found that the present court has swayed off course. It was evident in formulation of the Fourteenth Amendment that Blacks would have to be protected as further verified in the Civil Rights Amendments. In terms of the "exclusionary rule" which in Meese's opinion only aids the guilty criminal, the Supreme Court of 1886 upheld a ban on "unreasonable search and seizures" in Boyd v. U.S. This decision prohibited all government attempts to obtain a person's private papers or other property--by warrant or subpoena and forbade their use as evidence for conviction. If the court becomes anymore conservative Meese may gain vast support to this charge of strict interpretation. For today:

... the Court is involved in a new curtailment of the Fourteenth Amendment's scope ... the civil and political rights of the individual ... are treated as inferior to the ever-increasing demands of governmental authority. ... (W)e see an increasing tendency to insure control rather than to nurture individuality. 162

Significance

The overall significance of this work is presentation of a holistic analysis of police brutality and redress mechanisms within the confines of this political

economy. Philadelphia is used as a case study due to its unique record in this area of not only extensive abuse but citizen efforts, legalities, and the epitome of abuse, MOVE. Black Philadelphians are focused on because little has been codified on their experience since the major sociological study by DuBois in 1899.163

The study of police brutality has been approached basically through piecemeal analysis in which causes and continuation are viewed as dependent on a number of independent variables. This study perceived the issue as multifaceted indeed; yet, interrelated in its goal of system maintenance.

The position of the federal government through legislation and interpretations by the courts has been nefarious at best. Through scrutinization of major landmark decisions and the criteria for litigation against the police, the present status of where the public stands in relation to brutality can be discerned. The current trend suggests that a police officer's chance of escaping prosecution are ninety-eight out of one hundred, which "might appear to the police as a positive encouragement."164 Thus the parameters of and advantages to using juridical means to curb police excesses are drawn.


164 Box, Power , p. 90.
The MOVE incidents were grossly misrepresented. In this paper, an analysis is not only given to the obvious use of police force, but also redress efforts of those abused by police; litigatory injustices; and overall responsibility for police excesses. These issues have been given only cursory acknowledgment by the few that chose to examine this current phenomenon.

Through utilization of a historical basis coupled with legalistic and grass-root efforts, a theoretical foundation was established for organized activity outside the confines of the system in the area of police abuse. It is also hoped that this work will be useful to other endeavors in the goal of eradication of police violence and add to the dearth of knowledge in Black studies.

The focus of the next chapter will be on the constitution and violence on Blacks. Private violence as treated by the Thirteenth Amendment will be discussed in addition to official violence. The Fourteenth Amendment and subsequent civil rights legislation outline punitive and preventive measures taken by the government. Supplemental to this analysis is the present status of unwarranted searches and interrogations to fully illustrate the trend towards increased police authority.

Chapter III is a historical analysis of brutality in Philadelphia and the efforts taken to end systematic persecution of minorities. The litigatory process from
local trials to federal charges against the city are fully investigated. The organizational activities of the community and efforts at improvement of relations with the police are also documented.

Chapter IV is a study of MOVE beginning with a theoretical description of the group's philosophy and subsequent behavior. The 1978 and 1985 events are reconstructed only to aid the reader; for the analysis is focused on issues raised from events as opposed to the events themselves. These issues include: deadly force, prosecution of officers for abuse, use of all-white jury, redress for victims, respondeat superior, and the use of commission and grand jury to investigate the police. This work concludes by offering prescriptive suggestions towards eradication of violence on minorities.
CHAPTER II

VIOLENCE AND THE CONSTITUTION

Supreme Court decisions are pivotal in American legislative history to discern the status of any legislatible phenomenon. The court's interpretation of the constitution has usually worked in the interest of the state in its effort to propel the bourgeois advantage.¹ "Never ... can the Supreme Court be said to have for a single hour been representative of anything except the relatively conservative forces of its day."² Embodied in such conservatism are racist beliefs, ethos, and practices. Consequently, the court system as an agent of the dominant ruling class, has sanctioned violence towards Blacks as part of the aforesaid ideology. This has been accomplished through its reluctance to protect Blacks and provide relief to victims, coupled with an absence of punitive standards to prosecute offenders. Instead, in the majority of cases, the court has created a number of judicial "tests" that


inevitably work to protect the violators. If in fact the court rules in favor of the victim, the standards in the burden of proof are fortified. These claims are examined in the following pages beginning with the use of the Thirteenth Amendment in private violence as distinguished from police brutality as it developed into a violation of the Fourteenth Amendment. Concluding with an illustration of the court's present stance towards widening police discretion at the expense of civil liberties.

During the slave era, the court established noninterference in private and police violence on Blacks masked by state's rights. The court also tied the hands of Congress, if they had been predisposed to render liberal Black legislation, by support of state superiority in the area of slavery. In the Dred Scott decision\(^3\) Justice Taney ruled that Congress did not possess the power to abolish slavery in the territories. Therefore, compromises between the North and South "... had the total effect of creating the presumption that the central government was powerless to interfere with the institution of slavery."\(^4\) In sum, the court had thus established their link in the oppression of Blacks by abandonment of the slave question.

The purpose of the Thirteenth Amendment and

\(^3\)Dred Scott v. Sandford, 60 U.S. 393 (1857).

subsequent civil rights legislation was to not only abolish slavery but the "incidents and badges thereof." It can be argued that racially motivated violence, i.e., "... where the perpetrator's intent or conscious objective is to injure a person or their property, because of the person's racial identity, is in fact consequential to enslavement mentality."\(^5\) Following such rationale, violators should be prosecuted under said amendment and federal protection against violence provided. The reluctance to do such has justified white supremacy and extended the indignity of subordination as Blacks "... ceased to be slave(s) of an individual, but in some sense became the slave(s) of society."\(^6\)

The court at that time repudiated the view that social inequality resembled and in fact encompassed the badges and incidents of bondage. The court maintained a strict interpretation of the Thirteenth Amendment as emancipation and after which disavowed any obligation to ensure freedom.\(^7\) Thus federalism limited the Amendment to be binding only on the individual, not states. It also


became incumbent upon Blacks to prove violations of federally secured rights. This burden of proof was further complicated by the court's requisite test of "intent" by the violators. Under these stringent precedents it is no wonder that it was not until 1968 that the court expanded its interpretation of the badges of slavery as applicable to Black exclusion from a white community as reminiscent of the Black codes.

Private Violence

In a nation where the ideals of freedom and equality are held paramount, the right to life unencumbered by violence has always been and remains to be questioned. Following emancipation, lynching and other violent acts became instruments of racial control. In fact, any act that challenges the "subordinate status" has been met with aggression to balance the dominant/submissive parody. Throughout the history of the African in America, one can note their assertiveness as being met with intense opposition. The disciplining of slaves that evolved into a reign of terror during reconstruction is today evidenced in police brutality. The frequency and intensity of violence is directly correlated to the nature of activity among

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Blacks. The current lull in the number of such acts deems the inquiry of Black homicide moot to some; yet it is representative of Black entrenchment for "(a) race firmly locked into a subordinate caste position (does) not need frequent violent reminders that its place is at the bottom. . . ."¹⁰ This theoretical assertion is actualized through elucidation of the court's ideological stance on this phenomenon.

The approach of the court has been the construction of tests applicable by case to case considerations. Even with the laws in place and deemed relevant through their own precedents, systematic rulings on litigation involving violence has yet to be realized. Since 1859 over 5,000 Blacks have been lynched, others have been maimed, beaten, and burned by some known, otherwise anonymous, suspects.¹¹ Between 1889-1918, 85 percent of the lynchings took place in the South. The rationale offered was "... inefficiency of their legal systems (that were) . . . slow and uncertain, and that appellate court rulings based on legal technicalities often rescued the guilty from punishment."

The significance of this argument is that it is identical


¹²Belknap, Law and Order, p. 5.
to that offered by present day law enforcers when questioned on their dissemination of street-level justice.\(^{13}\)

The organization of the Klan as an extension of the early slave patrols serves as an extra level force to repress Blacks through tyranny. Congress had passed 18 U.S.C.A. 241, better known as the "Ku Klux Klan Act" to prosecute conspirators that "... injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution. ..."\(^{14}\) In the short run, the act proved to be effective in bringing hundreds of indictments but only a few convictions; yet it did serve to weaken the Klan.\(^{15}\) The Klan has yet to account for their crimes. As recently as 1982, Klan members were acquitted for shooting at Black pedestrians on the street that resulted in two injuries. Monetary judgment was effected, but prosecution waned because the court reasoned that the victims would have had to be engaged in a federally protected right at the time of the attack.\(^{16}\) The Department of Justice claimed it lacked


\(^{15}\)Belknap, *Law and Order*, p. 12.

\(^{16}\)Crumsey v. Justice Knights of the Ku Klux Klan
sufficient authority to initiate criminal proceedings using 18 U.S.C. Sec. 241.17

The role of the Justice Department can be better illustrated through the call for protection and assistance by the civil rights workers in the 1960s. During that turbulent era not only Blacks but white sympathizers were also killed by incalcitrant forces, which further exemplifies Black subjugation as a function of "... the absolute refusal of the law to protect (them)...."18 The fate of the perpetrators was left to the courts in which the majority were acquitted.19 In many instances, representatives of the Justice Department witnessed atrocities, took notes, held some investigations, but fell short of prosecution due to lack of federal jurisdiction.20

The court consistently held that the federalist system precluded governmental intervention to enforce constitutionally conferred rights. Racial violence by

No. 1-80-287 (E.D. Tenn. March 1, 1982).

17 Belknap, Law and Order, p. 108.
20 An example is the killing of Viola Liuzzo, a white civil rights worker—no murder convictions, only conspiracy. Suit brought against government because of involvement of FBI informer was dismissed for lack of evidence. "FBI Cleared in '65 Klan Shooting," Philadelphia Daily News, 27 May 1983, p. 28.
private individuals constitute criminal acts which is under the state's jurisdiction. Also, the provision of police protection is the responsibility of state and local governments. Reliance upon the Southern states to prosecute and protect up to and during the sixties was incredulous.  

Early requisites of the court to substantiate federal intervention was/is whether the violated right comes under the purview of federal protection such as voting. Thus the federal prosecution of lynching would depend on whether the victim was in federal custody or the killing interfered with government operations. The consequence of such logic produced rulings such as U.S. v. Cruikshank (1876) in which sixty Blacks were killed and their bodies left to rot in the sun in Colfax, Louisiana. The court held that the Fourteenth Amendment was inapplicable to rights of one person against another. The justices did not believe that state inaction, the constitutional basis of the Klan act, could make federal intervention constitutional. Congress' position was evidenced by the fact that out of 248 bills introduced on lynching between 1882 and 1951, not one passed.

Police Brutality

Short of a written statute, substantiating state

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22 Ibid., p. 18.
action became the new challenge in effecting civil rights legislation. Due process and equal protection only authorized Congress to forbid states to take affirmative action to deny or invade upon individual rights. It was not until 1945 that sec. 52 of the Civil Rights Act of 1866 was utilized to prosecute racial violence. In this landmark case of police brutality, state action was inferred on the basis that the promulgators of violence were state officials. Federal encroachment was legitimated through the court's "color of law" test which holds if one is discriminated against because of one's color under state laws than it would be necessary to intervene for his protection. 23 The objective of this ruling was to strike down discriminatory state laws and punish all individuals, whether they worked in a professional capacity for a state or not, if their actions deprived Blacks of the enjoyment of their civil rights. Although of limited effectiveness in voting, segregation or economic curtailment in civil rights; Screws illustrated its weakness in the protection of the most important of all rights--life. Robert Hall was not only denied due process when he was beaten unconscious but his life when he was '"... dragged feet first through

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the courthouse into the jail and thrown upon the floor dying' and 'upon removal to a hospital died within the hour.'"24 The instrumentality of sec. 52 to prosecute police was rendered futile by the court through their interpretation of "color of law." Specifically by insertion of the standard "willful intent" by violators and nullification of acts violative of state law as not constituting state action.

The problematic of adjudicating law enforcement techniques was implanted in this case as the officers held their act was justifiable on the grounds that "... they used no more force in arresting the victim than was necessary."25 The statute was weakened further and police discretion expanded by the court's preclusion of an officer's responsibility in knowledge of rights since sec. 52 lacked a precise "ascertainable standard of guilt."26 This rationale served as a major tenet of the "good faith" test which pardons acts based on an officer's interpretation of legislation and proper enforcement thereof. In accordance with the provision "willful intent" in deprivation of federal rights, the severity of the law is diminished,27 thereby making it possible to delineate

25Ibid., p. 100.
27Civil Rights Act of 1866 in present form as
law officials acting in "good faith" from willful violators of the constitution. The "... cause of civil liberty would have been better served if the court had invalidated the law on the ground of vagueness and the Department of Justice had then gone to Congress for a clear cut, modern statute.28

The court has relinquished much of the accountability of their decisions to Congress who has the statutory power to determine the rights and privileges of U.S. citizens. Perhaps Congress at that time believed the Civil Rights Act in fact fulfilled that purpose and undoubtedly did not foresee the dismantling of their efforts by the court. The failure of a state to provide equal protection of its citizens within its jurisdiction as a result of inaction or inability made it the duty of Congress to enforce protection. Congress made an attempt to strengthen the effectiveness of 42 U.S.C. with the Civil Rights Act of 1968 18 U.S.C.A. sec. 245 (B) that holds

"Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with or attempts to injure, intimidate or interfere with . . . (2) any person because of his race, color, religion or national origin . . . participating in or enjoying benefits, privileges, employment, etc. . . . shall be fined . . . or imprisoned.29

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28 Carr, "Screws," p. 64.

29 William B. Lockhart, Yale Kamisar, and Jesse H. Choper, The American Constitution--Cases and Materials (St.
The only differentiation of this act from the prior statute is the inclusion of private violence under the same scope as official acts. In light of Congressional authority to "enact laws to punish all conspiracies with or without state action--that interfere with fourteenth amendment rights" renders the court's search to find a constitutional right dubious.

... (T)o sustain a criminal indictment on such an uncertain ground ... subjects sec. 241 to serious challenge on the scope of vagueness and serves in effect to place this Court in the position of making criminal law under the name of constitutional interpretation.

Shifting the responsibility between the branches of government has historically and presently proved to belabor and evade major issues. The federal government has been vindicated from recrimination by: limited viable legislation, determination of appropriate jurisdiction to lack of inclination to enforce. The Thirteenth Amendment, U.S.C. 241 in addition to "... a panoply of existing Reconstruction statutes which could have been, and still can be, invoked to provide for federal protection against violence inflicted upon citizens." In U.S. v.


30 Ibid., p. 1012.

31 Ibid., p. 1013.

Guest the court interpreted sec. 241 to protect one's federally secured rights, from interference with the added burden of proving "specific intent" in violation of rights. The expansion of sec. 241 to include Fourteenth Amendment rights was accomplished in U.S. v. Price, in which private persons were brought under purview of "under color of" if they were jointly engaged with state officers. Furthermore, the court revitalized U.S.C. 1985 (3), a provision for remedial relief to victims of race crimes, stressing motivation of the attacker as a determinate to invoke Thirteenth Amendment legislation. As one can see, "... these decisions support the contention that substantive right to freedom from racially motivated violence exists under the thirteenth amendment."

It has been found that police brutality and racially motivated violence have been treated as exclusively separate legal entities. This holds true even when the perpetrators are police officers as illustrated by Screws, or they participated in or refused to protect the victims as in lynchings. The vehicles to investigate

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police digressions are Fourteenth Amendment due process violations and 42 U.S.C.A. sec. 1983 which acts as a deterrent for police misconduct in that victims are redressed for deprivation of their constitutionally secured rights.

Legal mechanisms for controlling police abuse range from common law torts such as false arrest, battery, and trespassing; the exclusionary rule which bars the use of illegally obtained evidence and criminal sanctions. Prosecution of officers wanes primarily because of the standard of proof required which is more exacting than civil trials. Additionally state and federal provisions are enforced by the District Attorney or the U.S. Attorney, both of whom are reluctant to prosecute officers and are dependent on police departments for information against the officers in question and other cases as well.38 Since Screws, however, the emphasis has been on utilization of 42 U.S.C. sec. 1983 for redress of grievances against police brutality by monetary awards as opposed to penalization.

Moreover, sec. 1983 is being rendered virtually ineffective as a deterrent against police excesses in that: responsibility for monetary awards falls on the municipal entity and not the individual officer; the erection of numerous obstacles in bringing such claims; the enormity

38"Suing the Lawbreakers," p. 782.
and the burden of proof on the plaintiff.\textsuperscript{39}

The basis of sec. 1983 claims are causation of injury consistent with the execution of a government's policy or custom. If these acts represent official policy then the government as an entity is responsible and thereby liable for damages under sec. 1983.\textsuperscript{40}

Historically, a municipality enjoyed immunity which originally began as an extension of sovereign immunity of the state. The problematic stems from "... the fact that while a municipality is a governmental subdivision with all the attendant powers and responsibilities of a governmental body it is also a corporate entity.\textsuperscript{41} Governmental immunity was never completely accepted by the courts because it runs contrary to liability from negligence and the constitutional guarantee that a person is entitled to a legal remedy for personal and property interests. In general, municipalities are held liable for injuries caused by employers in performance of governmental functions of a corporate nature. However, a distinction is made between negligence of officers and acts done by the authority of

\textsuperscript{39}Ibid., p. 781ff.


\textsuperscript{41}Frederick Slabach, "Civil Rights--Section 1983--Municipal Corporation is Not Entitled to Qualified Immunity for Good Faith Violations by its Officials (Case Note)," Mississippi Law Journal 51 (March 1980):147.
the municipality; therefore, if a corporation executes lawful power in an illegal manner or directs an officer to do an act illegally, it is liable.\footnote{John Lichty, Redress Against Sovereignty. A Study of the Increasing Liability of Municipalities in Tort. (Grand Forks: Bureau of Governmental Affairs, 1972), p. 5.} The court has granted award damages under 42 U.S.C. sec. 1983 if the intent of the defendant's conduct is found to be evil and when it involves ". . . reckless or callous indifference to the federally protected rights of others.\footnote{Penland, "Section 1983," p. 674.}

42 U.S.C. 1983 as a vehicle for redress against police excesses is used because unlike sec. 242 it establishes a civil remedy. In addition, specific intent as proscribed by willfullness as a standard of proof was removed. The principle case in this area is Monroe v. Pape\footnote{Monroe v. Pape 365 U.S. 165 81 S.Ct. (1961).} in which plaintiffs sought damages from both individual police officers and the City of Chicago for invasion of their constitutional rights. In Monroe v. Pape, Justice Douglas, writing for the Court, asserted an expansion of sec. 1983 in that acting "under color of state law" is enough to substantiate state interest regardless if the wrongdoer is acting within or beyond their instructions.\footnote{Dick Howard, "The States and the Supreme Court," Catholic University Law Review 31 (1982):378.} However, the municipality could not be
sued under this section. Even though the court invoked municipal immunity, it countered that drawback by the assertion that although there may be in existence a state remedy, the injured party could seek federal relief before the state. The federal forum for redress against police misconduct has been preferred in that it is believed that the federal judges are more familiar with civil rights claims, are insulated from local political pressures, discovery rules are more liberal and backlogs are shorter in some jurisdictions.46 This ruling countered the tradition of comity between federal and state courts, the principle that federal courts ought sometimes to defer to state tribunals before accepting jurisdiction of a dispute .... through abstention by a federal court so that a state court may resolve an unclear state law .... and refusal to permit a federal court to intervene in certain state proceedings, especially criminal trials.47

The Supreme Court overruled Monroe to the extent that it held municipalities were not 'persons' under sec. 1983 in Monell v. Department of Social Services.48 The court concluded that the Monroe Court had misconstrued the legislative intent of the 1871 congress by their reluctance

46 "Suing the Lawbreakers," p. 782.
47 Howard, "States and Court," p. 381.
to impose liability on a municipal corporation. They reasoned that governmental entities are, in fact, responsible and thereby liable for injuries resulting from official policy or customs. As a result of Monell, local governments can be sued directly under sec. 1983 for damages, for declaratory judgments, or for injunctive relief. On the question of qualified immunity as based in "good faith," the court responded. "On its face, section 1983 allows no immunity from liability but when the immunity is well grounded in common law and supported by strong policy, the Supreme Court has recognized it." However, Monell reaffirmed Monroe, insofar as Monroe held that the doctrine of respondeat superior is not a basis for holding municipalities liable under sec. 1983 for the constitutional torts of their employees. Qualified immunity as determined by judicial decisions is based on the rationale that without some immunity "... officials might be deterred by the risk of lawsuits from using their unfettered and independent judgment ... (which) on balance, ... will better serve the public good."

"The police judgment underlying the Court's recognition of qualified immunities resembles that in the

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49 Howard, "States and Court," p. 386.
absolute immunity cases: 'It is better to risk some error and possible injury from such error than not to decide to act at all.'

Outside of legislators, judges, and prosecutors, all other officers may claim only qualified immunity; police officers are among those who may make such a claim. Additionally, such immunity would permit use of the good faith defense in that they thought their action was in fact constitutional and that they merely "... incorrectly predicted the future course of constitutional law."

Such rationale is exemplified by Bivens v. Six Unknown Named Agents in which a citizen's constitutional rights were clearly violated, the defendant's were absolved on the belief that their actions were constitutionally subjective. The

"... trier of fact must decide that the officer's belief was reasonable, albeit mistaken. The significant expansion of the defense was that the police officer might not be liable because he believed he had probable cause even though he lacked probable cause for his actions."

The issue of qualified immunity was somewhat

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55 "Suing the Lawbreakers," p. 784.
reconciled with Owen v. City of Independence\textsuperscript{56} in which the chief of police was dismissed by the city manager. The ex-officer claimed the dismissal violated his Fourteenth Amendment rights on the basis that it deprived him of a liberty interest. The federal circuit court held the city was entitled to qualified immunity from liability; the Supreme Court held the city is not entitled to immunity under sec. 1983 for constitutional violations.\textsuperscript{57} Its rationale was that a municipality may not invoke the good faith defense to absolve its officials for this in effect would remove the victim's remedy for municipal wrongdoings. Although the Owens ruling may prove to be costly through the imposition of money damages, the court believed "... since it is the public at large that benefits from government activities, it is proper that the public at large be responsible when government infringes individual rights." The second principle in this ruling was deterrence as officials realizing that the municipality will be liable for injuries, whether the official acted in good faith or not, the officials "... will have an incentive to err on the side of protecting citizens' rights."\textsuperscript{58}

\textsuperscript{56}Owen v. City of Independence 445 U.S. 622 (1980).
\textsuperscript{57}Slabach, "Civil Rights," pp. 140-41.
\textsuperscript{58}Howard, "States and Court," p. 104.
Under the doctrine of qualified immunity, the court has to revert to the time of the alleged violation and find the appropriate law to "... determine whether the defendants conduct violated a clearly established constitutional right as of that time." This decision makes the intent of the defendant irrelevant and further inquiry unnecessary as it provides a vehicle to dismiss sec. 1983 cases for failure to state a claim.

The tendency of the court has been to hold a city liable for the negligence of police officers. Briefly, if in the line of service an individual policeman commits some act of negligence whereby a citizen is injured, the municipality is liable for the individual act. However, in regards to excessive force, the municipality in most cases has not been held liable for injuries. The courts have justified excesses as the enforcement of an officer's duty. In order for a municipality to be held liable it must be shown that the policeman did something he was in fact authorized to do and if done in a proper manner would have been lawful. It has been evidenced that even knowledge of the violent character of an officer does not make the municipality liable.

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60 Ibid.

61 Lichty, "Redress Against Sovereignty," p. 12.
The test utilized particularly for police misconduct has been "deliberate indifference" as established by Estell v. Gamble which is a display of the reckless or gross negligence of civil standards. This test is applicable to cases where the supervisory official knew "... or had imputed knowledge of, a past pattern of unconstitutional police behavior and did nothing about it." Therefore the burden on the plaintiff is to show training was nonexistent or inadequate which would imply acquiescence to the continuing pattern of police misconduct. The landmark case in discernment of the extent of supervisory involvement is Rizzo v. Goode. In this case, a number of individuals and organizations in Philadelphia accused the Mayor, City Managing Director, and the Police Commissioner of Philadelphia of authorization and encouragement of a "pervasive pattern of illegal and unconstitutional mistreatment of citizens." The district court found that constitutional rights had, in fact, been violated in an "'unacceptably high number of instances'" and that the official policy as through custom of the department was: to discourage filing of complaints,

63 Kramer, "Sword and Shield," p. 78.
minimal consequences of officers' acts, and resistance to disclose the disposition of the complaints. Although the Constitution does not provide citizens with a right to improved police procedures, the lower court ordered the city officials to submit a comprehensive program for increased police response to complaints by the citizens according to the following guidelines: (1) detailed revision of police manual specifically outlining police conduct in public relations, unnecessary use of force and property damage when processing suspects, (2) procedural revisions in the process of complaints such as availability of forms, investigation and adjudication of nonfrivolous complaints, a provision of a forum in which complainants may be heard and prompt notification of the latter on the outcome.\footnote{Ibid.} The Third Circuit upheld the appropriateness of the injunction as a remedy to stem recurring violations, the Supreme Court reversed. The basis for the reversal was absence of sufficient case or controversy between respondents and officials to substantiate injunctive relief, officials who are not actively promoting civil rights violations do not come under purview of sec. 1983 and "... principles of equitable restraint and federalism barred the massive interference in police operations required by the district courts injunction."\footnote{"Notes on Rizzo,", p. 1261}
pattern of police violations of civil rights was evidenced in the case, the defendant's relationship to that was not clearly displayed. "The petitioners could not show that there was any direct participation by supervisory personnel which encouraged, implicitly authorized, approved, or acquiesced to the alleged misconduct." Liability based on supervision and public responsibility to eliminate police misconduct was rejected in Rizzo in accordance with the inapplicability of sec. 1983 to the doctrine of respondeat superior. Therefore action against the police cannot be predicated on lack of supervision even when such supervision or training is negligent thereby preclusion of sec. 1983 suits in which the only official action was inaction.

A nexus could have been established to substantiate case or controversy if the individual officers involved would have been named. The court held that police officials do not cause brutality through mere acquiescence. Also lacking was the existence of a statute which could establish the likelihood of a resultant injury. The absence of unconstitutional statutes, affirmative policy or plans precludes upper echelon officials from being joined

68 Kramer, "Sword and Shield," p. 77.
69 "Suing the Lawbreakers," p. 784.
70 Kramer, "Sword and Shield," p. 77.
under sec. 1983 in accordance with the "threshold statutory liability" test. In Rizzo,

(T)he court did not deny that a policy existed, but rather focused on the nature of the policy. In essence it drew a misfeasance-nonfeasance distinction: liability attaches when a police department as a matter of policy violates constitutional rights, not when it simply refused to correct violations.71

Injunctive relief as a remedy to stem the tide of police discretionary use of techniques has been utilized by many litigants. The advantages of injunctions were outlined in Lankford v. Gelson:72 (1) they are directed to top police administration as opposed to a few officers, and by extension to the entire police force especially when a municipality is sued, (2) it is directed to continuing patterns of police violations rather than on isolated incidents, and (3) police departments are encouraged to check discretion by making it more effective through "administrative rulemaking."73 However, in light of "... comity and federalism ... the availability of broad mandatory injunctions against police departments ..." is limited.74 The juridical procedure to discern statutory

authority for an injunction has been based on the merits of a case. In the Hague case, an injunction against Jersey City officials who prevented C.I.O. organizers from distributing leaflets and public assemblage, was upheld. Respondents in Rizzo had relied upon this ruling in their claim for an injunction but the court distinguished Hague as involving a "deliberate policy" of city officials in denial of constitutional rights. The companion case that formulated a base for the claim was Allee v. Medrano in which injunctive relief was appropriately invoked where a "'pervasive pattern'" of police misconduct was shown. In Allee, Texas Rangers enforced unconstitutional laws against union pickets by consistently harassing them. The court invalidated the claim not on the question of a pattern for that was evidenced, but rather that the defendants could not be linked as playing an "affirmative part." The inapplicability of Hague and Allee in police brutality suits served to strengthen the requirements to attain injunctory relief, in addition to the stringent standards for proving the official's role in unconstitutional actions.

The respondeants in Rizzo v. Goode argued that they

sought vindication of the right of ". . . 'people living in a democratic society to be free from repeated patterns of unconstitutional, illegal, and unjustified exercises of police power.'" The court held that right may exist but it does not substantiate mandatory relief through injunctive remedies. 78 Federalism evoked the enjoinment of state officials in this case as determined by the nature of the said violation.

Although the court has issued injunctions against the police in some cases, such as Lyons to stop the use of strangleholds, the overall effect of this method has been slight. 79 The result of the Rizzo case was to narrow the use of injunctions as it restricted the lower federal courts issuance of them as a judicial remedy to police brutality. The limitation of an effective means to deal with patterns of police abuse shows how police ". . . organizations have taken over our society at the expense of the individual." 80

The constriction on injunctive relief coupled with qualified immunity as a basis for dismissals illustrates the retreat of sec. 1983 which has coincided with the general upswing of political conservatism in the United

78 Ibid., p. 1263.
States. Prior to 1982, a defendant had to prove that his acts were not malicious or unreasonable. As a result of the Harlow ruling this requisite has been altered by the insinuation that a defendant enjoys qualified immunity where his "... actions do not violate a clearly established constitutional right as of the time of the defendants actions." This defense has served as a powerful weapon by local officials in sec. 1983 cases. Rulings such as the aforementioned exemplifies the present paradox of sec. 1983: the expansion of types of cases qualified for review along with a narrowing of the scope of 42 U.S.C. sec. 1983. The lower courts have recognized that "almost any common law tort committed by an individual officer as well as systematic conduct may be viewed as a constitutional violation..." Accordingly, there has been an "... impressive flood of litigation against state officers in the federal courts." Approximately one out of every three cases "... were civil rights suits claiming constitutional protection against state and local officials." The high proportion of sec. 1983 claims has been the court's basic rationale for the current

constriction of its applicability. The increasing volume of suits have precipitated a liability insurance crisis; yet, most suits fail because of their frivolous nature, lack of research, and litigatory difficulties. Most police cases involve false arrest, excessive force, and physical brutality. Nominal effects of the suits have been the precipitation of policy making oriented to defense of civil suits, some means to review public complaints, statutory immunization, and a decrease in unnecessary arrests. These claims have yet to be put to any type of systematic testing. In order to provide an incentive to initiate sec. 1983 claims, the successful sec. 1983 plaintiff can claim attorney's fees under the Civil Rights Attorney Fees Award Act of 1976. "Such a statute was thought necessary in order to enable poverty stricken Americans to vindicate their constitutional rights." However, defendants' attorneys can claim their fees in areas where they have prevailed and the invocation of the Frivolous Rule which allows the exclusion of fees for time spent on unsuccessful claims, as contrived in Hemsley v. Eckerhart, has diminished the attraction of sec. 1983 suits.


In the court's eagerness to dispose of civil rights claims they devised a formula which puts the focus on the states to deal with compensatory cases. The court held that the 1983 statute merely guarantees a forum in which constitutional violations can be heard, not necessarily rectified. The rationale was formulated in Paratt v. Taylor in which procedural due process was distinguished from substantive due process in that only the former is applicable to sec. 1983 claims. Procedural due process is a claim of deprivation of property or liberty without the due process of law. It is only in denial of proper procedure that a constitutional violation can be asserted. If the plaintiff has state laws or alternative remedies for redress of defendants' alleged misconduct, they are not denied due process.

According to the court, . . . the fourteenth amendment outlaws deprivations of life, liberty and property without due process, a plaintiff pursuing such a claim under Section 1983 does not state a cause of action if adequate alternative remedies exist for the redress of a loss.

If a tort remedy exists or a forum in which one's claim of deprivation can be entertained then by the nature of availability, one's due process rights are not violated. The reasoning in Paratt served to relegate procedural due

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process claims to state courts and outside the confines of sec. 1983. This rationale is evidenced in Hudson v. Palmer\(^{92}\) which concerned the destruction of prisoners' property by a guard. The court held the inmates' sec. 1983 claim should be dismissed for failure to state a claim and the availability of state tort remedy. Now "neither negligent nor intentional . . . deprivations of property can be asserted under sec. 1983."\(^{93}\) Here, as well as Paratt, the mere existence of a tort is enough to satisfy due process. For one ". . . only (has) a right to an opportunity for a due process hearing at a meaningful time and in a meaningful manner."\(^{94}\)

In addition to limiting access to federal courts for such claims, the court also fortified the requisite standards to recover for damages. A person who causes said deprivations is liable; however, ". . . the Court concluded that compensatory damages are not to be presumed; rather plaintiff must plead and prove damage."\(^{95}\) Such damages that have to be shown are: "deliberate indifference, namely actual intent or recklessness."\(^{96}\) The intent


standard was revitalized in Williams v. Vincent in which the court distinguished "purely innocent acts" that may somehow be transposed into civil rights violations as not under the purview of Section 1983 action. The test invoked to ascertain individual liability was a determination of the behavior as that which "'shocks the conscience.'"97

The court has recently considered a statute of limitations on sec. 1983 in their continuing efforts to delimit claims. In Wilson v. Garcia98 they first characterized sec. 1983 alleged offenses as those involving personal injury which is inclusive of one's civil rights as a part of the individual. "The Court read the fourteenth amendment as a mandate that all persons shall be accorded the full privileges of citizenship. The court then reasoned that '(a) violation of that command is an injury to the individual rights of the person.'"99 It further held that since personal injury cases are often addressed through tort law, they would let the state apply the relevant law to the sec. 1983 violation to determine its relevance and utilize the time limitation given by that

state law. If, however, the closest related statute cannot be applied, the state will then rely on its residual statute. This procedure has led to lengthy debates on characterization of the appropriate statute that would maximize the plaintiff's most beneficial limitation period. Although Congress is aware of the problem, they have not legislated to solve it, thereby leaving it to the states to establish their own "... limitations consistent with internal state policy."\textsuperscript{100} The court could have established uniformity for internal and interstate cases by "articulating one limitation period for all circuits in Section 1983 Civil Rights claims."\textsuperscript{101} Uniform characterization falls short of promoting consistent standards, for plaintiffs can now choose state or federal forum.

The court's consignment of sec. 1983 claims to lower courts within the state's jurisdiction has brought the purpose and efficacy of the statute full circle. The rationale for addressing 1983 claims in federal court as opposed to the states encompasses the panoply of problems in which it is now confronted with: jury bias, inadvisable defense, qualifiable municipal liability, and the difficulty in securing injunctive relief. The

\textsuperscript{100} Ibid., p. 250.

\textsuperscript{101} Ibid.
The aforementioned will now be investigated in relation to the claim that sec. 1983 is not efficient enough to deal with police excessive use of authority.

The plaintiffs in suits against the police are at an inordinate disadvantage from the outset as their word is pitted against one who upholds the law. In theory, the local prosecutor can take action against cops accused of anything from simple assault to murder, in practice it is often difficult if not impossible. The prosecutor is in a position where they have to depend on the police for their investigations and in many instances are actual comrades with them. It has been found that a prosecutor will offer to drop the charges against a person if they will sign a statement promising not to bring suit against the police. A prosecutor is limited by being unable to condition a voluntary dismissal of a charge upon a stipulation by the defendant which is designed to forestall the latter's civil action.102 On the other side, the defense attorneys used are employed by the municipality. They are regarded as experts in police procedure and often "make a pretrial determination that the officers acted correctly." The district attorneys also socialize with the police and tend to inculcate the locker room versions of police duties.103

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A major problem in police abuse litigation is drawing the line between reasonable and excessive force as based on the manner in which the alleged abuse took place. The versions offered by the plaintiffs and defendants are usually radically different, "and testimony that corroborates the story of either side is often unavailable because 'few arrests, searches, or uses of force occur in the presence of disinterested witnesses!'"\(^{104}\) When interested witnesses can be found, depositions are used to impeach them through extensive questioning.

Juries, the most critical determinate factor in 1983 cases, are found to be biased in such cases. The media portrayal of the police, coupled with the middle-class status of most jurors tends for decisions to favor the police. Through preemptory challenges, Blacks and any one else who has had any altercation with police, are removed from being prospective jurors. The jurors' frame of reference of the police is more a result of "art and instinct than on systematic knowledge, . . . they view police work as an unending series of instant life or death decisions." This "'split-second syndrome'" suggests that any evaluation of the officers is unfair second guessing.\(^{105}\) Furthermore, since no two situations are

\(^{104}\)"Suing the Police," p. 801.

alike, officers need discretion to respond on an ad hoc basis; therefore, any action an officer takes should be approved since they are adequate judges of correct action as based on their training. The consequences of reliance on such split-second decisions is that they are accompanied by negative results.\textsuperscript{106} Plaintiffs in such cases are usually minorities or have a previous record of infractions with the law and are thereby deemed as undesirable. Since the plaintiffs are rarely totally innocent\textsuperscript{106} it is difficult for the jurors to empathize with them. There is also a lack of clarity on the major issue of whether the degree of force exercised was excessive or appropriate based on the circumstances in which it was employed.

Police credibility plays a most important role, even in the face of a record of repeated abuses and incredulous behavior, the officer's action will somehow be vindicated. Also, the officer is not likely to admit his mistakes and rarely will an officer use excessive force \"... against the middle-class who are able to articulate their grievances convincingly.\textsuperscript{107}\" Plaintiffs are not as impressive as police with their letters from appreciative citizens, and who have been trained to testify. The issue becomes subjective analysis of officers' character as

\textsuperscript{106}Ibid.

\textsuperscript{107}"Suing the Police," passim.
opposed to whether the officers defaulted on their duties and exacerbated situations, thereby being depicted as victims in the hands of criminals. These claims are evidenced in the relatively small number of suits actually heard, even fewer cases won and the monetary amount of awards. It has been found that "... the average Black plaintiff received from the jury less than one half the amount won by the average white."\(^{108}\)

**Present Trends**

The promise of a guarantee to life and liberty became binding on state and local governments through the Fourteenth Amendment. This nationalization of civil rights took place between 1961 and 1969 through Supreme Court interpretations of the Constitution. The present Attorney General, Edwin Meese, has on several occasions attacked the Supreme Court's incorporation theory of the Fourteenth Amendment as "constitutionally suspect" in that the state has been held accountable for procedural due process infractions. Meese has held that the courts have abrogated the autonomy of local entities and heralded criminals through their rulings. However, upon close examination, one will note that the cause of civil justice is suffering by the present constriction of rights and the expansion of police discretionary powers as consistent with an ultra-\(^{108}\)Fyfe, "Expert Witness," p. 247.
conservative nation-state. The following remarks are in attempt to exemplify these claims through cursory examination of the court's rulings on due process as they relate to the aggrandizement of police powers.

Meese's call to the courts to interpret the Constitution as closely as possible to the ideas and purposes of its framers is not based on concern for judicial philosophy but for political results. Conservatives once relied on the courts to protect property rights against regulation by progressive majorities in state legislatures and Congress,

(n)ow they hope to restrain 'the unfettered and inevitably arbitrary wills of an elite few . . .' so that democratic majorities in the states can presumably restore prayer to the schools, restrict abortion, suppress pornography and fill the jails to overflowing. Since these social issues would largely fall under the control of the states, the attack on activist judges also clothes itself in the garb of federalism.109

The rulings issued by the Supreme Court affecting the police give the impression that they somehow have control over police functions. Many rulings that free criminals are technical and have little to do with deterring police abuse.110 They ". . . merely provide that if the police propose to set the criminal process into motion, then they must proceed in certain legally restricted ways . . ." that

109 Rakove, "Mr. Meese, Meet Mr. Madison," p. 77.

Meese refers to the exclusionary rule which would forbid inclusion of evidence obtained unconstitutionally as established in Mapp v. Ohio\footnote{Mapp v. Ohio 367 U.S. 643 (1961).} as only helping the guilty criminal and purports abandonment. The original intent of the framers was to ban all unreasonable search and seizures and to prevent the use of one's personal property, even when obtained by subpoena, to be used as evidence in a conviction.\footnote{Taylor, "Who's Right About Constitution," p. 20.} In fact, one can note that the Warren's court restriction of power is "... a pale remnant of expansive rights..."\footnote{Ibid.} The present court has severed the term reasonable to edifice a number of instances in which officers cannot only search a person, but seize their property (with or without a warrant) and use the evidence found for conviction. Justification for which is based on the deterrence rationale in the "good faith of an officer in execution of their duty as exceptions to the exclusionary rule. The court held in Illinois v. Krull\footnote{Illinois v. Krull 107 S.Ct. 1160 (1987).}
that the exclusionary rule is inapplicable to evidence obtained by the police acting in good faith. This ruling was held to support "technical violations" such as acting on a statute that is declared invalid later on. If an officer is acting

in objectively reasonable reliance on a statute authorizing warrantless administrative searches that was subsequently found to violate the Fourteenth Amendment he would be relinquished from responsibility. The court reasoned that the application of the exclusionary rule would have little deterrent effect on future police misconduct.\textsuperscript{116}

it thereby resigned itself to determining what evidence is permissible to effect a conviction. The court considers the circumstances in which evidence was obtained as violations of the Fourth Amendment if they are "... willful and prejudicial to the accused ... regardless of the good faith of the individual officer. ...").\textsuperscript{117} The tests are quantitative in that they measure degrees of deviation from legalities: extent it was willful, extent of privacy invaded, and whether or not the evidence would have been disclosed without the violation.\textsuperscript{118} The doctrine used to decide whether fingerprints, confessions, etc. are subjected to suppression due to an illegal arrest is known

\textsuperscript{116} \textit{Criminal Law Bulletin} 23 no. 5 (September/October 1987): 43.

\textsuperscript{117} Frank W. Miller et al., \textit{The Police Function} (Mineola: Foundation Press, 1982), p. 563.

\textsuperscript{118} Ibid.
as the fruit of the poisonous tree. In this vein of logic, the court evades the dispute over the extent of police authority, as the question is not abstract propriety of police conduct, but admissibility of evidence.

Police methods to attain evidence is the area that their discretionary powers have led to blatant abuse of civil liberties. Case-by-case analysis by the court has given license to continuation of such practices as police merely seek innovative techniques to maintain daily procedures. Police have evaded the search restriction imposed by Mapp through concoction of any story that would illicit some basis for "probable cause." The Fourth Amendment protects security of persons and thereby requires weighty public interest, i.e., enforcement of criminal laws before government agents are allowed to search or seize. The test for probable cause is determination of

"... facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant ... the belief that" an


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offense has been or is being committed (by the arrestee).\textsuperscript{122} The requisites for probable cause have steadily increased until now they are assessed under the "totality of circumstances approach" which deems the concept as "fluid . . . not readily or even usefully reduced to a neat set of legal rules . . . and that with respect to searches, it requires only that there be 'a fair probability that contraband or evidence of a crime will be found.'\textsuperscript{123} In wake of such retrenchment, the court is still unwilling to overrule Mapp and continue to engraft exceptions that may actually be incentives to search unsupported by adequate probable cause. For instance, the test required for issuance of warrants to verify probable cause was based on knowledge of informant as credible or reliable, to acceptance of information provided by an anonymous informant.\textsuperscript{124} The veracity of the informant is no longer required, now only relevant considerations are used. The totality of circumstances analyzes common sense to deduce fair probability that contraband or evidence of a crime will be found, on an individual case basis, after the


fact. The necessity of warrants which signifies a magistrate's collaboration of probable cause was further eroded with the Terry opinion. The court held that the U.S. Constitution has recognized that under some circumstances, an officer may detain a suspect briefly for questioning in absence of probable cause. If a search or seizure is found to be reasonable, as judged by a balancing test, then probable cause does not need to be shown. The Terry opinion thus opened wide the door to an unpredictably diverse array of police practices that might now be permitted. The court was thus put in the position to balance public interest in law enforcement as opposed to the individual's right to be left alone. The line is drawn if the search "confer(s) too broad a discretionary authority on the police." 

Field interrogations and search and seizures are theoretically based in crime prevention. Historically police practices have condoned aggressive prevention patrols in order to let the community feel the presence of the police. Studies on law enforcement have cited the

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128 Ibid., p. 533.
129 Ibid., p. 572.
practice as the source of community complaints, for misuse produced friction, even riots. Such activity provided the background in which the court ruled in Terry, Mapp, and Escobedo. However, since then the court has relaxed its requirements for police justifiability of actions. For example, regarding inventory searches of autos, the court held "(t)here was no showing that the police were doing anything more than following standardized caretaking procedures."\(^{130}\) The result is that illegal police conduct will be allowed on the basis that it technically resembles permissible enforcement policy. The court will not ban field interrogations simply because police were abusive, as they denied efficacy of suppression of evidence when police have other purposes in mind than prosecution, it is only when they exceed their bounds that the evidence and its fruits must be excluded.

The final area under investigation is Miranda:
"'after decades of police coercion, by means ranging from torture to trickery, the privilege against self-incrimination . . . requiring police in every state to give warnings to a suspect before custodial interrogation.'"\(^{131}\) Attorney General Edwin Meese would like the court to overturn Miranda to stop the warnings. The Justice


\(^{131}\)Brennan, "Bill of Rights and States," p. 12.
Department has even gone as far to prepare substitute language to encourage confessions and exclude the provisions for right to counsel. It has been found that informing a suspect of his rights has not appreciably affected confession rates. Miranda has not even curbed tactics used by the police during interrogations such as ". . . showing the suspect fake evidence, putting the suspect to a phony lie detector test that he is guaranteed to flunk and making fraudulent offers of sympathy and help." The court ruled in Taylor v. Alabama that illegally obtained confessions, only after a warrantless arrest based on less than probable cause, should be excluded as fruits of an illegal arrest. Miranda ruling warnings have been sufficient to attenuate illegal arrests based on the following factors: "(1) the temporal proximity of the arrest and confession; (2) the presence of intervening circumstances; (3) the purpose and flagrancy of the police misconduct; and (4) the voluntariness of the statements." In Colorado v. Connelly, the court "found that state need only prove a Miranda Waiver by a

preponderance of the evidence.\textsuperscript{136} In order to discern the voluntariness of a confession, coercive police action must be proven. The court has upheld the admission of statements made to a psychiatrist because the proceedings in which information was obtained was not criminal investigation.\textsuperscript{137} The court did not allow suppression of statements taken under duress by a plaintiff for they argued the latter clearly had the right to "... choose between speech and silence."\textsuperscript{138} On tactics used by the interrogators in which defendant was not fully informed of the charges against him, "(t)he Court thus found that mere silence by law enforcement agents as to the subject matter of an interrogation is not 'trickery' sufficient to invalidate a suspects waiver of Miranda rights."\textsuperscript{139}

Miranda has persisted . . . because it allows us to celebrate our values of individualism without paying any real price. . . (it) stands for the enshrinement of individual rights over the need of the state for efficiency, equal justice for rich and poor before the law, the right to be presumed innocent, and the demand that the police follow the law while enforcing it. That it has managed to fail in any real sense to reform police conduct, (and) it serves interests opposite to those intended by its authors.\textsuperscript{140}


\textsuperscript{140}Malone, "You Have the Right to Remain Silent," p. 380.
To effectuate Miranda, a city should be held liable for abuse of process if an arrest is based on a scheme to harass, for its ratification by the city makes it directly involved in an illegal proceeding.\textsuperscript{141} The mystification of respondeat superior that holds an official must not only have knowledge of but direct unconstitutional practices to be linked to them serves to foster toleration of police officers by their supervisors "'... who are lying and covering up misconduct (which prevents us from ever) getting to the root of it.'"\textsuperscript{142} In addition, an articulated policy favoring or promoting police brutality, a state statute or city ordinance authorizing unconstitutional conduct would have to be produced to establish a link between municipal officials and brutality.

Conclusions

Due to the inherent problems and obstacles in bringing suit against the police, it has been surmised that civil suits are not an effective deterrent to police misconduct. If a plaintiff is successful in a sec. 1983 case, the fine is paid by the city as opposed to the officer; barring suspension or criminal prosecution, the


\textsuperscript{142}Remark by J. A. (Tony) Canales, the U.S. Attorney for Houston in Smith, "Cops Getting Away," p. 37.
police are virtually immune from the consequences of their acts. By returning such suits to a local forum, familiarity and political pressures curtail the likelihood of verdicts in behalf of the complainant.

Overall, the police as an institution, have virtual carte blanche in the performance of said duties and any attempt to curb their excesses is met with resistance. The President's Commission on Law Enforcement and Administration of Justice recommended in 1967 that the state legislatures and police departments impose control on field interrogations, the court has not only invalidated any restrictions, but expanded such practices.143

In analyzing Supreme Court cases, one may be prone to herald rulings that, on all outward appearances, are beneficial to the cause of liberty; however, at closer scrutinization, the contradictory nature of its decisions can be seen. The most evident technique for retrenchment of the courts has been in their formulation of tests, edified to dispose of civil rights cases. In this chapter, the legitimation of violence on minorities was evidenced through such requisites as: "willful intent" of violators, color of law by the state, patterns of misconduct, unconstitutional statutes, and overall appropriate standing to bring suit. The types of relief sought from violence,

143 Merten, "Control of Police," passim.
short of prosecution, have been: injunctive relief, declaratory judgment, and monetary awards for damages. The most utilized has been sec. 1983 in which damages are awarded for deprivation of procedural processes in police misconduct cases.

Prior to Monroe, sec. 1983 had only been used twenty-one times from 1871 to 1920, most exclusively on the voting rights of Blacks. The intention of the act was to deter future deprivations and to compensate victims of past abuses. 144 Although a municipality has been held liable for official abuse of its citizens, the burden of proof and the requirement of an "affirmative policy" from the Rizzo ruling, makes redress claims "... a cumbersome and inefficient process." 145 Furthermore, a pattern of police brutality has to be found in order to initiate any type of injunctive relief. The only way a municipality should be allowed to limit liability is to withdraw completely the police officer's power to arrest, for inherent in that power is official delegation of municipal authority which makes "... his edicts and acts represent official policy." 146

144 Slabach, "Civil Rights," pp. 140-41 passim.
145 "Notes on Rizzo," p. 1275.
CHAPTER III

POLICE BRUTALITY IN PHILADELPHIA

Philadelphia is being utilized as a case study to test the extent of police abuse in America. It is necessary at the outset to construct parameters of the violence in the city by offering its role in the early history as fostering a climate for policing excesses. Secondly, the depth of police brutality is established in the extensive numbers of cases alleging such activities. Frank Rizzo is highlighted not only as one who encroached upon the civil liberties of others but through his antics, actions, and overall protection from prosecution of his subordinates encouraged such abuses by police officers. Due to the overall ineffectiveness of the infrastructural mechanisms to address infractions of the police, civilian organizations emerged from the community and City Hall to facilitate that purpose. The culmination of the aforementioned efforts were illuminated by the intervention of the federal government in their attempt to prosecute city officials for civilian abuse by law enforcers.

Early History

The City of Philadelphia is wrought with a history
of racial conflict. Like most Northeastern cities, the presence of Blacks in the nineteenth century was viewed as a threat to the newly arrived immigrants and the "pure" Americans in economic and social endeavors.¹ Blacks and others as relegated persons were banished to ethnic enclaves, many of which they still inhabit, formulating in Philadelphia "a loose confederation of separatist neighborhoods, each with a distinct lifestyle reflecting ethnic, race and income levels . . . (that) have little in common."² The institutional ghetto was thus effected by deliberate policies of the Philadelphia Housing Authority and private realtors, the politicosocial ghetto was sustained by Blacks.³ It was widely held that the impoverishment of Blacks lent to crime in these areas. The apprehensiveness of whites, and Blacks already established in regard to the nature of Black migrants was reinforced by stereotypical accounts that served to create an environment of suspicion and fear.⁴ The compendium of these attitudes

¹See Florette Henri, Black Migration: Movement North (Garden City, NY: Anchor Press, Doubleday, 1974) for a comprehensive analysis of employment and social strife.


⁴Case in point are articles by Robert Abbott in the Chicago Defender which gave negative depictions of Blacks.
induced an atmosphere in which police obstruction of the personal liberties of Blacks was legitimized.

The early function of the police was not only to maintain peace but often to dole out punishment for alleged crimes. The type of treatment Blacks received in the hands of the police was brutal as evidenced in 1743 when a Black man cut his own throat rather than be whipped by police officers. 5 By the mid-1800s the Philadelphia police, made up of working class white males, illustrated a readiness for violence and often competed with the gangs to keep Blacks off the streets. The law enforcers were also used as political cronies during elections, as they took pride in their ability to keep the peace. 6 The police became an agent to monitor and control rebelliousness and often times a precipitant of violence throughout the Black urban experience.

The strata of the Black community that was active in propelling its interests, embellished in majoritarian terms, was met with resistance from either the governmental institutions, white community or within the ranks. Over a period of time the faces and causes have shifted in degrees but the primary purpose of racial equality for


socioeconomic advancement has remained consistent. Philadelphia held the first free Black political convention in 1831 in which Blacks were urged to abandon the word "colored" and adopt "oppressed Americans." Also separatism was a central theme at this and other pre-Civil War conventions. Additional progressive acts took place in Philadelphia such as the founding of Black churches, a high school, and a literary society in the early 1830s. Blacks were devoted to the underground railroad and had a strong belief in the unlimited capacity of Black intelligence.

The influx of new Blacks from the South which reached 47.7 percent of the total Black population by 1847, coupled with increasing violence led to retrenchment of Black progress. The lull in cultural achievements became reflective of their tendency to look back at past acts as opposed to continuance of the momentum needed to face adversity.

During the fight for the franchise, proslavery forces burned down a Black church in 1837. In the following year an antislavery agitation center was burned the day after its first meeting. It was reported that

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"... the city's police refused to provide adequate protection."¹⁰ Every fire during those turbulent times had been an occasion for a small riot in which the police failed to enforce civil order.¹¹ The numerous clashes between Blacks and immigrants during the 1840s caused state and federal troops to intervene.¹² August 1, 1842, a riot was precipitated by a conflict between Black members of the Moyamensing Temperance Society and a mob of whites. Blacks living in the area were beaten and their homes were damaged as windows, doors, and furniture were smashed, which were in turn thrown into the streets by the mobs. Blacks were also forcibly removed from their homes and beaten on the street. Smith's Beneficial Hall, a Black meeting place, was burned down. Also the Society of Covenanters, a Black religious society, was set aflame, "nothing was saved but the walls."¹³

All ensuing attempts to integrate the city and elevate the status of Blacks were met with resistance throughout the next centennial. Helmeted troops had to be posted throughout the transit system upon the appointment of Black drivers so that they would be protected from

¹¹ Lane, Roots of Violence, p. 11.
racist attacks that occurred in August of 1944. As a result of the Transport Workers Union having to upgrade Blacks, Federal troops had to contain mobs that tried to shut down the transit system. It took six days to restore order.\(^{14}\) "Paradoxically, inter racial tension in Philadelphia (grew) rather than diminish(ed) as a direct consequence of Negro advances in housing, employment and suffrage which (were) ultimately expected to extinguish these frictions."\(^{15}\)

By the 1960s civil disobedience had been a direct result of the injustices that Blacks had endured. Philadelphia as a few other urban areas, witnessed a riot in August of 1964, which was sparked by an attempted arrest made by police officers. The police were attempting to arrest a woman whose car was blocking a major intersection. While the woman was being removed, bricks and bottles were hurled from the rooftops of houses adjacent to the incident--police reinforcement dispersed the crowd and it appeared as if the situation was under control. Later that morning, smashing and looting resumed on Columbia Avenue, following a rumor that a pregnant woman was beaten and shot by a white police officer. Disorder continued for the next few days. The police were so restrained while Blacks

\(^{14}\) Philadelphia Tribune, 5 September 1964, also Allen Ballard, One More Day's Journey.

\(^{15}\) "Black Philadelphia," p. 17.
damaged their areas that Black leaders called for more stringent measures to the point of volunteering to be deputized in an effort to support the police.\textsuperscript{16} After the smoke cleared, over 1,300 persons were arrested and detained illegally. One Muslim, believed to have incited the riot, was held for $10,000 bail. During the incident, Robert Green, aged twenty-two and owner of a small business in the area, was fatally shot by the police.\textsuperscript{17}

The source of tension most prominent in Philadelphia centers around housing and crime. A plan to build public housing in a predominantly white area ignited protests of the residents and the formation of a white rights group to obstruct construction. The Whitman Park scandal lasted over a span of twenty years and caused the city to lose over two million dollars in federal funds for public housing for not complying with guidelines.\textsuperscript{18} As Mayor, Frank Rizzo sided with the residents and called for the formation of a "white rights" group to protect themselves from Blacks encroaching into their area.\textsuperscript{19}


\textsuperscript{17}Philadelphia Tribune, 12 September 1964, p. 12.


In March 1985 the police launched Operation Cold Turkey in which over 1,500 people were stopped, searched, and sometimes arrested for being present at fifty-one targeted street corners or blocks. The City consented to an injunction prohibiting such sweeps. In this same year, after a police officer was killed in a predominantly Hispanic neighborhood, the police swept the area, hauling in suspects, searching homes, and harassing family members of said suspects. "A federal judge found the police conduct 'disgraceful' and issued an injunction prohibiting further sweeps."20 As a result of activities on November 22, 1985, a state of emergency was called that banned gatherings of more than four in a thirty block white area. A Black and an interracial couple had moved into homes in this southwest Philadelphia neighborhood and were met with rocks, potshots by BB guns, racial slurs, and an attempted fire.21 "Many police officers came to the scene, but failed to take any action while the two families huddled inside for hours in fear for their safety." The unruly mobs were not dispersed, nor were the persons that hurled debris at the homes arrested.22 Chuck Stone of the

20 Frank Kent, American Civil Liberties Union, Representative of the Coalition for Police Accountability, "Report and Recommendations of the Coalition for Police Accountability," April 21, 1986, pp. 1-2.


Philadelphia Daily News commented that this action was consequential to the 1985 MOVE bombing in that the violence committed by the city "... legitimized violence in other people's thinking."  

Current complaints involve the use of excessive force during apprehension and detention of suspects, which appears to be utilized as a method to humiliate and harass. It has been found in Philadelphia, after nineteen hours of open meetings on brutality, that the arrest process is an "... instrument of indiscriminate community control, and, in some cases, is an expression of an individual policeman's bigotry."  

The other area of concern is ironically enough, the lack of law enforcement as a form of abuse. The proliferation of open drug sales on Philadelphia street corners is idly witnessed by the police. The activities are continuous on a daily basis, thereby not affording residents any solitude.

It is argued here that racial intolerance and violence in Philadelphia, is a prerequisite to a climate in which police brutality is allowed to flourish. It is no accident that this city is cited as a case study as it had one of the highest rates of violence and the most

23 "Brotherly Fear," p. 34.

progressive attempts to counteract such incipient injustice. This problematic is strongly rooted in the 1700s and came to fruition with the 1985 bombing of a Black neighborhood. The parameters of police brutality will now be established followed by the response of the community and the political structure.

Police Abuse in Philadelphia

Abuse refers to those practices by the police that are outside the confines of "legitimate police functions of law enforcement, crime prevention and maintenance of public order." There are basically two identifiable types of abuse: "ideological" and routine. Actions aimed at the suppression of particular viewpoints, organizational efforts directed towards correcting system deviations and/or harassment based on alternative life styles comprises "ideological abuse." Routine abuse extends from verbal assaults, unauthorized searches, seizures of persons or goods, excessive use of force, long detentions up to and inclusive of "justifiable homicide." The problematic is two-fold in that not only are people abused but those responsible for such violence escape any type of reprimand or prosecution in the majority of cases.

The types and number of brutality cases vary with the one disclosing such figures. Police records are inadequate overall for obvious reasons, also it has been found that the procedure for filing complaints lends too much discretion for police disposal before an investigation. It has been alleged that the manner in which investigators question complainants serves to justify police actions rather than determine facts. The police do not publish comprehensive statistics as to the number of complaints received, processed, or cases of alleged brutalization. The newspapers publish an inordinate amount of allegations of police infractions, however, it is difficult to distinguish frivolous claims from legitimate abuse. The data from the following available sources found, lend credence to the general theory that although Blacks are roughly one-third of the general population they account for over one-half of the complaints and cases of abuse.

From 1950-1960 the Homicide Unit of the Philadelphia Police Department reported thirty-two cases resulting in death. The medical examiner's inquest exonerated the officers involved in thirty cases on the grounds that death was due to justifiable homicide. In two cases the officers were subjected to a grand jury.

investigation, they were then tried and found not guilty.\textsuperscript{28} The United States House Commission on police misconduct found in "Philadelphia from 1960-1970 Blacks constituted 22 percent of the population, 37 percent of those arrested, and 90 percent of those killed by police."\textsuperscript{29} "Regardless of the index used, the Negro's tendency to be a subject of police slayings is excessive."\textsuperscript{30}

The Black United Front estimates that in the last three decades, over seven hundred minorities were killed and three hundred were injured by the police. Out of these figures, not one single officer was criminally prosecuted or suspended from the force.\textsuperscript{31} The Public Interest Law Concern of Philadelphia estimated in the 1970s, as based on the number of complaints and actual litigation, that over a five year period, police shot one person a week and 50 percent of the victims were unarmed.\textsuperscript{32}

Extensive abuse by the police has forced the city's Black and Puerto Rican communities to live "in a pervasive


\textsuperscript{29}U.S. Commission on Police Misconduct, p. 1.


\textsuperscript{31}Hugh King and Lamar Williams produced and directed "Black and Blue," an independent film documentary on police brutality in Philadelphia.

state of fear."..." It has been found that 70 percent of the men who complained of brutality were in fact Black or Puerto Rican. Typical cases are: detaining and arresting persons without adequate probable cause; use of excessive force in apprehending suspects, such as blows to the head and body with nightsticks; use of racial slurs and derogatory terms in reference to minority persons; detention of persons improperly clothed; refusal to allow parents to confer with juveniles during initial custody; threatening persons if any charges brought against officers for misconduct during arrest that they would be rearrested and convicted; unauthorized entry into homes, often breaking down doors or glass of entry way, total disregard for a person's belongings during searches. Cases in point of last claim are: Delores Terry's home which was ransacked twice by police looking for a rifle which was never found, and the home of Rev. Joseph Kirkland was damaged after he implored the police to cease the beating

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35 These are excerpts from the cases used as a basis for Council of Organizations on Philadelphia Police Accountability and Responsibility v. Rizzo, 357 Federal Supplement, March 14, 1973.
of Christian Harris.  

The police in pursuit of Richard Rozanski for a murder he was acquitted of, entered the home of his mother-in-law without a search warrant and brandishing arms, began to overturn the furniture and intimidated the family.  

There are also numerous reports of people being abused when stopped for traffic violations. A case in point is William Cradle who was dragged from his car, after being stopped for running a stop sign, and was "... battered ... with night clubs until he dropped to the ground bleeding and unconscious. ..."  

Journalists of the Philadelphia Inquirer reviewed 433 homicide cases from 1974-1977 and asked judges to determine if the interrogations were illegal in which they noted that 80 cases were.  

Suspects have been beaten utilizing techniques that leave no severe marks, such as: beating feet and ankles; twisting, kicking, or using objects to jab testicles; placing a telephone book on suspect's head and hammering; pummeling back, kidneys, and

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39 The following comments in this paragraph are from Jonathan Neumann and William K. Marimow, series entitled "The Homicide Files" appeared in the Philadelphia Inquirer, 24, 25, 26, 27 April 1977, cover story and followup.
ribs. Psychological abuse is used by forcing other suspects to watch, constant interrogation on an average of twelve to fifteen hours, and by cajoling and misleading the suspect either through threats or unkept promises. The physical abuse was collaborated by hospital records of suspects after interrogations. One suspect, Leon Harasimowicz, died before a doctor could attend to his injuries. In the beating of William Roy Hoskins, there was sufficient evidence to prosecute four detectives, however, a decision was made in private, by the Police Commissioner, District Attorney, and City Managing Director not to prosecute, instead they were transferred.

Allegations against the police of conduct reflecting various degrees of the aforementioned are numerous. More serious are the cases of justifiable use of deadly force. Other than those cases where police report self defense or that suspect had committed a felon which thereby legitimates the use of weaponry, we have: nineteen year old Cornell Warren arrested on a traffic violation was shot in the back while handcuffed, the killing of Jose Reyes, a former mental patient was shot in the head, while standing in the doorway of his home; in this case, the District Attorney was restrained from issuing a subpoena for records to investigate. Also, a federal grand jury

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refused to indict the officer on criminal charges. Harold Brown, shot during a scuffle with police; Ricardo Smack was "accidentally" shot in the abdomen while lying on the ground; Michael Sherard, killed, for running down the street with a portable television which police suspected was stolen; Andre Carter, caught between a suspected felon and police was shot twice and paralyzed for life. Most other cases follow this same pattern lacking a basis to substantiate use of deadly force. The circumstances in most instances are so outrageous they led a Justice Department official to rate the city's police force as "'the most brutal in the nation.'" Between 1970-1974 the police shot 236 people, killing 81 of them. The record appears to show that a Black man is not supposed to walk away from any confrontation with a white officer.


44 King and Williams, "Black and Blue."

45 "Police Story," p. 29.

46 Ibid.

47 King and Williams, "Black and Blue."
The Role of Frank Rizzo

Overall, as is established, police violence is an integral part of the Black Philadelphian experience. The extent of abuse appears to follow a cyclical pattern underlined by a continuum of such a threat. Alleged subversions are met with a rise of abuses, when the fear subsides, there is a disclosure of the practices that evidences its violation of the norm. As time passes, general amnesia fosters a climate in which the practices are renewed. However, this theory is injected with an intervening variable indigenous to Philadelphia, i.e., an enormous increase and sustenance of such abuses during Frank Rizzo's tenure as Commissioner and Mayor of the city . . . from 1960 to 1970, three times as many Black citizens were killed by policemen as white. Furthermore, in 1970, the number of blacks killed showed a dramatic increase, almost double that of the previous year and more than double the average from 1960 to 1969.

Fomenting a clear connection between Rizzo and abuse has been a major problematic and has been found to be spurious at best. However, a compendium of theoretical assertions along with factual accounts of Rizzo's actions in regard to police and encounters with Blacks will be offered to solidify a causal determinant of Rizzo and police abuse.

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49 Bennett, Pennsylvania Committee on Civil Rights, p. 7.
Optimum clarity can be achieved through a biographical reconstruction of Rizzo and resultant activities as based on his language, ideas, and their effect.

Rizzo's background represents an expose of life in America; for it is only here that a high school dropout and avowed racist could become the Mayor of a major city with a high proportion of Blacks. Frank Rizzo grew up in an ethnic neighborhood in Philadelphia. Rizzo believed that his people (Italians) had a similar background to Blacks, for he had no understanding of the Black experience. According to one of Rizzo's friends, Danny Troisi, Rizzo never had any negative encounters with Blacks during his childhood days, which led Danny to assert that Rizzo's racism is probably "based on the short-sightedness of a policeman. . . .Conceivably being part of the police department, it's easy to misplace poverty with a tendency toward breaking the law. Rich people don't have to steal." 50

Prior to Rizzo's twenty-third birthday in 1943, he followed in his father's footsteps and went into the Philadelphia Police Department. Rizzo attained a grand reputation as a foot patrolman, although in all of Rizzo's years in the city's gambling and nightclub center he never

made an important rackets arrest. 51

On January 16, 1952, Rizzo was promoted from foot patrolman to captain and assigned to West Philadelphia, a primarily Black area. It was here that he had full exposure to the people "he didn't know very well." Rizzo sought to stop gambling, whoring, and bootlegging by leading raids on a number of Black after-hour clubs, stores, and even private homes searching for untaxed alcohol. There was a number of complaints by Black West Philadelphians. 52 Yet some store owners and businessmen in that District looked upon Rizzo as a "White Messiah-come to save them from the ravages of hoodlums and stick-up men, . . . (however) (t)here were so many complaints being filed with then District Attorney Richardson Dilworth against Rizzo and his men," that the D.A.'s office did not know what do with them. 53

One citizen, in describing Rizzo said that he inspired fear. When he walked the street a whole wave of fear preceded him. All these little guys, small time hoods were scurrying up alleys when they saw him coming. He was a real fist-in-the-belly guy. A cold rage would come over

51 Ibid., p. 82.
52 Based on comments made by Blacks who lived in the area during that time offered during survey, corroborate the general dissatisfaction with Rizzo's tactics.
him; as he appeared to almost go blank and then bang in the gut, ". . . he had this whimsical way of just clobbering you." 54

Rizzo was not directly responsible for all the charges leveled against him. What he was responsible for was getting his men to emulate him. If the captain could physically abuse people, search a house without a warrant, or punch a suspect into a confession, what was to stop other officers from doing the same thing? The ranks employed his techniques to impress their supervisor, they also reflected the values and thinking of Rizzo. As Rizzo insisted on perpetuating a tough-guy image, he would defend his men under the most questionable of circumstances. 55

It was the methods employed to maintain law and order and the population it was geared towards which will be explicated through the following series of events that gave Rizzo the reputation as being racially insensitive. On May 1, 1965, NAACP pickets began marching in front of Girard College to demand the admission of Blacks. The picketing which was organized and led by Cecil Moore, a Black criminal lawyer, lasted through the summer and into the fall of 1965. 56 The night of June 24, 1965 witnessed

54 Ibid., p. 75.
55 Hamilton, From Cop to Mayor, p. 49.
56 Philadelphia Tribune, 4 May 1965, pp. 1, 3.
the inevitable clash of the pickets and the police, although there was no outbreak of violence, store windows were broken and two policemen were slightly injured. Moore asserted that Rizzo acted "viciously" that night, ordering his men to run their police motorcycles up on sidewalks to terrify the crowd. Moore also claims that when (then Commissioner) Leary protected a Black demonstrator named George Brower from a police beating Rizzo deliberately struck his superior on the head. Rizzo denies this charge.57

Another instance of Rizzo's actions was in 1966 when Rizzo was informed that the Student Nonviolent Coordinating Committee was harboring firearms and even produced three sticks of dynamite which had detonating caps allegedly retrieved by the informant. Rizzo organized four teams of heavily armed police with a reserve of one thousand, who were to make raids on the four SNCC headquarters. Only two and a half sticks of dynamite were found at one of the headquarters, which lacked detonators. Four persons were arrested and held at $50,000 bail since dynamite was involved. The charges were dismissed.58

In the aftermath, Black civil rights leaders jumped on Rizzo. James Forman called him a "racist" and said he had ordered the raids to "promote his personal ambitions" . . . SNCC charged that Rizzo planted the dynamite. Stokely Carmichael said: "The next time Racist Rizzo

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57 Daughen and Binzen, *Cop Who Would be King*, p. 96.  
brings his troops into our neighborhood he's going to have to answer to all of us."\(^59\)

In August 1966 at the height of the Civil Rights movement, Rizzo was appointed acting Police Commissioner by Mayor Tate. The white population of the city had been thrown into paranoia over the Civil Rights movement and what they viewed as an encroachment of their liberties by Blacks. In an effort to garner the votes from this sector of the polity, and allay their fears, a media generated law and order campaign was launched. Rizzo's promotion can be viewed as a result of urban stress in which he purported to cure increased rebellion by, as he would state it, "crush(ing) the opposition." Rizzo appealed to Blacks to trust American laws and courts for their own protection, but even the liberals believed the police were corrupt and the system was both racist and inhumane.\(^60\)

At each instance of Rizzo's ascendancy, there were outcries of disapproval from the Black community which were unheeded. The National Association for the Advancement of Colored People said that Rizzo was "completely incompetent," and that he lacked the "necessary education" for top police command in addition to a long record of "persecuting Negroes with storm trooper tactics."\(^61\)

\(^59\) Daughen and Binzen, Cop Who Would be King, p. 100.

\(^60\) Ibid., p. 40.

\(^61\) Ibid., p. 92.
Although Tate had used Rizzo for political purposes, he did believe that he gave the city the best police chief in the United States. "Rizzo has been my best appointment, without question." 62

The former Police Commissioner Leary had concentrated on improvement of police hardware. He revised the entire communication system so that police response time could be cut to two minutes. Leary also instituted many effective yet controversial special units. Rizzo later took the branch method and expanded on those improvements. 63 Rizzo used a World War I tactic which was used by the French to save Paris by renting buses capable of carrying fifty armed police at a time. He also developed a riot squad equipped with powered rifles with telescopic sights and requested armored personnel carriers or tanks. Rizzo put integrated patrol cars in Black areas to decrease tension and increased the size of the K9 units; ergo, Philadelphia was armed and prepared for any type of civil disorder. 64 Spencer Cox, former Director of the Philadelphia Chapter of the ACLU said that Rizzo had launched a "'gigantic, repressive political surveillance apparatus . . ." through 18,000 detailed intelligence files

62 Ibid., p. 104.
63 Hamilton, From Cop to Mayor, p. 76.
64 Ibid., p. 73.
on political activists. The name of any activists believed to "'cause trouble . . . (especially) leftist radicals," had their name, address, picture, and rundown on file.65

In September 1967 a poll commissioned by the Philadelphia Bulletin found that 84 percent of the public approved of Rizzo's handling of the police department, with only a 3 percent disapproval and no opinion by 13 percent of the public.66 Two months later, on November 11, 1967, Philadelphia experienced its own mini-Soweto.

A school demonstration was organized to demand more courses in Black history and culture.67 Although the students were well behaved, Rizzo stationed about two hundred policemen around the crowd. Dr. Mark R. Shedd, then Superintendent of Schools, recalled that the students "wanted things that weren't totally unrealistic. We heard their demands and then went into a conference session to give them an answer! Rizzo barged into the meeting furious. He told me he was going to run my ass out of town!"68

Richard H. DeLone, a young white administrative assistant at that time, recalled the incident as a police riot.

66Daughen and Binzen, Cop Who Would be King, p. 130.
68Hamilton, From Cop to Mayor, pp. 78-79.
They just beat the shit out of those kids who offered no resistance. It was a real stampede. I had seen police brutality before but never at this level. I saw two cops holding a kid while the third hit him over the head. I saw a cop break his billy stick over a kid's shoulder. They were really pounding the shit out of them. It was totally unnecessary and really bloody. Rizzo just couldn't keep his finger off the trigger. He started a police riot. There's absolutely no doubt about it.69

The response of the public and the administration at that time was split. The then Superintendent Mark Shedd stated that he did not view any activities that would warrant such action by the police. People began calling the police within an hour after the incident praising the role of Rizzo in quelling the march. Then Mayor Tate, who was vacationing in Europe at the time, also hailed Rizzo, while the Black community called for Rizzo's removal.70

The most notorious raid of civil rights activists was led against the Black Panthers in August 1970, when photographers took pictures of the members standing spread eagle with their pants around their ankles. The police asserted that the members were ordered to loosen their pants but they stripped voluntarily, hoping to embarrass Rizzo who was not present when the raid was conducted, but was at the Roundhouse (headquarters) planning three

69 Daughen and Binzen, Cop Who Would be King, p. 118.

70 Ibid., p. 119.
simultaneous raids on the Panthers. Rizzo cynically commented, "'Imagine the big Black Panthers with their pants down.'" Charles Sisco, then age twenty-four, said that the police had started shooting into the Panther headquarters demanding that they come out. Rizzo ordered the raid because an undercover officer reported that weapons, inclusive of a bomb, were on the premises. All the furniture and everything else that could be moved was confiscated by the police. People from the community had gone to the precinct to protest the bail of $100,000 per member. This incident was part of the suit against Rizzo as being responsible for the manner in which the raid was conducted but the Panthers were dismissed from the suit for lack of standing.

Rizzo's reputation for overreacting was further exemplified when over one thousand heavily armed police were posted throughout the city during the People's Constitutional Convention at Temple University during that


Although Rizzo asserted that he was trying to improve relations with the Black community, he was becoming "... the face of the police state" in the latter sixties. 77

... No public figure in America has taken a tougher "law and order" approach to crime and dissent than Rizzo. Whether boasting that he would "make Attila the Hun look like a faggot," ... there has never been any question about where Rizzo stood. 78

Most of the complaints about Rizzo alleged that he and his officers had made civil liberty violations by using illegal searches, utilizing excessive and unnecessary force in apprehension of suspects, forced confessions, and discrimination against Blacks. These charges were filed continuously until he resigned as police commissioner in February 1971.

Commenting on Rizzo's overall performance, Philip Savage, former director of the NAACP for Pennsylvania, New Jersey, and Delaware, stated:

The tone of his tenure as Commissioner has been highly anti-democratic, antijudical and more in line with the way in which punishment was meted out.


during pioneer days . . . Rizzo's utterances have made it almost impossible for anyone accused to get a fair trial. He calls accused persons 'creeps' and 'animals'! These labels tend to prejudge the innocence or guilt of persons, thereby serving to undermine our whole judicial process. Those like Rizzo who tend to inculcate anti-democratic feelings among uninitiated segments of our community weaken the democratic process. Rizzo represents to whites the protection against Black political takeover—the only barrier protecting them against barbaric, animalistic actions of Blacks, the kind of crap whites have been taught to believe about Blacks. To that extent Rizzo has been a promoter and exponent of Black hatred. I don't believe he is anti-black, personally. I don't believe that it's intended. He's unaware of his actions and expressions and he can't control them. This tends to promote hatred of students, black radicals and those accused of crimes.

Georgie Woods, a radio personality, remarked during an interview in 1971, that he thought Rizzo was a "good police commissioner," however, there were many mistakes in his relations with the Black community. "The Black community wants law and order, but we want it with justice. This (was) his biggest failing." In 1965, Mr. Woods was accosted by Rizzo, when Woods had attempted to stop an interracial fight, and notify the police, Woods was grabbed by Rizzo and held at gunpoint, "'Make one move, you black son-of-a-bitch, and it'll take thirty-six doctors to put you back together.'" Woods was subsequently arrested and charged with inciting a riot. After Rizzo was informed of who he was, Rizzo said he did not recognize him. "Woods

79 Hamilton, From Cop to Mayor, p. 87.
80 Ibid., p. 72.
held no grudge against Rizzo for the embarrassing incident," nor did he press charges. The experience and subsequent view of Georgie Woods is reflective of a cadre within the Black community. Rizzo's ascendency to Mayor would not have been possible without the support of some of the Black community, the turnout and voting preferences reflect that Blacks, particularly in the North Philadelphia area, had supported Rizzo in both elections.

As a police captain and later Commissioner, it can be strongly argued that Rizzo's reputation as a tough cop, as supported through the aforementioned interactions with the citizenry, coupled with constant defense of abusive officers influenced the precipitation of police violence. It has been found that "(p)ublicly, most police commanders have been unrelenting in their denials of police brutality. Privately, many of these same commanders speak of the excessive use of force by their officers as one of the worst problems. . . ." It is also known that police disfavor the legal and administrative limits on the use of violence. Police activities are constantly being

81 Walter, "Rizzo," p. 79.
83 Stark, Police Riots, p. 60.
84 Ibid.
influenced by its spokesman, the public, the politicians, and news reporters. However, it is the policies of the chief, spoken and unspoken, that carry the most weight. Officially the use of excessive force is condemned, yet a chief eager for arrests, and a desire for political ascendancy, may lead to the allowance of "... considerable leeway (to officers) if they make enough arrests." To further propound this issue, the ineffectiveness of prosecution of police as having little effect as deterrence for the police know "... that their chances of being caught are small and that their chances of being convicted are infinitesimal." If they were indicted, the department's attitude would be one of tolerance and tacit approval as evidenced by their reluctance to cooperate with investigators. Rizzo had utilized the defense of "'mistaken judgment'" to exonerate his officers from "blatant and unwarranted actions." To exemplify the extent to which this issue was personalized by Rizzo, he once shouted at a Prosecuting Attorney during

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85 Cooper, Police and Ghetto, p. 4.


87 Comment made by George Parry, former director of the District Attorney's Police Brutality Unit, in Cory, "A Close Look at Brutality," p. 36.

88 Ibid.

89 Hamilton, From Cop to Mayor, p. 49.
the defense of an officer in court, "'Don't get involved with me or you'll be worrying about your own rights.'"\textsuperscript{90}

Rizzo enjoyed the unrelenting support of then Mayor Tate, who categorically denied abuse and backed the police in "virtually every issue, irrespective of the opposition," as based on observations from 1966 to 1969.\textsuperscript{91}

\textbf{Rizzo as Mayor}

The police have been protected from political pressures through civil service and unionization; however, they have wielded significant political power through these channels. Their politicalness, coupled with a belief that police can prevent crime, has elevated them to a favorable political position.\textsuperscript{92} This theory is exemplified by Rizzo's use of the police as a political base as reflected through continual endorsement by the Fraternal Order of Police. Rizzo also capitalized on the ideological manipulation of the voters through his law enforcement experience to catapult him into the mayoralship.

Rizzo's basic political platform was his call for law and order which to many of his constituents meant keep Blacks in line "... if they want to kill, rape and rob

\textsuperscript{90}Ibid.


\textsuperscript{92}T. Jones, "Police in America," p. 29.
one another, let them. . . ."93 Comments were made such as bring back the electric chair," . . . I'll throw the switch myself" or " . . . the way to treat criminals is 'Spaco Il Capo' (i.e., break their heads). . . ." He believed that the Black Panthers should have been "strung up" and MOVE run out of the city.94 These comments and media shorts on Black criminals fueled Rizzo's ideas which were " . . . particularly effective among the white working class whose neighborhoods border(ed) the black ghettos."95 Rizzo became the personification of civil law as he promised Philadelphians that he was " . . . going to make Attila the Hun look like a Faggot."96 "Rizzoism" metered down into the ranks of the police and was legitimated through constant denial of police infractions. At the height of homicides by law enforcers, Rizzo had then Commissioner O'Neill to investigate and he found no reason to warrant disciplinary actions against the officers.97 It was not until the United States Attorney General launched an examination of allegations of abuse that Rizzo conceded to

93 Hamilton, *From Cop to Mayor*, p. 12.


95 Hamilton, *From Cop to Mayor*, p. 11.

96 *Sayings of Chairman Frank*, p. 62.

some misconduct in the ranks.

It had to be the environ of fear in a highly racially divided city that led to Rizzo's ascendency; for his knowledge of municipal government was very limited. In Rizzo's mayoral campaign he had a conservative platform as he was against busing, government subsidized housing, and increasing taxes. He pledged to improve city services and bring businesses back to the city in order to stimulate the economy. Yet "(h)is appearances in city hall were usually confined to an annual trip to Council Chambers to plead for a larger police budget."98

Rizzo had influence on the police and through their defense he contributed to an atmosphere in which abuse was condoned; yet, this could not be proven satisfactorily to the courts. In a class action suit brought against Rizzo an attempt was made to hold Rizzo responsible for brutality as commissioner and in subsequent litigation as Mayor.99

In the first case, the Supreme Court reversed the decision of a lower court which found the policies and practices of the force inappropriate, not solely on unsubstantiated respondeat superior but an absence of a pattern of misconduct.100 In both cases, the courts failed to view

98 Hamilton, From Cop to Mayor, p. 49.
100 Tony Jackson, former director of Police Projection PILCOP, from transcripts of the MacNeil/Lehrer
police brutality as a consequence of the procedures and policies of the police department. It has been shown quite often that Philadelphia's method of handling complaints is "'purposefully fragmented'" which serves to justify police excesses. The court held that if a pattern could be established then perhaps a link could be made to a violation of the Equal Protection Clause. In fact what is needed is a judicial perspective to the organizational realities of policing and the serious nature of brutalization before a connection can be established to the officials in charge.

**Internal Procedures to Oversee Police**

Due to the professional aura given to policing, it is generally held that police should oversee and discipline themselves. This reasoning was ingrained in the very structure of the Philadelphia police department as the discipline function was given to themselves by the Home Rule Charter of 1959. The procedure utilized to lodge complaints is that the individual must first go to any

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precinct in the Philadelphia area and see the Operations Room Supervisor who will record the complaint. There are no specific forms provided for police misconduct, therefore a general form is used in which all the pertinent information is ascertained as to exactly what happened, the officer's name, badge number, or the vehicle which can be utilized to pinpoint the officer. The supervisor then types a skeleton report and assigns it a number. Afterwards, the Internal Affairs Bureau is notified, if the supervisor deems that the complaint is reliable, i.e., nonfrivolous and worth investigating. The Internal Affairs Bureau assigns the complaint another number and will send someone out to interview the complainant, after the interview, a determination is made on what type of action should be taken.\textsuperscript{104} If Internal Affairs recommends that an officer be disciplined based on the event, the case is then referred to the Police Board of Inquiry made up of top police administrators and an officer of equal rank to the one accused of wrong doing. It is up to the board to deem if charges are in fact substantial enough to reprimand the officer.

It is obvious that blatant problems and inconsistencies are built into the nature of this

\textsuperscript{104}Interview with Corporal of Philadelphia Highway Patrol, January 22, 1988, 34th and Girard Aves., Philadelphia, PA.
procedural system. The likelihood of a citizen who underwent abuse, entering a police precinct to make a complaint against an officer are remote. Secondly, the Operations Room supervisor has extensive latitude in determining whether the complaint is legitimate and thereby deeming reportable value. It has been held that many verbal complaints remain in that form and unless one witnessed in fact the officer recording the information, chances are they will remain unheard. It has been found that the police tend "... to minimize, and seek avoidance or withdrawal of complaints."\textsuperscript{105} The complaint is usually subjected to a polygraph and also is questioned in a hostile environment often with the accused officer there based on his right to face the accuser.\textsuperscript{106} If the complaint does make it to Internal Affairs, one is faced with a new set of problems: small inadequate staff due to deficient training in investigative techniques and overall lack of independence. Police rotate time in Internal Affairs, therefore there is no assurance that the officer under investigation may not have to work alongside the investigator.\textsuperscript{107} The Bureau also lacks written guidelines that note the disciplinary procedures and role of the

\textsuperscript{105}C.O.P.P.A.R. vs. Rizzo 357 F.Supp. 1289.  
\textsuperscript{106}Schwartz, "Complaints Against Police,", p. 1028.  
commanders resulting in overlap of functions with the individual commanding officers. After the Bureau concludes its investigation, usually comprised of interviewing the complainant and witnesses, a report is prepared for the Police Commissioner, in which a history of previous misconduct charges are deleted. It is solely up to the Commissioner at that point to determine if the officer should, in fact, be disciplined. The case is then referred to the Police Board of Inquiry, if evidence is extremely strong; however, it should be noted that even at this stage, the Commissioner may cancel a hearing or drop the charges since the Board is in fact "a creature of the Police Commissioner." If the Commissioner disagrees with the findings of the Board, he can ignore the recommendations. The procedure offered by the police to discipline its officers has been deemed inadequate by all from the magistrates to the citizen except the police institution itself. The procedure is directed to departmental violations as opposed to the constitutional violations of the citizens. Finally, if a complainant's case does make it through the system, they are not informed

108 Ibid.
110 Ibid.
of the outcome.

Other methods to oversee and protect civilian liberties have been the establishment of the Commission on Human Relations that was created by the Home Rule Charter, "(t)o investigate, educate, conciliate and enforce laws that forbid discriminatory practices. In addition, it has acted to quench frictions before they get a chance to start—especially with regard to changing neighborhoods." 112 The Commission merely referred the complaints they received alleging misconduct to the Police Department, for they had no investigatory or enforcement powers "with respect to such complaints." 113

In Pennsylvania, the United States Attorney and the District Attorney have some power to prosecute the police. In a study of police investigations conducted by the District Attorney's office of the Special Community Rights Division, a clear conflict of interest was found in the pursuit of such endeavors. The District Attorney is dependent on the police for investigations which are first referred to the police department. In addition, the officers involved will not speak to anyone outside the police department without the approval of their supervisors. 114 If an officer does speak up, it has been

113 C.O.P.P.A.R. v. Rizzo, p. 1293
found that there is a high incidence of perjury, as noted by the Pennsylvania Crime Commissioner who stated that the police officer "intentionally gave false statements in reports and in courts." The problems in getting an officer to testify against a fellow officer have been deemed partially responsible for the failure of many police investigations. The hierarchical structure of the department reinforces a "'conspiracy of silence,'" for one that does testify is labeled a traitor and will be put under considerable social pressure.

There are also policies implanted that impede checks on the police. The most readily used is the "serious injury policy" in which the citizen has to suffer severe physical damage preferably substantiated by hospital records, to sustain merit for the officer to be disciplined. The majority of cases that do not meet this standard are dropped. The complainant's satisfaction is used to dispose of complaints on a nonprosecution basis when police receive some type of reprimand or short-term suspension, which can be taken out of vacation or sick


days. Finally the mutual release policy, when both sides drop charges against each other, therefore, many cases in which officers should be reprimanded are "washed out."\textsuperscript{117} Serious cases were found where the evidence was inordinate against the officers yet the District Attorney failed to prosecute. In addition, the District Attorney's office often times does not communicate its decision to prosecute the police officer to the claimant.\textsuperscript{118}

One ambitious effort of the D.A. was the establishment of the Community Rights Division that was devised to handle litigation against police. However, this was viewed as a political ploy to receive the endorsement of Black Philadelphians for Ed Rendell.\textsuperscript{119} One major problem confronting them was finding an attorney willing to handle cases. The head of the division, George Parry, was subsequently brought in from Buffalo to handle major litigation.\textsuperscript{120} However, the overall record of the District Attorney's office, inclusive of the division in actual prosecutions, is not known but based on media accounts and

\begin{enumerate}
\item \textsuperscript{117} Schwartz, "Complaints Against Police," pp. 1025-26.
\item \textsuperscript{118} C.O.P.P.A.R. v. Rizzo. This practice has been reformed in that the complainant has access to information.
\item \textsuperscript{119} Interview with Michael Churchill, Director of PILCOP.
\item \textsuperscript{120} Adrian Lee, "Delbert Africa 'Beating' Case," Evening Bulletin, 1 May 1979, p. 9.
\end{enumerate}
interviews, it is believed to be slight.

Another problem in Philadelphia is "the lack of a strong training and supervisory system with the objective of limiting abuse of civilians."\textsuperscript{121} The Police Commissioner denied such conduct exists or ever constitutes a serious problem and therefore has not established a meaningful procedure to handle complaints against the officers. There does not exist a method to keep track of the complaints received and only minor penalties are imposed on police. In fact, the officers who take the Fifth Amendment on alleged abuse cases are retained without penalty. In Goode v. Tate, Judge Fuller held it is a practice of the police to discourage the filing of complaints to avoid or minimize the consequences of proven misconduct. Little or nothing is done by the city to punish such infractions or to prevent their recurrence.

Redress Measures

After a long period of citizen dissatisfaction with the existing avenues for redress of grievances against police, the City Council became concerned with "the excess zeal being showed by policemen in searching houses for numbers writers--often without warrants, or with warrants obtained too readily."\textsuperscript{122} In response, then Mayor Dilworth

\textsuperscript{121} Public Interest Law Concern, "Summary of Police Project," 1978, p. 2.

\textsuperscript{122} Joseph D. Lohman and Gordon E. Mismer, "Civilian
established the Police Advisory Board as part of his reform policies to gain support of the city's minority population. Sixteen years prior to the founding of the Board there had not been any instances in which a member of the Philadelphia police had been disciplined for a wrong done to a civilian.123

The idea of civilian review boards is unique to the American experience, for there has virtually been no attempt to create such boards in continental countries. Civilians infiltrating the profession to deem police actions as reasonably justifiable have been viewed as ludicrous at best. However, if the record shows that the police are absent an inclination to police themselves when a citizen complains then civilian investigations are desirable.124 This subject addresses the very foundation of a democracy as it "... focuses on the issue of civil watchfulness and control of the military arm of the communities."125

Overall, the notion has been critiqued in that it may in fact work against democratization for it puts the

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125 Ibid., p. 9.
police on the defense and increases their alienation. This will serve to widen the gap between police and the community in which abuse may in fact increase due to neglect. Of course, the groups most affected will be the ones the Board is designed to help, the low income. In Philadelphia, it is difficult to test those claims as the Board did not exist long enough for it to be empirically scrutinized.126

The overall procedure utilized by the Board was to hold public hearings to investigate each complaint through information provided by both sides. The Board attempted to remain objective in its activities, yet two members of the Board were retired police officers and the other members represented various business interests.127 The Board was riddled with problems, one was lack of funding and poor recordkeeping, thereby precluding an ethnic breakdown of complaints and types. The goal of the Board was to relieve hostility and resentment against the city government for wrongs suffered at the hands of the police. It took referrals from public agencies and organizations and was able to provide the mayor with useful information on police practices and individual incidents.128

126 Berkely, Democratic Policemen, pp. 145-46.
128 Ibid.
After its first six years the Board reported that it had received 510 complaints and that over half of them were withdrawn before the hearing. Out of the remaining complaints, 156 resulted in findings of proper police conduct. The general consensus of the Board was that there was "'no general pattern of officiality condoned police brutality or discrimination based upon race, creed or national origin.'" In those cases where a police officer may have been found at fault, the Board did not have the power to subpoena that officer or initiate any type of action to enforce its decision. "Many complaints were withdrawn because of the delay in completing investigations. Seventy-two percent of all complainants were non-white although Philadelphia's population was almost three-fourths white." The Police Advisory Board developed its own "modus operandi empirically," which was basically to submit their findings to the Police Commissioner who had the sole authority under the charter to discipline the members; the consideration of civilian complaints was a role thrust upon it.

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129 Berson, Case Study of Riot, p. 51.
131 Ibid.
133 Spencer Coxe, "Police Advisory Board: The Philadelphia Story," Connecticut Bar Journal 35 (June
Board's recommendations included: suspension with loss of pay, departmental reprimand, letters of apology, and punishments. The counsel for the police usually argued the officer was merely carrying out orders and the department, not officer, should be on trial. In this instance, the Board could have been used to clarify and improve the policy as well as redress of wrongs.\textsuperscript{134}

The problems with the Police Advisory Board stemmed from the unanticipated ancillary functions such as go between the police and the citizen. This put the Police Advisory Board in a position to explain the powers of the police to the citizens. First the complainant had to initiate the process, present the case, and solicit a response from the police. The citizen had the burden of proof and was unrepresented by council. Due to the lack of financial support the services that could have been rendered were delimited. Additionally, the Police Advisory Board had to depend on the police department to conduct investigations as they were unable to hire individuals for that purpose.\textsuperscript{135} Finally, the Board had no way to initiate an action without a complaint and had no power to subpoena.

The Police Commissioners and the Fraternal Order of Police, 1961):140.

\textsuperscript{134}Ibid., p. 149.

\textsuperscript{135}Lohman and Mismer, "Civilian Review," pp. 63-64.
Police were vehemently opposed to the Police Advisory Board and responded with injunctory litigation aimed at ending their proceedings. The first injunction resulted in the name being changed and an agreement that the Board would only make suggestions, not advise, as "Rizzo (was) determined that no outside force shall oversee the police." The Board was eventually dissolved by court order after a petition to that effect was brought against it. "Mayor Tate said in a press conference . . . that he intends to let Rizzo handle complaints." 136 The then President of the FOP, John Harrington, had repeated the claim that the Police Advisory Board was a hindrance to law enforcement efforts, particularly during the riot of 1964. 137

The Board had recommended that police services be improved in the "avoidance of violence to apprehended persons." 138 One major complaint was arrest records, even when the person was absolved from wrong doing. The Police Advisory Board was successful in having some records destroyed. It also engendered some apologies and provided a psychological dividend in that the complainants were heard.

It cannot honestly be said that the incidence of illegal practices in Philadelphia has measurably

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declined because of the board . . . but is an indispensable step toward the reduction of these abuses with police authority to a minimum

The public received very little information about the Board through the press; most people remained totally unaware of its existence. "... Negro newspapers publicly state(d) its lack of faith in the board." Community leaders such as Cecil B. Moore, the then President of the local branch of the NAACP, stated "there should be no special court for policemen. If they have done something wrong, you should lock them up like everybody else!" Moore also commented that the Police Advisory Board was "designed to whitewash crimes of the police."

Grass Root Efforts

The lack of effective infrastructural mechanisms to restrain overzealous behavior of the police precipitated community response in the hopes of instituting internal and extra-legal means to fulfill that function. Other than riots, the most utilized technique to display outcry against abuse have been rallies and marches. It was not unusual for the community to coalesce after what was considered to be unnecessary use of force by the police,

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140 Ibid., pp. 151-52.
141 Lohman and Mismer, "Civilian Review," p. 56.
142 Berson, Case Study of a Riot, p. 52.
especially during the sixties. Many protests were aimed at the removal of Frank Rizzo as Police Commissioner and Mayor as it was held that his overall demeanor and comments were anti-Black.\footnote{Hamilton, \textit{From Cop to Mayor}, p. 81.} Demonstrations were held city-wide and at the precinct level in addition to marches that usually attracted an average of one thousand persons.\footnote{Cory, "A Close Look," pp. 26, 33.} These techniques are still being used as annual reminders of the MOVE incidents as supporters and sympathizers of the group hold a vigil at the precise time that the bomb was dropped on their home.\footnote{\textit{MOVE Sympathizers Organize}, \textit{Philadelphia Inquirer}, 13 May 1986, p. 1.}

The underlying consensus of most groups was that the police department is unresponsive to complainants, due to deficient structures which makes a fair hearing impossible.\footnote{McCormick, "God Bless Frank Rizzo," p. 122.} These same organizations became targets of police harassment for expounding their views and the nature of their activities. The leaders often complained of being roused in the night for ticket violations, subjected to questioning and overall imposition by the police.\footnote{Ibid., p. 123.} Rizzo accused the United Fund of distributing funds to legal agencies that were harassing the police since they provide

\begin{itemize}
  \item\footnote{Hamilton, \textit{From Cop to Mayor}, p. 81.}
  \item\footnote{Cory, "A Close Look," pp. 26, 33.}
  \item\footnote{\textit{MOVE Sympathizers Organize}, \textit{Philadelphia Inquirer}, 13 May 1986, p. 1.}
  \item\footnote{McCormick, "God Bless Frank Rizzo," p. 122.}
  \item\footnote{Ibid., p. 123.}
\end{itemize}
legal counsel for people with brutality claims. He also threatened to stop the police from contributing funds unless support to legal aide societies ceased.\textsuperscript{148}

The North City Congress (NCC) was established in 1964 by the Philadelphia Council for Community Advancement (PCAA) and a Ford Foundation grant after the riots in that same year, to foster communication and improved relations between the police and the community.\textsuperscript{149} The group served as a clearinghouse for complaints that arose from neighborhood problems and police-community tensions, the goal being to exact enough political power from the community to influence policing.\textsuperscript{150} Alton Lemon, former director of North City Congress, and an expert in police community relations, attributed the high rate of tensions to unmet needs in the Black community.

Because of their experiences they do not feel the system under which we live is working for them. Instead, they see the system as opposing their efforts to conform to American ideals. Policeman in particular, and other law enforcement officers to some extent, are viewed as helping to maintain the status quo.\textsuperscript{151}

\textsuperscript{148}Ibid., p. 122.


\textsuperscript{150}Ibid., p. 235.

\textsuperscript{151}Lawyers' Commission for Civil Rights Under Law, "Proceedings, Planning Sessions on Police Community
NCC represented a compromise between the police and the community to improve relations through a training program for the police and the community to educate the latter on police procedures. The police were enlightened on the concerns of the Black community and were encouraged to increase familiarity through programs such as Operation Handshake. The program was successful to the extent that it was supported by the community. There was also an absence of further rioting which may or may not be attributed to the efforts of the NCC and the human relations squad. 152

A crucial factor in an organization such as this is the attitude of the Police Commissioner. Once Rizzo took the lead, mistrust by the community coupled with controversy about Rizzo worked against its support base. Further, as the organization became more knowledgeable of the political process in terms of the proper governmental agencies to pressure, municipal backing began to wane. 153 Although the group is still in existence, their goals are more militant in terms of lending their support to any organizational effort aimed at the elimination of abuse and other vestiges of oppression which is clearly a step above


153 Ibid., p. 233.
their original format.\footnote{154}

Other than policing themselves, police are virtually immune from control by external sources. The City Council and local electorate have proved to be ineffective in their efforts to control them. The prosecutors are not responsible for supervision of police and would rather not be involved in the issue of reviewing their procedures. The role of the community has had an impact on policing through educating the people and as somewhat of an ideological deterrent in that the police are aware that their acts will not go unnoticed. Although a number of methods are used by community advocates the most favored is litigation for punitive and preventive redress.

\textbf{Public Interest Law Center of Philadelphia (PILCOP)}\footnote{155}

PILCOP played a major role in the litigatory pursuits to effectuate police accountability through their attempt to get the police department to uphold civil liberties in law enforcement. PILCOP not only provided a clearinghouse for allegations of police brutality cases,

\footnote{154}{"North City Congress," paper housed at the Blockson Collection, Temple University, Philadelphia, PA, 1987.}

\footnote{155}{The following historical reconstruction of PILCOP is based on an interview with Michael Churchill, present director of Public Interest Law Center of Philadelphia, November 3, 1987, 125 South 9th St., Philadelphia, PA.}
but also acted as a proponent to change the discriminatory policies and practices of the Philadelphia Police Department (PPD) through legal actions.

The center found its origin as an offspring of Kennedy's Lawyers Commission on Civil Rights at the end of the sixties which examined civil rights cases on a volunteer basis. At that time, police abuse cases were handled along with housing and other violations under the Equal Protection Act. The early activities that initiated litigation concerning the police were spearheaded by the Coalition Against Police Abuse (CAPA) that was also organized in the early seventies. This group represented a coalition of community interests, legal affiliates, and interested citizens united to eliminate brutality and disseminate information on that problem. One of their first actions was that they sought an injunction to halt racial discrimination in the hiring of police officers for the number of Black and other minorities which decreased 28 percent under Rizzo's tenure as Commissioner. The class action suit "... charged the city with racial bias in the hiring and promotion of Black policemen." A temporary restraining order was issued in May 1972 requiring one

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Coalition Against Police Abuses; American Civil Liberties Union; Community Advocate Unit; Pennsylvania Department of Justice; National Emergency Civil Liberties Committee; National Lawyers Guild; Philadelphians for Equal Justice and PILCOP, A Citizens Manual on Police Abuse (Philadelphia, 1976), p. 9.
Black officer be hired for every two whites. In the mid-seventies, the Law Enforcement Assistance Agency made funds available to those interests concerned with the enforcement of civil rights, which led to the consolidation of the law-related organizations under the auspices of PILCOP. Upon receiving funds, the center was able to set up the police project as a separate component of the law center and began the collection of data as a basis to strategize their efforts to counter police infractions.

Most brutality cases were referred to PILCOP by community groups or public law concerns. All vital information was taken inclusive of race, police district in which incident occurred, and the exact nature of the alleged abuse. A number of different strategies were then employed such as: directing the complainant to the police department; soliciting the Human Relations Commission to aid in efforts; pressing charges against the police department through the prosecutor's office; and initiating action through the small claims court for monetary awards. In 1976, 550 complaints of abuse were filed at PILCOP out of that total, 420 complainants were interviewed, 50 percent of them charged police with abuse, 216 received some type of media attention, and 98 complainants faced

PILCOP also served as an aide to attorneys involved in litigation by provision of a resource bank of trial methods and any information that may be pertinent to that particular case; for example, a file was kept on police repeat offenders of abuse. There were also training sessions for lawyers in abuse cases which entailed law updates and innovative techniques for favorable rulings. In addition, PILCOP issued yearly reports on the breadth of problems as based on complaints and resulting action, entitled Probable Cause.

Citizen problems in seeking redress are that, in two-thirds of the cases, the citizen is charged with disorderly conduct, resisting arrest, or assault and battery on a police officer. The citizen is also pressured to bargain away the right to sue or institute a criminal complaint and there are very few attorneys willing to deal effectively with this situation because they are unfamiliar with the possibility of an effective civil case. If the complaint is made to the department, the maze of procedure is intended to discourage the complainant, and if hearings are held, the victim usually needs counsel. If the District Attorney's office does not act, the complainant has the option to appeal the decision to the Court of

Common Pleas. This procedure requires the victim to bear the expense of an attorney for any possibility of success. Finally, a civil suit for damages can be filed if the incident resulted in injuries.\textsuperscript{159}

PILCOP had run into some difficulty concerning funding in 1975 when debate ensued by the local regional Governor's Commission over whether brutality ought to be checked. After a very close vote PILCOP was commissioned for another year. The National Association for the Advancement of Colored People's local chapter, headed by Alphonso Deal, and PILCOP then held public investigations of brutality in Philadelphia. The hearings received wide publicity which served as a means to educate the public on the efforts of the organization. The center also published a report on all the shootings in the city between 1971-1974 and made an analysis of deadly force. This information was utilized by the Justice Department in 1978 in their investigation of brutality claims and as a partial basis of their suit against the city. In 1977, PILCOP represented the Guardian Civic League suit for discriminatory practices, tests, and promotions. Overall the organization's purpose and method were two-fold in adjudication of infractions of civil liberties and the promotion of equal opportunities of minorities within the

\textsuperscript{159}PILCOP, "Summary of Police Project," 1978.
police structure.

By 1981 the funding for the project had all but dissipated, most problems were in some form addressed and others had to be set aside for lack of funding. The staff that handled screening and referral were laid off, yet files were maintained on officers involved in a number of obstructions and complaints were referred to lawyers. Research on viable prescriptive remedies to the problems continued.

Churchill holds that the decline in blatant abuse cases is due primarily to an institutional change of Mayors for the type of leadership and the personality thereof played an important role in abuses. The suits brought against the officers also had a nominal effect, even though most officers escaped prosecution, the threat of litigation served to stem the tide. Another factor that impeded overt abuse was intervention by the Justice Department that served as an overall embarrassment to the city particularly to the businesses. What's more, the organization of the Black community led to a rise in the number of elected officials addressing this issue continuing to decline.

Some hold that the rulings rendered by the court, coupled with increased criticism, have helped destroy the morale of the police and further complicate the issue by forcing them to seek ulterior ways to maintain their
accepted methods.\textsuperscript{160} Prescriptive remedies utilizing the legal mechanisms of the system are aimed at increased litigation particularly injunctions to remove repeat offenders.\textsuperscript{161} The prosecution of repeat offenders would be expedited with invocation of the "use immunity statute" which would require a court order to compel the testimony of a witness on the basis that no information derived will be used against that witness in any criminal case.\textsuperscript{162} Judicial review of police policy has been recommended to encourage development and revision of police tactics. In this way the conduct of an officer can be scrutinized as to its conformity to departmental policy. The communication of judicial decisions to the police department makes a proviso in which prosecutors automatically appeal cases in which law enforcement policy is in question.\textsuperscript{163} "In short, the cooperation of officers in these investigations and the stiff sentences meted out to the convicted offenders will help the police to police themselves."\textsuperscript{164}

\textsuperscript{163} Klein, "Fighting Corruption," p. 110.
\textsuperscript{164} Ibid., p. 115.
United States v. City of Philadelphia

The preceding sections sought to expose the widespread abuse of Philadelphians by the police and the role of the former Police Commissioner and Mayor in the protection of those inciting such violence, as well as setting an example through his own acts implying institutional approval. It then became necessary to examine the infrastructural mechanisms to address abuse along with efforts made by the local polity, grass-root, and organizational pursuits. The compendium of all the aforementioned endeavors were of limited instrumentality in curbing the excesses of the Philadelphia police force. It was in this environ that the United States Attorney General became a part of the continual quest for a remedy, the encroachment of civil liberties through police excesses.

Interest in the suit against the City of Philadelphia was spurred by a number of concerns. Foremost was the litigatory vacuum left by the failure of the Rizzo v. Goode case to exact an injunction against the police department for abuse through establishment of a formidable link between Rizzo and police actions. Secondly, criticism loomed against the department as case after case of police excesses were reported in not only Philadelphia newspapers, but national releases as well. The most poignant series was the Pulitzer Prize winning story on tactics used by the
Homicide detectives to exact confessions. Those stories initiated the investigation of fifty-two cases by the U.S. Attorney's Office, out of these only three resulted in indictments. In one case a jury acquitted the officer charged, in another the indictment was withdrawn. The third case—the Wilkinson case—the police were convicted on only one count of conspiracy. The Wilkinson case involved a mildly retarded auto mechanic who was beaten into signing a confession of a fire bombing death of a Puerto Rican woman and her children. Six neighbors were also coerced to testify against him.

The discontent felt by defense attorneys of their frustrated efforts led to an alignment of forces between them and the City's existing organizations aimed at the elimination of abuse. At the helm of these undertakings was, of course, PILCOP. The Department of Justice discussed steps they might take "... to eliminate alleged unlawful police practices in Philadelphia." The overall opinion of interested parties in Philadelphia was that unless the case could be filed in a succinct, comprehensive manner, that it would have little deterrent effect on

167 Ibid. Under Attorney General Benjamin R. Civiletti.
police practices. Local concerns held that these types of suits not only "... drag on for a long time," thereby discouraging the plaintiffs, but they are costly and on face do not warrant the results comparable to its investments.\textsuperscript{168} In fact, based on the victims questioned by Jayma Abdoo, they favored criminal prosecution of officers rather than injunctive relief.\textsuperscript{169} The Department of Justice favored a case that would address systematic injustices; for in the provision of proof of such, the city government would be forced to do something about it. The statutory base would be the Equal Protection Clause of the Fourteenth Amendment in that citizens were denied basic rights. The existence of discriminatory practices while being a recipient of federal funds would also be incorporated.\textsuperscript{170} It is ironic that while the latter claim received cursory examination that was linked to standing, the former claim was barely perused.

This suit was contemplated in 1977 but was not filed until 1979. The City held that the suit was merely a political act by the federal government to gain support


\textsuperscript{169} Ibid., p. 6.

from minorities. Nationally, this unprecedented move was viewed as an attempt of the Carter Administration to "... consolidate and resolve the major problems in police conduct litigation." Locally, citizens that overwhelmingly believed in the extensive problem of police abuse viewed the suit as part of the continuing legacy of looking towards the government to mend social ills. The suit was well supported by the Guardian Civic League, Philadelphia's Black police organization, and the former President Harold James remarked that "... the suit (was) 'long overdue.' (He added) We regret that the image of many has been tarnished by the unprofessional actions of a few and the inaction of others. . . ." 

Overall, the suit charged then Mayor Frank Rizzo and nineteen other city and police officials, inclusive of then Commissioner O'Neill, with the implementation of a system that encouraged abuse and the denial of citizen rights. The Philadelphia Police Department (PPD) was deemed to be inundated with instances of brutality and constitutional violations to the extent that they "shock

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172 Comment based on survey results.

The policies and practices identified as acquiescent in or permitted are:

1. The physical abuse of persons
2. Use of deadly force
3. Use of the arrest process to coerce and influence citizens
4. Fragmentation of internal investigation which serve to protect officers rather than prosecute
5. The insulation of officers from external investigation

Two areas distinguished here for purposes of emphasis are those procedures that condoned abuse and training. In the first we find that in twenty identifiable cases, fifteen of the officers had a full, documented history of abuse of citizens and were promoted to higher realms of service. The department also commended and promoted other officers that have brutalized persons. In addition, the PPD refused to suspend or discipline officers that have been found "civilly liable for abuse, or have been convicted of crimes deemed barbaric and misdirected by the


The suit identified insufficient training and the quality of new recruits as an important facet in abuse. The entrance requirements for the Philadelphia police force are good physical condition, no police record, the ability to pass a written exam and high school diploma or GED equivalent.\textsuperscript{178} "Philadelphia has no educational admission requirement other than passage of a general intelligence exam (and) ... offers no salary incentives to officers taking college courses."\textsuperscript{179} Training consists of an eighteen week program in addition to in-service training in a mobile classroom.\textsuperscript{180} Parry, former District Attorney in charge of police prosecutions, holds that the department has been most "deficient in training its officers in the legal use of deadly force. ... (They) do not have their own written firearms policies." The state statute permits officers to "fire on persons suspected of 'forcible felonies.'" Even Police Commissioner O'Neill said that the

\textsuperscript{177} "Text of the U.S. Lawsuit alleging abuse by Philadelphia Police," \textit{Philadelphia Inquirer}, 19 August 1979, p. 4-E.


\textsuperscript{179} Cory, "A Close Look," p. 36.

\textsuperscript{180} "Study of Police," p. 36.
deadly force law isn't 'sufficiently clear.'"\(^{181}\) What's more, the department failed to provide psychological screening services especially to aide known offenders in handling stress.

Finally, the Department exhibited community disregard by their lack of initiative in fostering police-community relations. The claims advanced were: rights to due process of law; to be secure against unreasonable search and seizures; and the right to be free from being compelled to be a witness against oneself.\(^{182}\) The Attorney General sought injunctive relief from the systemic practices of abuse since no other forum was available for such a remedy. He held that the pattern of abuse precluded individual civil suits for damages and that they had a direct burden on interstate commerce as people visiting the city are privy to such abuse. The statutory basis was the enforcement of 18 U.S.C. 241 and 242 and 245 which prohibited denial of constitutional rights and ability to bring suit when the U.S. has an interest and 42 U.S.C. 2000 in which recipient programs of federal funds are not allowed to discriminate.\(^{183}\)

On October 30, 1979, District Court Judge Ditter

\(^{182}\)"Text of the U.S. Lawsuit," p. 4-E.
\(^{183}\)Ibid.
dismissed most of the suit primarily on lack of standing by the Attorney General based on absence of authority to advance the civil rights of third persons; to initiate and maintain a civil lawsuit; and the timetable advanced, would deny individual defendants their day in court. The Attorney General does possess the authority to initiate suit to prevent discrimination in the distribution of federal funds; however, the office failed to substantiate this charge with facts resulting in the dismissal of this claim along with the rest of the suit.

Judge Ditter dismissed the complaint "without ever testing the merits of its deeply serious charges" as he only questioned standing of the Attorney General. Ditter held that on three separate occasions Congress failed to empower the Attorney General to prosecute conspiracies that interfere with constitutional rights, which would have corrected the deficiency of 42 U.S.C. 1985. His observation was based on the ensuing debates during the passage of the Civil Rights Acts of 1957, 1960, and 1964 which hypothesized the effects of suits by the Attorney General on the public, particularly if the former

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186 Ibid., p. 1252.
is politically minded. Ditter believed that the Attorney General wanted him to enter an injunction based on his views and those of his defendants of how the police department should be run. Utilizing the aforementioned evidence he concluded that he "cannot recognize a power which Congress has thrice refused to grant."

The Attorney General argued that Congressional inaction should not have a "... bearing on (this) power to bring a civil suit which seeks to enjoin the deprivation of the rights secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments." It is clear that Judge Ditter interpreted the efforts by the Attorney General as a usurpation of Congressional authority and as an encroachment on not only federalism but the delicate balance between the branches of government. The Attorney General, as an integral component of the executive branch has the "expressed authority" to ensure that the laws are faithfully executed. By filing the suit, the Attorney General was fulfilling that executive function to ensure that constitutional claims were adhered to. There was no hint of law making in the request for an injunction, further, the absence of legislation aimed at the protection

187 Ibid., p. 1254.
188 Ibid., p. 1255.
189 Ibid., p. 1256.
of rights evades the substantive issue of legislation to "... enjoin widespread deprivations of constitutional rights." 190

The Attorney General argued that he possessed statutory authority through 28 U.S.C. 518(b) which holds that a case may be considered where the United States has an interest. Ditter held that this was merely a "housekeeping provision" that pertains only to the organization of the federal government, and Congress did not intend to vest that much power to the office as based on Congressional hostility towards intrusion in local affairs. 191 If one questions the criteria of exactly what constitutes an interest it will be noted that Ditter ignored a large body of case law that permits the Attorney General to bring suit. 192 Although the government is prohibited from interference in a private suit, it is authorized to investigate matters that affect the public at large and in the enforcement of criminal laws. 193 In re Neagle 135 U.S. 1 (1890), the court reaffirmed the power of the executive branch to ensure that the laws are faithfully executed. In re Debs the Supreme Court allowed the

190 Reich, "Authority of Attorney General," p. 263.
Attorney General to bring suit for an injunction against striking union leaders for they threatened to obstruct interstate commerce and transportation of the mails, thereby effecting a state of emergency. The Judge rejected the relevancy of these arguments in the Philadelphia suit on the grounds that the situation in Philadelphia evolved over a period of time and did not encompass an emergency situation. Here, more than anywhere else, the Judge displays his lack of sensitivity to the issue of brutality, his inherent bias toward police discretion in controlling their own affairs, and the role of brutality on the expression of constitutional liberties. Judge Ditter made over five remarks regarding the impact of this type of suit on policing, particularly in the scrutiny of their procedures and the possible limitation of their powers. The Judge made only one cursory remark regarding the effects of brutality on the people. In fact the Judge made a mockery of inequality in a set of hypotheticals of the Attorney General bringing suit to save dogs that are destroyed after forty-eight hours without notifying owners, libraries with not enough books on Africans, or a hospital with restrictive visiting hours. These advances stemmed from the fact that the Judge could not see a relationship

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194 In re Debs, 158 U.S. 564, 15 S.Ct. 900, 39 L.Ed. 1092 (1895).

between practices and procedures of the department that serve to foster brutality, which led him to conclude that restrictive policies of any entity serving the public could be challenged.196

The final charge to the Attorney General to be considered here was his right to initiate suit as a third party when other remedies existed, such as individual and class actions under 42 U.S.C. 1983.197 This brings us full circle to the problematic raised in Chapter II of the constriction of Sec. 1983 cases, also the failure of Rizzo v. Goode to exact injunctive relief. Ditter concluded that when Rizzo v. Goode went to the court, Philadelphia could not be cited as a "person" but the ruling in Monroe v. Pape now makes that possible. Yet, Rizzo v. Goode required a pattern of abuse linked with policies and practices of the department which was the basis of U.S. v. Philadelphia. One other oversight was the cost involved in such litigation and based on past defeats this possibility did not look promising. The patterns of brutality cannot be stemmed by individual claims for monetary damages, and if relief from police misconduct is a private good, then individual litigants cannot claim injunctive relief that would have an influence on the larger population. In

196Ibid., p. 1268.
197Ibid., p. 1262.
addition, the "'(p)atterns of complaints appear to indicate institutional rather than individual problems.'"198

On appeal, the United States modified its position and advanced that the actions of the defendants not only violated due process, but 18 U.S.C. secs. 241-242 in that the abuse practices were disproportionately aimed at Blacks and Hispanics.199 Judge Aldisert, writing for the three judge circuit court, followed the precedent as set by Judge Ditter in rejection of the suit on the absence of implied power to initiate suit and a lack of evidence to support the allegation of discriminatory brutality practices. There was also lacking a nexus between discrimination and the expenditure of federal funds. The court repudiated the contention that secs. 241 and 242 could be interpreted as to grant a right of action as to injunctive relief. It further rejected that cause of action should be applied in the absence of other remedies.200 Since the U.S. is not part of the violated class, it could not state a claim, granting such would pose a frontal attack on the federalist system. The appropriate question should not have been


200 Ibid., p. 190.
congressional inaction as indication of the limitation of the power of the Attorney General, but "... whether Congress intended that the United States has an 'interest' in the prevention of widespread, systematic denials of constitutional rights."\(^{201}\) The dismissal of this suit limited the power of the Attorney General to enforce federal civil statutes, therefore, the civil rights of persons victimized by police remain unprotected. The federal government has thus revealed their ineffectiveness and lack of inclination to support civil liberties in this instance.\(^{202}\)

**Conclusion**

In this chapter the total disregard of the well-being of Blacks as a continual legacy in the Philadelphia experience was demonstrated through incidents of violence from the 1700s to the present time. The role of the Philadelphia police as precipitator and manager of such violence was displayed by an examination of their torrid history as witnesses to and proponents of violence on Blacks. The department has been deemed as one of the most brutal police forces in the nation and the methods to oversee it have been ineffective. "Consequently, this department serves as a model for evaluating the failure of

\(^{201}\) Reich, "Authority of Attorney General," p. 267.

\(^{202}\) Franklin, "Quest for Remedy," p. 198.
police accountability throughout the country."  

The notions of abusive patterns as being reflective of internal policies and that they are in fact condoned by the upper echelons of the police force and municipal authorities was examined by relating the career of Frank Rizzo to police activities and his protection of officers from prosecution. The logical consequence was to then examine all existing vehicles for recourse of such abuse. It was found that the infrastructural mechanisms were deficient, grass-root efforts, though persistent, had little results and that civil sanctions and criminal penalties, ". . . have failed to deter police misconduct and offer little or no protection from abuse." The City of Philadelphia has awarded millions in settlements of victims of abuse. Some commentators like to herald that fact as evidence of the City's effort to deter abuse. However, these claims only affect individuals and do not provide broad declaratory relief from brutalization. The escalation of such suits gives merit to their inability to curtail abuse. It should also be noted that these awards are usually minimal and infrequent due to the exacting standards in such litigation. When compared to the suffering endured by the plaintiff, it can be asserted that no amount of money can

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204 Ibid., p. 191.
replace the loss of a human life.  

United States v. Philadelphia was representative of a compilation of all the aforementioned in that it reflected the dialectics of repressory law enforcement and the ineptitude of any mechanism to counteract that. The cases clearly showed institutionalized abuse through practice, procedures, examples, and rewards as opposed to punishment for excessive force. The problem of utilizing the Equal Protection Clause is illustrative of the conflict of discretion and control of police functions. Due to the nature of the environ, discretion has to be allowed in order to effectuate the enforcement of law, yet there does exist structured ideals to control such discretion. It must be remembered that all the democratic process requires is the provision of structures and a forum to address civil violations, not corrections.

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CHAPTER IV

MOVE

This chapter will begin with the theoretical evolution of MOVE followed by their philosophy, membership, tactics, and the events that ultimately led to their confrontations with the police. The first major incident that gave MOVE national recognition was in 1978 in which they were forced from their home and a police officer was killed. During the conflict, a MOVE member, Delbert Africa, was publicly beaten by three law enforcement officers. The trial of those officers will be examined to illustrate the limitations of prosecuting officers inclusive of the use of an all white jury. The second MOVE/police conflict ended with an area of the Black community razed under the leadership of a Black mayor. It will be argued here that lack of restraints on the police use of deadly force led to their excessive behavior. Finally, in the continued quest to impede police abuse we had the use of an innovative technique, the MOVE Commission, which was set up by the Mayor to investigate the incident. Their findings and recommendations will be examined as their role in checking police activities will
be assessed. The point here is to exemplify aforesaid theories of police brutality and redress efforts through the MOVE experience.

During the 1960s there was a revolutionary voice within the black community that sought to overthrow the capitalist system with all its incipient injustices as a direct consequence of mass exploitation. The Revolutionaries wanted the right to define themselves as a people and determine their own destiny through self-reliance. This force did not depend upon the system for freedom; for its promises masked the purpose of absorption within the system.¹

The moderate faction of the Black community won out and established the integrationist agenda which merely elevated the level of Black interaction within the capitalist system via individual mobility and intensified consumerism. What happened to that revolutionary voice that wanted freedom by "any means necessary" as Blacks moved into quiet acceptance of the status quo? While some continue to struggle through other means such as writing, teaching, organizational, and litigatory pursuits, others have been unable to reconcile the contradictions of the revolution from above that dissipated the true goals of the people below. The masses, by which the battle was waged,

still continue to live in abject poverty and despair while blinded by the illusory dream of freedom through commodities. It was the last category of Revolutionaries that the untold tragedy of a movement deferred weighed its toll. These Blacks may never possess the mind set or socioeconomic requisites to accept the reality of a race asleep in the wake of mass oppression. Society has termed some of these as "schizophrenic," "extremists," "aberrations," or just different. Somewhere within this configuration of terms lies MOVE, a group born out of the heartbreak of an untimely cause.

The void created after the decline of major activists' groups of the sixties left some of its membership in disarray, in search of an identifiable group. The absence of a vehicle to articulate their cause led those that were unable to consolidate themselves within the system, to the MOVE philosophy. The background of the majority of MOVE members can be traced back to the Black Panthers and the Revolutionary Action Movement (RAM).²

Since its inception, membership has been noted at up to the hundreds, including a large number of supporters that expound the teachings of John Africa and have adopted some of MOVE's dietary and physical regimens. There are

²The following comments on MOVE's organization are from Murray Dubin and Andrew Wallace, "The People Behind the Barricade," Philadelphia Inquirer, 7 May 1978, pp. A1, A12.
also MOVE sympathizers which are composed of people from the community who basically feel that MOVE was treated unfairly. The core of the group was a family unit, Vincent Leaphart, alias John Africa, his sister Laverne Leaphart Sims, her husband Charles Sims, and their children Debbie Angela Sims, Charles Shelton Sims, Dennis Merrick Sims, and Gail Zelda Sims. Vincent Leapharts' sister, Louise Leaphart James, was a former member, now a supporter, gave the house on Osage Avenue to her son Frank R. James Africa.

There were white members of MOVE, such as one of the cofounders, Donald Glassey, who is said to have codified the philosophy since John Africa did not have a formal education. Glassey left the group in the early seventies and denounced the group and its teachings during an interview following the 1985 siege.3 Sharon Gale Penn and Sue Africa renounced their membership in the midst of the police conflict and returned to their former way of life. Chuckie Africa said of Penn that she "... is not as strong as the (other members) ... and the same system that harassed her and made her weak has now taken her over."4 This pattern is reflective of other whites in the sixties who avowed the virtues of the Black revolution and were able to step out of it any time and return to the

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3 Interview on KYW, May 14, 1985.

system, something Blacks were unable to do—because of their color.

the MOVE organization is a powerful family of revolutionaries, fixed in principle, strong in cohesion, steady as the foundation of a massive tree. A people totally equipped with the profound understanding of simple assertion, collective commitment, unbending direction.\(^5\)

The historical structure of Afro-American movements reflects the impact of Christianity as it revolves around the Christ as its essence, many groups also became the personification of one being.\(^6\) MOVE from its origin in 1972 centered itself on the teachings as based on the philosophy of John Africa.\(^7\) A movement such as this can be compared to the Rastafarians in that they both reflect emotional discontent and unrest possessed with a visualized goal and a change in social institutions.\(^8\) Also present is the "... messianic-millenarian overtone, deeply religious in nature, with victory rooted in the hope that the power of the supernatural would overcome might with moral

\(^5\)The philosophy of MOVE has been extracted from a six week series in the Philadelphia Tribune, entitled "On the MOVE from the Writings of John Africa," 28 June 1975, 5, 9, 12, 15 and 29 July 1975. This quote is from 28 June 1978, p. 17.


An integral part of the MOVE philosophy is that God is on the side of truth and right which are virtues they possess, oft times acts of nature were used to provide their connection with the almighty such as: after the police erected the barricade in 1978, the wind blew it down; being in a house for over fifty-two days without water or food and emerged healthier than ever; the judges that came in contact with MOVE either died or suffered terminal illnesses; survival through the police pogroms of 1978 and Birdie and Ramona Africa in 1985. Dissonance, social, and cultural incongruities produced alienation of the group as they take on a counterculture which leads to the death of society or its rejuvenation.

MOVE extolled an antitechnological, back-to-nature stance with their level of critique aimed at governmental institutions as opposed to the capitalist economy as the source of all ills. As professional Agents Provocateurs, their daily goal was to bring attention to the contradiction of the "world system" that advances its interests at the cost of the majority.

Their ideas are directed to oppressed people in

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10 Interview with MOVE supporter Jeanette Knighton, January 1981, at Philadelphia City Hall. Incidents corroborated by news sources.

general; poor whites; Puerto Ricans; Blacks; and people of the Third World that are a part of international oppression. MOVE believed that the only answer to world depression is self-dependence; for, one cannot look to the government of repression for protection. A government that diverts interest to external affairs to mask internal conflict. "Building war ships to protect against the danger of invasion and being invaded with vd, fbi, tb, cia, tnt, cd, ddt, drug addicts, alcoholics, racism, sexism, deceptionism." Politicians are a continued target of critique as those who would go to any length for support, reflect the most immoral fabric in the weave of society, lacking any type of credibility or accountability to those who empower them; "These politicians have solicited the indulgence of false patriotism, and left you to mourn the death of its victims."

MOVE constantly harassed the Black bourgeoisie for their cooptation into the system likened only to a criminal act. Cruse noted that extremist factions, from desperation and alienation of the ghetto, pass a stage of hate to "ghetto paranoia, directed not only towards whites, but as a more immediate target the middle-class Negro, the

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13Ibid., 1 July 1975, p. 5.
14Ibid., 15 July 1975, p. 2.
'bourgeois,' By Blacks compromising with the system, they took on the nature of the oppressor, thereby accepting their ethos while condoning the oppression of themselves and others.

It is impossible for Black folks to solve the problem of inequality while endorsing, supporting this higher-lower syndrome. It is impossible for Black folks to solve police brutality while BLACK CAPTAINS are hired to supervise the beatings; impossible for Black folks to solve the problems of court injustice while BLACK judges are hired to put you away.

One theoretically based tactic that made MOVE the source of much criticism was the right to represent oneself in court:

The same crazy politician that will see you offended, watch you defend yourself, be responsible, reliable, use self-control, and tell you not to take the law in your own hands. Tell you you can't be the judge of such circumstances, that this kind of situation has to be officially administered by a qualified judge, a so-called legal administrator. . . . Any time anybody is willing to allow the law of life to be taken out of their hands and put in the slippery hands of a lifeless politician they can expect politics.

During their trial for the alleged murder of Officer James Ramp, conspiracy, rioting, and other lesser offenses, William Phillips Africa said: "A freeman has no choice

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17 Ibid., 22 July 1975, p. 6.
18 Ibid., 15 July 1975, p. 15.
but to represent themselves;" Delbert Orr Africa maintained that "'an Attorney does not believe as I believe. He'll answer with slick stuff, sly stuff. I've been taught to be honest, straight forward.'" The MOVE members also waived their right to a jury for as Janine Africa held, "'(b)eing tried by one confused judge who didn't witness the situation is bad enough . . . (b)ut being tried by twelve confused people is . . . .'" Delbert Africa did not want a jury because he felt that it would be composed of "'racist whites from the Northeast and store-bought Negroes from downtown.'"

The origin of self-representation is from England when persons accused of serious crimes were not allowed counsel, the Sixth Amendment was an attempt to rectify this legacy. Prior to the 1963 Gideon ruling, people unable to afford a lawyer were forced to go to trial unrepresented, but the Gideon decision changed this so that those defendants facing "serious charges" had to be provided with counsel. However, the quality of lawyers provided meant "no meaningful difference in their situation, as they were convicted and given stiff sentences with almost the same

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20 Ibid., p. F2.

regularity as in pre-Gideon days." Self-representation has been critiqued because it is bound with the concern for courtroom ethics. It is believed that a person representing themselves will have less respect for order and will be more disruptive than a represented person.\textsuperscript{22} MOVE often taunted the judges, disturbed the decorum of the court, and made a mockery of the legal profession through their constant barrage of insults and other verbal attacks.\textsuperscript{23}

Blacks are turning to self-representation because of the "inherently racist, repressive and class-biased judicial system." Many feel that a lawyer will not be able to represent them with "aggressiveness and sensitivity." It is also an organizational tactic to "... forcefully and effectively defend oneself while expounding the philosophy of the movement."\textsuperscript{24} At one point, MOVE exhortations had gotten so out of hand the judge had wanted them gagged and bound. However, the Pennsylvania Supreme Court ruled in 1976 that it disapproved of the binding and gagging of seven MOVE members in municipal court in 1974 when they refused to quiet down during a hearing on charges

\textsuperscript{22}Angela Davis et al., If They Come in the Morning: Voices of Resistance (New York: Okpaku, 1971), pp. 212-14.

\textsuperscript{23}Profanity and insults used are documented throughout news accounts of trial and was also witnessed by the author.

\textsuperscript{24}Davis, If They Come, p. 211.
resulting from a demonstration. The court stated that "binding and gagging only increases the tension in a courtroom and is counterproductive. The high court also expressed its disfavor of contempt of court actions against defendants." MOVE was eventually banished from the courtroom and the rest of their case was handled by court appointed back-up lawyers.

The question can be raised as to whether or not the nineteen week, $400,000 trial of the MOVE nine for the killing of James Ramp was a political ploy to incarcerate the members for a lengthy period. The rationale for such a query is based on the fact that MOVE was sentenced on less than substantial evidence. There are still many unanswered questions such as why was the MOVE house demolished before ballistic experts could perform an investigation. The District Attorney's office was not even contacted for their opinion of the demolition which turned out to be a bad decision in litigation. Ramp, a Vietnam War military advisor, allowed himself to be caught in the line of fire. It was never established whether the bullet


27 Interview with Tony Jackson, June 1981.
that was supposed to have been fired through a screened-in basement window, through water pouring in from deluge guns, entered his chest and exited the back, or vice versa. In one police picture an officer was seen running across the street with the type of gun that killed Ramp, yet on testimony the police said they did not use that particular type of weapon and that it was found in the basement of MOVE headquarters. It is difficult to conceive in the wake of so many inconsistencies how the MOVE nine were sentenced to serve thirty to one hundred years for third degree murder.28 Being imprisoned for life or executed by the state was MOVE's final statement to attest the injustices of this system.

The prospect of long prison terms is meant to preserve order; it is supposed to serve as a threat to anyone who dares disturb existing social relations, whether by failing to observe the sacred rules of property, or by consciously challenging the right of an unjust system of racism and domination to function smoothly.29

MOVE 1978--Trial of Officers

The major obstacle in attaining convictions in police brutality litigation is that the burden of proof lies on the victim. Rarely are there any witnesses to collaborate the victim's testimony and evidence is


primarily in the form of hospital records. In the 1978 MOVE siege, three officers savagely beat Delbert as he surrendered with his hands on his head; videotaped for the world to see; yet the officers involved escaped any type of reprimand for their actions. (All of the Blacks surveyed and only 25% of the whites held that police overreacted and abused Delbert Africa; however, only 40% of Blacks recommended suspension from the force.) "These men in uniform, under the guise of being law enforcement officers, savagely kicked and stomped a human being, and they (police) had no regard for the public who might have been looking."30 The purpose of presenting this trial is to codify the manipulation of court procedure to relieve the officers of being penalized of violating Delbert Orr Africa after he surrendered. The problematics in the prosecution of the police will be exemplified utilizing this case of Officers Geist, Mulvihill, and Zagame charged with simple and aggravated assault and official oppression.31 The tactics used by the police prior to and during proceedings, and the role of the all-white jury in such cases, will be addressed.


31The information on Commonwealth v. Geist, Mulvihill and Zagame, docket #7911-001 1/3 2/3 3/3 (January 1980) is from notes taken by the author while witnessing the trial.
In 1978, MOVE found themselves in an armed confrontation with the Philadelphia police. Their problems with the police and city government stem back to 1972 as MOVE constantly harassed officials for their policies that they believed encroached upon the liberties of the masses. Following one incident of police brutality, a MOVE baby was said to have been killed by the police, making the police a target of increased criticism. In 1977, the Powelton Association voiced complaints about MOVE harboring dogs and rats on their property. However, some hold it was not concern of MOVE's sanitation habits but attention by the press that led to initial conflict. When MOVE refused to allow Licenses and Inspections on the property, warrants were issued by Common Pleas Court Judge G. Fred DiBona, for the arrest of Delbert, Merle, Jeanette, Phil, and Edward Africa on June 4, 1977 because of their refusal to evacuate the premises of 307-309 N. 33rd Street, based on health code violations. For over a year, the police maintained a barricade, also ordered by Judge DiBona, because MOVE brandished weapons in front of their compound.

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33Seventy-one percent of those surveyed disagreed with the media inflamation of MOVE's disposition through negative accounts. However, 43 percent based 80 percent of their opinion on MOVE from media. See pp. 10-13 for sample and appendix for results.

The community displayed more opposition against the barricade than against MOVE. The Powelton United Neighbors initiated a suit to prevent its construction and the City Wide Black Community Coalition for Human Rights held one of the largest demonstrations in Philadelphia history denouncing the barrier.  

In addition to the barricade that was set up, all city services were cut off. The police had staked the area out on a twenty-four hour basis and made so much money in overtime that one police officer purchased a boat and named it Delbert Africa. The case against MOVE was never really firmly established other than refusing to let the city inspect the premises for alleged health code violations. MOVE was within their right to carry arms for the purpose of protecting their property as they did not venture away from the compound with the weapons. According to constitutional law, one has the right to resist arrest if they fear the use of deadly force in their apprehension. MOVE clearly had a basis to resist under these circumstances; however, the general consensus is that


36 Police officer interview, June 1980, Philadelphia City Hall, by writer.

MOVE has no rights since they disturbed the peace with use of the bullhorn, accumulated debris—-attracting rodents—-on their property, and created a war zone.

Most people surveyed held that MOVE had no right to defend themselves militarily and that the possession of arms merely served to inflame the situation.\textsuperscript{38} Cruse holds that "... armed self-defense was militantly raised so as to provoke the police into more severe repressive actions by giving them a ready-made excuse to shoot to kill."\textsuperscript{39} Whenever Blacks use arms to defend themselves

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. . . it is twisted and distorted on official levels and ultimately rendered synonymous with criminal aggression. On the other hand, when policemen are clearly indulging in acts of criminal aggression, officially they are defending themselves through "justifiable assault or justifiable homicide."\textsuperscript{40}
\end{quote}

On May 3, 1978, an agreement was reached with MOVE for them to vacate the premises within ninety days, no later than August 20, 1978.\textsuperscript{41} After a period of ten days and countless pleas over the bullhorn to get MOVE to surrender, over five hundred police officers and fire personnel were stationed around the compound, water was

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\textsuperscript{38} One Hundred percent of whites and seventy-five percent of Blacks.
\textsuperscript{39} Cruse, \textit{Crisis of Negro Intellectual}, p. 359.
\textsuperscript{40} Davis, \textit{If They Come}, p. 25.
\textsuperscript{41} Testimony of Chief Inspector Fendol of the Philadelphia Police Department, January 8, 1980.
\end{flushright}
pumped into the basement with deluge guns, tear gas was
thrown into openings of the upstairs, and a barrage of
gunfire filled the streets. Once the members were removed,
the property was demolished; therefore destroying valuable
evidence for their defense.

A videotape of the events of May 20, 1978 was shown
at the trial with no display of emotion by the jury as they
watched Delbert Africa being severely beaten by the
officers, thereby visually proving that these officers had
used excessive force.\footnote{William Zembrzusky, "MOVE Incident on May 20,
1978," videotape.} Norman Y. Lono of the Philadelphia
Daily News testified that Delbert Africa surrendered with
his hands up:

(a) helmet hit Delbert in the face and Delbert fell
backwards into the rubble. The same officer
grabbed his hair and dragged him across the street
and dropped him to the sidewalk. The other two
officers started kicking his torso and lower
portions of his body . . . the chest and crotch
area. Two officers were involved in kicking
Delbert and a third one in a stakeout jumpsuit with
an automatic weapon joined in. Kicks were coming
from all over the place--kicked in face and crotch
then (he was) handcuffed and taken away. Another
officer comes up and takes two jabs at Delbert and
is restrained by another officer. (I) didn't see
Delbert resist at any time.

On August 8, 1978, Delbert Africa was examined at Jefferson
Medical in which lacerations on the head, eyes, ears,
throat, and lungs were found. Also multiple contusions
including a contusion of the testes and a fractured right
The kicking of a Black man in the groin by a white police officer is more than mere apprehension. "It is something more fundamental and psychological going on. It is the attempt to destroy the very essence, the very soul, the very spirit of a human; that is what it is."\(^{44}\)

The defense, in an attempt to justify police actions, used the behavior of MOVE members leading to the events as warranting such abuse. Chief Inspector Fencil of the Philadelphia Police Department, the first witness of the defense, recalled that the MOVE members were dressed in battle fatigues and carried weapons including a submachine gun; rifles, sawed-off shotguns and knives. William Philips Africa came out with three sticks of dynamite and threatened to throw it at police officers. The members also did extensive calisthenics to display their physical prowess, such as hundreds of push-ups at one time. The physical condition of the members were noted by the police for they were cautioned to be careful in apprehending them and ensure they were searched properly. In short, the MOVE members were considered armed and dangerous although no one up until this point had been hurt nor were any crimes committed; yet, a military situation did exist.

\(^{43}\)Testimony of Carol McLean, Assistant Director of Records at Jefferson Medical Center, February 2, 1978.

\(^{44}\)Comment by Reverend Daughtry during the United States House Commission on Police Misconduct hearings, p. 501.
The officers that were posted at the MOVE headquarters seemed to have been more taunted by the verbal abuse they received from MOVE than the brandishment of arms. One theory is that although a police officer will walk into a physical situation they become terrified of words. "Don't forget, most cops don't have any education, they're inarticulate" therefore, they feel more challenged by words than by any actual threat. The police were on stakeout for so long until MOVE members knew them by name and would make remarks about their personal life. It is necessary here to reproduce some of what was said by MOVE for it was also held by the defense that the language used by MOVE incited the police.

Let Black people rise up and long live revolution. Europeans came over here, stole land from Indians Mother_____ telling us what to do. . . . Uncle Toms—how many have beer to f____ for dinner? . . . All MOVE members are instructed to keep weapons pointed up at all times. . . . We're non-violent . . . want to be left alone, if they approach us with any violence, we'll retort. . . . If you try to come in we'll kill you. . . .

There exists a thin line between using a courtroom to discern justice and using theatrics to manipulate that function. In this final portion of the case, we will note the use of tactics which ultimately led to the dismissal of this suit. The trial was moved to another courtroom.

46 Commonwealth v. Geist, Mulvihill, and Zagame.
equipped with an elevator which raised a cage from the
detention area below that was next to jurors. Phil Africa
was brought into the courtroom with his hands and feet
cuffed, shackled together by a heavy chain, he was removed
from the cage and asked his name, in which he retorted:

Phil Africa, disciple of John Africa. Judge, let
me ask you what's the purpose of shackles, bitch
convicted for murder and given 40,000 bail wasn't
shackled ... when these perverted f--ing
sheriffs beat our ass, they don't get shackled.
...

Judge Kubacki ordered Phil to be removed from the
courtroom. Prosecuting attorney Parry stated, "there is no
rational reason to bring in Africans other than to inflame
the jurors." The jurors appeared to be frightened;
however, one laughed. Delbert Africa was brought in by
five sheriffs. "You in charge of this courtroom--what's
purpose of shackles and handcuffs? You're a criminal, this
is something you and Sprague (Defense Attorney) hooked up."
Judge Kubacki told Delbert to shut up, Delbert replied,
"don't you ever tell me to shut up." The wife of one of
the defendants remarked, "we didn't have to pay to go to
the zoo today," and laughed.

On February 2, 1980, the fourth day of the trial,
the real drama began with the testimonies of the three
officers charged with aggravated assault. Joseph Zagame
was first, he began by describing the behavior of MOVE as
parading out front with a loudspeaker talking constantly,
making threats on his life and his family as MOVE allegedly knew where he lived. MOVE worked on shifts and according to Zagame, were more militarily equipped than the police. Zagame was not only called a "sleazy little Daygo" by MOVE, but he was also cursed, spit at, and never knew what would happen for they had guns, knives, and would fight amongst themselves inside. Zagame was a good friend of Officer James Ramp, the officer killed during the shootout, he put Ramp's body in the police van after he was slain. He saw Delbert coming out of the window and had previously seen Delbert with a knife; fearing that Delbert still had the knife, Zagame grabbed his helmet and hit him because Delbert was capable of trickery. Zagame grabbed Delbert by the hair because he did not have on a shirt and he was in the line of fire. Delbert made a struggle so Zagame hit him again to keep him down. One officer said he did not have his gun (Geist), thought Delbert had it, "rolled him over with their feet to get him over--couldn't get handcuffs on him (so) kicked him over a few times."

Charles Geist, the second officer, began by summarizing his observations of MOVE. His duties were to patrol vehicle traffic around the compound because he had information that MOVE dug tunnels to houses in the

Mrs. Ramp testified that Ramp approached her the day before the incident and said, "he was going to be killed." An ex-police officer said of Ramp that "He loved to kill. . . . He was sick." Interview, January 31, 1980.
neighborhood and he had to check them. The odor of the place permeated the entire neighborhood. There was an eight foot barricade, twenty-five to thirty-five dogs of varying sizes, hundreds of rats, the place was disgusting and filthy. In December, while walking on patrol, he saw Delbert holding a naked baby while he himself was dressed warmly. As Geist moved towards Delbert he grabbed the baby by the ankles and turned the baby upside down and said, "if you come any closer I'll rip the baby in half and blame it on you." As Geist continued to describe the conditions and his mental state on the day in question, he began to cry. Also Ramp's sister and a few other spectators began tearing up as Geist described how he saw Officer Ramp die. "(An) explosion came out of the MOVE compound--smoke and gas burned our skin and eyes--water washed feces down street, rats were running across (his) face."

At this point, Geist saw Zagame struggling with Delbert and losing since he is a small built man; ergo, he joined in the effort to subdue Delbert. After Geist pushed Delbert on the ground, he noticed that his revolver was missing, thereby getting hysterical as he believed that Delbert had his gun. "(I) kicked him anywhere I could and stomped him until he got handcuffs on." Geist then admitted that he kicked him between the legs for it was his belief that Delbert still needed subduing.

The final officer, Terrance Mulvihill, testified
with more of the same--inclusive of tears, tenseness, and
gasping for air and water. He believed MOVE was dangerous
and was terrified of the group. Delbert referred to
Mulvihill as a "faggot" and that since his mother had
venereal disease when he was born, that he was retarded.
On the day in question, Mulvihill was shaking so bad until
he could not load magazines, he prayed that he would get
out of the incident without injuries. Mulvihill began
brutalizing Delbert after he saw that "Delbert was fighting
two officers and heard Geist say "he's got my gun."

After the lunch recess, Judge Kubacki ended the
proceedings with the following statement:

All evidence is in and has been reported.
Philadelphia is bleeding to death over MOVE death,
District Attorney offices, news, community, police
department is divided, no verdict can stop the
flow. Only a lightning rod can stop it, and I'll
be the lightning rod. (The) Judge will make (the)
decision, (and) will direct a verdict of not guilty
(thereby) taking it out of hand of jury. Court
adjourned.48

As outlined in the presentation of the trial, the
officers utilized numerous techniques to thwart the efforts
of some type of justice in their prosecution. The incident
in which Delbert was beaten took place in August 1978, the

48 This unprecedented technique is unconstitutional
since the defendants had requested a jury but it was not
challenged since the decision was in their favor. However,
a judge does have the option of issuing a verdict if the
one reached by the jury was unreasonable because the
prosecution failed to establish burden of proof for the
crime.
trial of the three officers did not begin until January 1980. The police also withheld the names of the officers for over six months. District Attorney Ed Rendell tried to persuade the police department to discipline the three officers to avoid "... the embarrassment of prosecuting them." The maximum departmental punishment short of dismissal is thirty days' suspension without pay.

A major problem in the District Attorney's office was finding the right prosecutor for the case. At that time there was a police unit within the D.A.'s office, but only certain lawyers were assigned to it. There was concern over using Black lawyers on police cases, as it is believed that would instigate racial tension and a white attorney may be more objective. Due to the public pressure to prosecute and the conflict of interest between the police and the district attorney, no one wanted the case. Rendell was forced to bring in an outsider, George Parry, to handle the prosecution. The second problem was finding a judge to hear the case; most Black judges did not want it as they are often challenged when handling cases that

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49 "Three Policemen to be Indicted in MOVE Incident," Philadelphia Inquirer, 2 August 1979, p. 1.


51 Interview with Tony Jackson, former Director of PILCOP, also acted as public defender for MOVE, June 1981, Philadelphia.
concern racial issues. Progressive judges did not want to be targets of MOVE taunts. MOVE had created their predisposition by the way they acted in court that spurred most judges to react which is what MOVE wanted. Judge Kubacki was prepared in that his negative attitude acted as the vehicle to enforce his point.52

The Fraternal Order of Police made constant accusations of the trial being politically motivated and refused to cooperate in hopes to contravene litigation. Every challenge imaginable was made from jury selection to relocation of the trial. The best attorney in the city was hired to defend the police; Albert Sprague, who defended the city against allegations of police misconduct in Rizzo v. Goode and U.S. v. Philadelphia. The police officers were well versed prior to proceedings as their stories were almost identical. Theatrics was used to persuade the jurors of their deep love for the officer killed and their shared convictions of fear of the "prowess" of Delbert Africa as embellished in tearful sobs. One of the most effective tactics used by Sprague was having the courtroom changed to one with an elevated cage. Delbert was not informed of the proceedings and, knowing the nature of MOVE, his reaction was predictable.53

52 Interview with Tony Jackson.

53 Interview with Jeanette Knighton.
The mood among the officers in response to the charges pending against the officers that beat Delbert was outrage. Members of the Fraternal Order of Police marched and held a rally in City Hall courtyard to protest the proceedings. Alphonso Deal was forced to resign from the Philadelphia Police Department due to internal pressures brought on after he sent a telegram to Rizzo calling for the dismissal of the officers who beat Delbert Africa. The Mayor told reporters that Deal was a "nut" and an "absolute disgrace," that he had better "retire" as he would "get a piece of him." Deal was cited as being an outstanding officer by the City Council in 1968, yet when he spoke out against the incident his professional career was jeopardized.

Deal held that "(I)n a civilized society we can't tolerate police officers taking justice in own hands." In outlining the treatment he received after this statement, he noted that first his assignment was changed to the district in which the attack on a Black family took place in 1985. Other officers had failed to respond to his request for backup, as he was clicked out of the police


56 Interview with Alphonso Deal, January 29, 1981.
radio. He was eventually suspended and ordered to
apologize for speaking out against the police. Deal
objected against his suspension because the decision was
made by a kangaroo court," while the FOP had locked the
doors to keep him out. Two thousand FOP members signed a
petition demanding Deal's removal after a court order
prevented Deal from being dismissed because of his
statement. During a meeting of the FOP, one officer
threatened Deal by saying, "'I'll blow your head off.'"
Deal's shirt was then torn off as he was challenged to a
fight by a fellow officer. Deal was then exposed to
constant harassment, such as being billed for tickets that
were not left on his vehicle, and his FOP emblem being
ripped off of his car. He also found bullet holes in the
window of the North Philadelphia branch of the NAACP where
he was President. The only problem with the department is
"the tone currently being set from the top," Deal
contended; and "'(u)ntil we are willing to stand up against
hoodlums in uniform or out . . . we won't be taken
seriously as professionals.'"57 The tragedy of the Delbert
case is that this society will not prosecute people that
take laws in their own hand and "we as leaders cannot show
Blacks that justice prevails."58

58 Interview with Alphonso Deal, January 29, 1981.
Jury

The all-white jury used in this case was brought in from Dauphin County, Pennsylvania, a small town approximately two hundred miles from the City of Philadelphia. The rationale of bringing jurors in was that they would be more impartial since they were not constantly exposed to the publicity and emotional aura of the incident.\(^{59}\) There were originally two hundred people on the juror panel, ten were Black and one of the Black women had her Doctorate; all the Blacks were excluded through peremptory challenges. It will be argued here that the systematic exclusion of Blacks from the jury process is an incidence of "\(T\)he badges of slavery (that) have never been substantially, much less completely, eradicated."\(^{60}\)

The legacy of the all-white jury is that it has been used not only to railroad Blacks for crimes they may not have committed, but in this instance, to liberate whites from prosecution of crimes of violence against Blacks. The Supreme Court held in 1880 that excluding Blacks from jury service is a violation of the equal protection clause of the Fourteenth Amendment; however, the practice continued as exemplified in Norris v. Alabama in

\(^{59}\)Interviews with the court clerk, Harvey Clark, reporter, and opening statement by Judge Kubacki in reference to the jury, January 29, 1980.

\(^{60}\)Feagin, "Slavery Unwilling to Die," p. 190.
1935 of total exclusion of Blacks as jurors. The constitution merely forbids systematic exclusion from jury panels, there is no requirement that one's race must be reflected in the makeup of one's jurors. As long as Blacks appeared on the original panel and were exempted through questioning, the all-white jury cannot be challenged as discriminatory. This practice was affirmed in Swain v. Alabama when the conviction of a nineteen year old boy accused of raping a seventeen year old white girl was upheld. The court held that exclusion of Blacks through peremptory challenges is not a constitutional issue since it does not constitute systematic exclusion.

Determination of whether the racial composition of a jury is reflective of the population is made during the selection of venire panel in the choosing of prospective jurors. In police trials, it has been found that Blacks were seriously underrepresented and that a large percentage of jurors sat on more than one police trial often within a short period of time. One problem noted was that jurors are chosen from lists of registered voters and Blacks do not.


not register in the same proportions as whites.\textsuperscript{65} A prosecutor has a limited number of peremptory challenges, however, a skilled questioner can obtain dismissals by showing bias and prejudice.\textsuperscript{66} Defense attorneys for the police tend to favor all white jurors for they tend to view the police as "... respectable people performing a difficult and necessary job."\textsuperscript{67} A study found that Black jurors in these types of cases usually resulted in hung juries due to the different perception of democratic society by some Blacks. The "... presence of black jurors makes consensus more difficult because it inhibits the operation of racial prejudice or other anti-plaintiff or pro-police biases."\textsuperscript{68}

The Supreme Court has ruled that when members of a defendant's race have been purposely excluded from the jury, the Equal Protection Clause is violated. In addition, it reaffirmed that a "defendant does not have a right under the Equal Protection Clause to a petit jury composed in whole or in part of persons of his own race..." The clause does forbid a prosecutor from challenging potential jurors solely on "... their race or

\textsuperscript{65} "Suing the Police," p. 806.

\textsuperscript{66} Sheila Marie Walsh, "Criminal Law/Peremptory Challenges", \textit{Illinois Bar Journal} 71 (June 1, 1983):622.

\textsuperscript{67} "Suing the Police," p. 814.

\textsuperscript{68} Ibid., p. 806.
on the assumption that black jurors as a group will be unable impartially to consider the state's case."\(^{69}\) Although this ruling does reflect the court's sensitivity to the issue, it is still a far cry from the elimination of the all white jury. The exclusion of Blacks should be a cause of the reversal of a conviction in that the verdicts are as illegal as their composition.\(^{70}\) Alphonso Deal found it appalling that in the State of Pennsylvania an all-white jury would be selected. "It's clear that everything is being done that justice will not reign as far as Blacks are concerned."\(^{71}\)

**MOVE 1985—Deadly Force**

The number of officers and munitions involved in the 1978 incident did constitute overkill, yet many Philadelphians held the actions taken by police were appropriate.\(^{72}\) In general, the police authorization of the use of force is unrestricted, although they are not allowed to use it maliciously or furiously. Further, the police are implored to maintain a humane demeanor and circumspect

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\(^{70}\) Miller, Police Function, p. 293.

\(^{71}\) Interview, January 29, 1981.

\(^{72}\) Forty-one percent of those questioned approved of Rizzo's handling of the 1978 incident.
in carrying out their duty. 73 It is held here that the absence of guidance in the use of deadly force in 1978 led to the use of excessive military power in 1985. The bomb that endangered an entire neighborhood was "... wanton disregard for human life." 74 Contrarily, it was held to be "... a sound, conscious decision ... by all the experts [and] professionals ... (t)he unexpected part of that was the fire itself." 75 The background to which such a resolution could be made will be offered through the history and status of deadly force. The activities on May 13, 1985 will be outlined in order to coherently analyze and illustrate the ineffectiveness of the MOVE Commission as a mechanism to oversee misguided police authority. Finally, the role of a Black a mayor in the aversion to or abatement of police brutality will be noted.

The only criminal issue more pertinent than capital punishment is that body of law which justifies homicide by police officers; thereby rendering execution without due process of law. One reason that this street level justice is allowed is due to the dangerous aura given to policing.

73 Terry, Policing Society, p. 93.


However, it has been found that police are "six times more likely to kill than to be killed in the course of their duty," also, the popular conception of the dangerous nature of police work has been exaggerated. The term used to identify one that has been slain by the police is "decedent," reference being made to the dual role of victim and offender as the slain violated the law. There is a disproportionate impact of executions without trial on Blacks who account for one half of persons killed; yet they comprise 12 percent of the population. Some argue that this is not a result of racism but from "... community characteristics such as the high general rate of violence in the inner cities."

Prior to the fifteenth century, felonies were punishable by death. The rise of institutions to house those guilty of felonious crimes led to long prison terms as opposed to execution. The police began using revolvers in the 1850s after criminals began using them due to the availability of army revolvers after the Civil War. The rearmament of and increasingly hostile urban society led to


\[77\] Ibid., p. 226.

official use of revolvers by the police to shoot fleeing suspects who were posing no immediate threat. It has been found that over the years the number of crimes considered felonious has been increasing while the use of the death penalty was contracted to treason and crimes endangering life. These changes had a direct effect on the number of situations in which a police officer could kill without trial.

The use of deadly force has been challenged as a violation of the Eighth Amendment's cruel and unusual punishment, the due process clause of the Fourteenth Amendment, and unreasonable seizure of the Fourth Amendment. In Mattis v. Schnarr the court held that deadly force does not violate equal protection because "... (T)he activity herein is not constitutionally protected as there is no constitutional right to flee to prevent arrest. The burden the statutes impose is on flight, not on life." The historical legalities surrounding the use of deadly force lead to the conclusion

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80 Sherman, "Police Homicide," p. 75.
that the only appropriate action is to govern its use.\footnote{Mattis v. Schnarr 404 F.Supp. 643 (1975).}

It has been found that Blacks are more likely to be shot in cities where regulations relating to police use of deadly force are vague as opposed to areas with more stringent rules.\footnote{Box, Power, p. 82.} The police do confront violent situations and must protect their own lives and guard the safety of others; therefore, the use of deadly force in a situation of self-defense is highly legitimate. The problem is that in the majority of cases the victim is weaponless, usually in flight from an arrest or merely a victim of an officer's miscalculation. The guiding rule of felony is used but when an officer is in the midst of an immediate threat and has to decide whether to employ force, he will not consider if the conduct is a misdemeanor or a felony.\footnote{LaFaue, Arrest, p. 214.} In fact, "... police seem uncertain of the nature and extent of their authority to use force in making an arrest. This is partly due to lack of explicit guidance from the law itself."\footnote{Ibid., p. 209.}

Another problem is that legal decisions pertaining to policing rarely are communicated to the officer on the street and/or have little effect on changing daily routine.
In this case, Tennessee v. Garner and Memphis Police Dept. v. Garner, the court ruled that the police may still use deadly force to apprehend felons if it is necessary and the officer has "probable cause to believe the suspect poses a threat to himself or others." Justice White held that the police may not seize an unarmed suspect by shooting him, as it would violate the Fourteenth Amendment ban on unreasonable seizures. Although this decision overturned statutes in about twenty states that gave the officers broad discretion, to shoot fleeing suspects, it left a loophole which allows for the continuance of such practices, i.e., the subjectivity of the officer to determine if this suspect "appeared to be armed and dangerous." Most police manuals fail to distinguish which felonies are in fact dangerous enough to warrant the use of deadly force.

Overall, the rules governing the use of deadly force are vague statements housed in police department manuals that in most cases are not correlated with any standards of punishment for violation of said procedures.


88 "The Supreme Court Rules on Deadly Force," Newsweek, April 8, 1985, p. 87.

89 Binder and Scharf, "Violent Police," p. 11.
In determining whether a shooting was justifiable, a balancing test is used of the state interests and the right of the individual. If it is found that the state's interest was served, i.e., the protection of society, the killing is justified and is thus deemed more important than the individual's right to a trial.90

The court has held that police manuals, since they contain rules and regulations guiding the activities of a public agency, have the effect of a statute and must be adhered to.91 Justice Neumann based his decision that the manual must be upheld in order to prevent officers from making arbitrary field decisions. The role of the manual is very significant in that violation of said rules of a public entity carries with it tort liability.92 In Pennsylvania, the newly revised rules concerning the use of deadly force are summarily as follows:

He is justified in the use of any force which he believes to be necessary to effect the arrest and of any force which he believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using deadly force only when he believes that such force is necessary to prevent death or serious bodily injury to himself or such other person, or when he believes both that:


(i) such force is necessary to prevent the arrest from being defeated by resistance or escape; and
(ii) the person to be arrested has committed or attempted a forcible felony or is attempting to escape and possesses a deadly weapon, or otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay.93

With this guide as the force of law in place, over 10,000 rounds of heavy caliber ammunition was shot into the MOVE residence on May 13, 1985. The inhabitants had not committed a felony nor were they attempting to flee arrest, in fact six of the persons were children. In the aftermath, six adults and five children were killed.94

The six dead adults are: James Conrad Hampton, age 36; Theresa Brooks Africa, age 26; Raymond Foster Africa, age 50; Rhonda Harris Africa, age 30; Frank James Africa, age 26; Vincent Leapheart, age 54. The five dead children are: Tomaso Africa, age 9; Katricia "Tree" Dotson, age 13-15; Zenetta Dotson, age 12-14; Delicia Africa, age 11-12; Phil Africa, age 11-12.

The Siege

The bombing and burning of Black neighborhoods is not unique in the history of Blacks in America. As noted in Chapter III, burnings of Black areas throughout the

94Margot Harry, "Attention MOVE! This is America" (Chicago: Banner Press, 1987), p. 73.
history of Philadelphia was an opportunity to riot. The closest corollary event to that in Philadelphia has to be the race riot in Tulsa, Oklahoma on June 1, 1921. It was during this incident that a bomb was dropped in the Black section which ignited a fire that engulfed thirty-five city blocks. As the fire raged on, local officials observed and took no action to extinguish it.95

The events leading up to the tragedy of May 13, 1985 are complex only in that they lend to different interpretations. MOVE began to reinforce their house by boarding up the windows and other openings, a bunker was then built on top of the house which was heavily fortified. MOVE began to use the bullhorn to demand that the city negotiate the reconsideration of the conviction of the MOVE nine.96 The Mayor holds that he was unable to negotiate with MOVE, now deceased members had held that the Mayor refused to negotiate with them.97 Charles Bowser holds if it was any other person or group that the Mayor and city officials would have made an attempt to review the demands.98 Members of the Osage Avenue community had


97Harry, "Attention MOVE!" p. 39.

98Charles Bowser, Special Investigation Commission Report, p. 6. Note: This opinion was excluded from the official MOVE Commission report.
pressed the city to do something about MOVE in their area, little did they know they were merely pawns used by MOVE to force city officials to review the convictions and by the authorities in their planned assault to rid Philadelphia of MOVE forever.99

Mayor Goode had been aware of the MOVE members on Osage Avenue and was alerted to the neighbors' complaints three and a half years prior to the incident.100 One year before the confrontation Goode began the process of formulation of an overall strategy to evict the members. Goode had characterized the group as urban guerrillas bent on psychological warfare. "MOVE [is] dedicated to the destruction of our entire way of life."101 The Mayor contends that he adopted a hands-off policy that had evolved from preceding administrations. This forbade any city inspectors onto the MOVE property or any contact being made with them other than through the police.102 That such a policy existed was refuted by former Mayor William Green


100 Ibid. Blacks were divided on the question of negotiations as opposed to 83 percent of whites that held violence could not have been prevented.


who held that "(a)llowing a MOVE buildup was dangerous. . . ."\textsuperscript{103} City officials from the various departments ofLicenses and inspections, Water and Sewer, Human Services, and Parole all testified that they were instructed not to interfere with any operations concerning MOVE. The major justification for the military assault on MOVE was the bunker affixed on the roof; however, the city, through Licenses and Inspections, could have issued a stop-work order one year before, which would have averted the entire incident.\textsuperscript{104} It is clear that the city was stalling for the appropriate time to launch an assault that was planned in May 1984.\textsuperscript{105} The Mayor then gave former Police Commissioner Gregore Sambor and former Managing Director Leo A. Brooks, a retired thirty year major general in the U.S. Army, his authority to implement an overall plan to safely evacuate the house.\textsuperscript{106} Sambor then instructed now retired Sergeant Herbert Kirk to develop a plan which included the use of water to prevent anyone from emerging from the roof and an entry device to penetrate the roof to allow tear gas to be deployed. Such entry devices were tested a number of times before the appropriate one was

\textsuperscript{103} Ibid.

\textsuperscript{104}"MOVE Transcripts," testimony of Raymond Tate former Commissioner of Licenses and Inspections, sec. C8.


\textsuperscript{106} Ibid., sec. C11.
found.  

On May 10, 1985, Sambor met with Fire Commissioner William C. Richmond, FBI representatives and two dozen top police officials to develop what Sambor characterized as "... the most conservative, controlled, disciplined and safe operations we could devise." Here, the legalities involved in using the fire department should be injected. The courts have held that the fire department as an instrument of the state have to perform said duties. Furthermore, they are immune from any type of liability in the performance of difficult and urgent duties; ergo, the fire department can be used in military offenses without fear of recourse. The plan as developed by the officials, submitted to and approved by the Mayor, was: to execute five warrants for the adult members, use of water and tear gas to force MOVE out, and the use of explosives to put holes in adjoining homes to dislodge tear gas.

In the early morning of May 13, over five hundred people were evacuated from 125 houses as the police suspected that gunfire might be used in the evacuation of MOVE. There were SWAT forces, seventy-seven police

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actually involved in the assault, and hundreds of police and fire officials involved in other functions such as crowd control, backup, etc. The environment was that of a war zone, tense, unsafe, and very intimidating. Many officers there were also involved in the 1978 siege including one that was tried for the beating of Delbert Africa. Mayor Goode had said that he asked Commissioner Sambor to hand pick the officers exempting those that participated in the 1978 incident that may have some residue of negative emotions, Sambor did not recall that. The police for the most part chose their own artillery which leads to the theory that they were "... invited to do whatever they decided was necessary without supervision or direction." Sambor testified that he "... did not restrict the type of weapon that was to be used." The decision on weaponry was made by the tactical division and the firing range staff. Sambor did add that he thought the weapons were, in fact, inappropriate for that operation.

A police report issued after the assault indicates that the cops were equipped with a powerful arsenal. Sixteen cops were assigned M-16s. Thirteen cops had 12-gauge shotguns with deadly 00 buckshot; two others were armed with .22 caliber rifles equipped with silencers; and there were also

111 Ibid., sec. Cl4.
114 Ibid., sec. Cl4.
Browning automatic rifles, 30.06 rifles with scopes, and 357 magnums on hand. Seven others were equipped with Uzi submachine guns; there were two M-60 machine guns and one .45 caliber Thompson machine gun. There were also two .50 caliber machine guns with arms-piercing ammunition ordinarily used to take out jeeps or trucks. To top it off, there was a 20mm antitank gun. Significantly, many of these are war-fighting weapons and are not normally found in city police department arsenals.

The Commissioner over a bullhorn ordered MOVE to vacate the premises; MOVE retorted with words that led officials to believe they were not going to leave peacefully. At that point tear gas was used followed by automatic gunshots. Sambor testified that the gunfire came from MOVE first; however, no automatic weapons were retrieved from the area.

The assault ensued with water from deluge guns, tear gas, explosives, one of which blew the entire front porch area off, and ten thousand rounds of ammunition. The police were then concerned that the bunker, still in place, gave MOVE a strategic advantage and their plan was to explode a hole in the roof and remove the bunker. Officer Klein composed the explosive devices utilizing Tovex TR2 and one and a quarter pound block of C-4; a consultant later testified that double that amount was actually used as Klein did not believe the amount was sufficient. The bomb was then placed in a satchel and

115 Harry, "Attention MOVE!" pp. 44-45.
taken to a police helicopter where it was dropped on the roof of the residence.\textsuperscript{117} An explosion followed that merely shook the bunker and for a moment it was then considered to drop a second explosive, but the fire started.

The tragic decision was then made to "let the bunker burn" by Commissioner Sambor, in which not only MOVE, but an entire community was engulfed in flames while the officials looked on. Their rationale was that they believed MOVE was shooting and they did not want to endanger the lives of the firefighters. MOVE was trying to escape the inferno but the gunfire from the officers made them retreat to a burning building for their own cremation.\textsuperscript{118} Sambor held that he did not believe that the decision to let the area burn presented any real danger to the occupants. He added that he did not try to find out why water was not put on the fire after the bunker was dislodged "(b)ecause it (was) not (his) job."\textsuperscript{119} The provision of fire fighting apparatus and water supply is exclusively for public purposes, thereby a municipality is exempt from any liability for failure to extinguish a

\textsuperscript{117}Anderson and Hevenor, \textit{Burning Down the House}, p. 144.


\textsuperscript{119}"MOVE Transcripts," sec. C16.
fire.  

The aftermath of this incident divided opinion nationwide. The action was commended by the likes of the FBI Director, Attorney General Edwin Meese III, and Los Angeles Commissioner Daryl Gates. The Black community was split, the majority of those outside the Philadelphia area were appalled while many Philadelphians accepted the action of their Mayor. Due to the uneasiness of Philadelphia and its community at large, Mayor Goode, after taking full responsibility for the incident, appointed a Commission to investigate the actions of those involved.

Commissions have been formed in this country, usually in the aftermath of some type of tragedy or scandal with the purpose of fact-finding to array the fears of the public and preempt the spread of rumors. There are basically two functions of the Commission, investigatory and advisory, the MOVE Commission fulfilled both of these roles. Other than the Knapp Commission that was appointed in 1970 to investigate police corruption in New York, there was little use of public inquiry commissions at the local level. The Mayor had used his implied authority as

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121 Harry, "Attention MOVE!" p. 16.
123 Carl E. Singley, "The MOVE Commission: The Use of Public Inquiry Commissions to Investigate Government Misconduct and Other Matters of Vital Concern," Temple Law
granted by the City Home Rule charter to establish the Commission as he may appoint persons to act in an advisory function, to receive and investigate complaints and his overall responsibility to conduct executive and administrative work towards the enforcement of law.\textsuperscript{124}

The Fraternal Order of Police challenged the legality of the Commission on the grounds of the Mayor's authority to establish; its subpoena power and its exact nature which would determine the extent that form rulemaking procedures applied. All City employees were asked to cooperate with the Commission by supplying information and testifying if necessary. The Commission was granted subpoena power in order to compel noncity employees to testify. The Philadelphia Court of Common Pleas had denied the request for an injunction by the Fraternal Order of Police against the Commission. The FOP hindered the investigatory function from the beginning. After losing the bid to stop the hearings, they instructed the officers involved to take the Fifth Amendment as they did not know if what they said in the hearings would be used against them in future criminal proceedings.

Regardless of the rationale used in its origin or the obstacles it encountered, some still held that the

\footnotesize{Quarterly Vol. 59, no. 2 (1986):305.}
\footnotesize{\textsuperscript{124}Ibid., p. 313.}
Commission proved to be a "unique opportunity for private citizens to participate in the quest for truth as holders of the public trust." Many at the outset felt the purpose of the Commission was to whitewash the crimes of the administration. The composition of the Commission lent credence to this claim as it was made up of legal, business, and managerial factions within the city. It has been found that all the members were supportive of the Goode election and of his administration as was expressed through their heavy donations and verbal support of the Mayor. Some Philadelphians also believed that the Commission was a waste of time and taxpayers' money, as they spent over one million dollars, conducted over one thousand indepth interviews, subpoenaed records of thirty-six city departments, and accumulated thousands of pages of documents. Many still remain mystified by the overall raison d'etre of the Commission in light of their conclusions.

The Commission first concluded that MOVE had evolved into an "authoritarian, violence-threatening cult," this thereby justified the lack of support given to the

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127 My survey found only 35 percent of those polled supported this contention. Sixty-five percent believed that the Commission was instrumental in revealing facts.
group that was evident in 1978 and the tactics used to remove them. The only evidence that such an evolution took place was the erection of the bunker on the Osage residence, and a statement by Louise James in reference to her son that he seemed to be more aggressive and militant in his demands. There was not much else to substantiate their claim of violence, as a matter of fact MOVE had not even brandished weapons as they did in 1978. It was also held that they terrified their neighbors with threats of abuse and intimidation; yet the Osage residents only refer to the sanitation of MOVE and the use of profanity over the bullhorn. These antics and activities are identical to those utilized in 1978.

The conclusions of the Commission seem to indicate that the activities of 1985 were haphazard, poorly planned, and that other means in particular negotiations, should have been employed with the attempt to apprehend the members without a loss of life and property. The Commission reached that conclusion because they believed peaceful apprehension was the goal of the Mayor, federal and local officials. Clearly if that had been their objective, the subsequent tragedy of destruction of MOVE and their children would not have taken place. Sambor testified that he viewed the children as combatants, "The prospect of a mind that could seriously consider armed conflict with nine year old boys and girls is frightening."
The thought that such a mind existed in the police commissioner of a major American city is sobering. 128

The Mayor was found to be "... grossly negligent [as he] clearly risked the lives of those children" Goode, former City Managing Director, known for his efficiency, diligence, and thoroughness in any undertaking, makes it highly unlikely that his actions were those of an uninformed person that happened to act hastily and haphazardly. 129 There were ample opportunities to remove the children from MOVE, as they visited the neighboring park daily on the basis of truancy and questionable child care, but these actions were not taken. It brings to mind the attack on the children in South Africa to prevent the spread of revolutionary ideas to another generation. The Mayor failed to halt the fire as he abdicated his authority to the police and fire officials. Finally, "(t)he plan to bomb the MOVE house was reckless, ill conceived and hastily approved. Dropping a bomb on an occupied row house was unconscionable and should have been rejected out-of-hand by the mayor." 130

The facts disclose that the material used in the

130 Bruce Kauffman, in his "Dissenting Opinion," March 1986, agreed with the amount of force used to subdue MOVE, in addition to 50 percent of the whites questioned.
bomb were provided by the Federal Bureau of Investigation months before its actual dislodgement and should not have been in the custody of urban law enforcers. This gives further credence to the theory that the 1985 incident was a well-planned tactical procedure to annihilate MOVE. The Commission further deemed the use of force by the police as excessive, in addition to the use of fire as a tactical weapon was unscrupulous.

In fulfillment of its role as fact-finder, some conclusions had to be drawn and by asserting a moral judgment on the incident, one would argue that they more than adequately did their job. The Commission then went one step further to make recommendations on how future incidents of this magnitude should be handled.

Recommendations were made by the Commission in six areas: operation of the city government and police department; coordination between the police and fire; local response to crisis; laws and regulations; disciplinary action; and further investigation. For purposes here, a few points have been extracted to support the contention that their concern was that in the future such situations should be handled more efficiently. First, a strategic planning process should be engendered in order to monitor all future violent confrontations with emphasis on non-violent recourse. To ensure that the policy comply with the Mayor, a liaison of the Mayor should be assigned to the
police. In addition, the appointment of a Public Safety Board that could review the policies of the police and fire departments should be considered. A policy statement ought to be developed "outlining the limited circumstances . . . for use of explosives. The increased visibility of minorities on the scene of racial incidents may reduce tension. The police department preparation of tactical plans for hostage or barricades should be submitted to the Mayor for review after consultation with federal, state, and nongovernmental experts.\textsuperscript{131} Finally, as a disciplinary measure, the Commission recommended that all city agencies involved, that had initiated internal reviews, resume such a procedure with the goal of "... diagnosing operational shortcomings, instituting corrective actions, assessing individual responsibility and initiating appropriate disciplinary action through standing procedures.\textsuperscript{132}

The consequence of these findings were negligible in that the Police Commissioner and Managing Director resigned before any criminal charges could be filed. The death of the children was deemed as unjustifiable homicide and was referred to a Grand Jury to determine if substantial charges and an identifiable person on which to levy charges for prosecution could be made. The testimony


\textsuperscript{132}Ibid., p. 375.
in Grand Jury investigations is kept secret which hampers public knowledge of said proceedings. However, "the state need only present evidence sufficient to convince them the suspect may be guilty and trial court will do the rest."  

The Grand Jury in Pennsylvania\textsuperscript{134} focused on the dropping of the satchel bomb from a helicopter and the decision to let the fire burn to ascertain whether crimes had been committed. They defined a crime as an act that has a direct causal relationship to a negative result but added that a state of mind of intent to do harm would have to exist to fully substantiate a criminal act. Utilizing such, the Mayor and other officials clearly committed acts that had a deleterious result but they did not possess a destructive state of mind at the time in that they were merely reacting to a situation. It was "... the MOVE members themselves, (that) played such an independent, important and overriding role in bringing about the resulting harm. ..."  

The dropping of the bomb was thereby justified within the realm of the use of deadly force as proscribed by general provisions.  

\textsuperscript{133}Long et al. \textit{American Minorities}, p. 130.  
\textsuperscript{134}As of this writing the report of the federal Grand Jury has not been released.  
\textsuperscript{136}Refer to pp. 226-234 of this study.
officials that made the decision to let the fire burn were exonerated because they did not foresee that MOVE members would make an "irrational" decision to return to the inferno, and in essence commit suicide.

These basic findings were housed in a 279 page report and were accepted by a 16-4 vote after a two-year investigation inclusive of 125 witnesses. Although two police officers perjured themselves on the extensive use of C-4, an explosive chemical, they were spared criminal charges because of the ordeal they had undergone in 1985. The conclusion reached by the Commission that police prevented MOVE members from exiting the burning house was dismissed by the Grand Jury for lack of evidence. Therefore, one of the major contentions of the MOVE Commission as a basis for criminal indictments of the police was thus nullified. Fire Commissioner Richmond commented that the findings of the Grand Jury reaffirmed his faith in the judicial system.\footnote{News report, KYW-TV, 3 May 1988.}

The investigation should have focused on proper procedures by the police Commissioner by the tactical teams that launched the assault and prevented the MOVE members from exiting the premises. In addition to examination of the breakdown of communication, the Police Commissioner and the Mayor should have been held legally responsible through
litigatory efforts for premeditated murder. The only real tragedy in the eyes of the Commission and city officials was the destruction of property which was redressed through construction of new homes by the city. MOVE was held responsible for their own death through their efforts as evidenced by the trial of Ramona Africa after the event, who was sentenced for seven years for conspiracy and rioting. MOVE was referred to as terrorists and defined as perpetrators as opposed to victims.138

Black Mayor

in the city of bells and love
for certain brothers,
a negro
plays white and mayor,
makes history in america
by disregarding the bill of rights
while dropping bombs on
who he used to be.139

The role of Black elected officials has historically been a sign of Black advancement in this system as a means to address the interests of a voiceless minority. History has shown however that most Black elected officials are virtually powerless in the advancement and protection of Black people either through the nature of the infrastructure and/or lack of inclination

138 Harry, "Attention MOVE!" p. 143.
to do such. Indigenous officials throughout the Third World have been used as a smoke screen to hide the continual rape and exploitation of a people. They obfuscate the major issues and lead the people into a stupor of confusion as they look for these leaders to deliver them in the face of increasing oppression. In fact, Black mayors have a detrimental affect on community agitation for change as faith in the system increases. Such is the case in Philadelphia, as evidenced by the conspiracy of silence in the aftermath of a tragedy. Most Black Philadelphians gave Goode a pledge of their confidence and support, he also managed to gain the support of whites who viewed him as "not so bad" after all. Daryl Gates of the Los Angeles Police Department, said that Goode is an "outstanding mayor" and an "inspiration to the nation."

It has been believed that Black mayors could be used to end the problem of police brutality by making police officials accountable for the actions of their subordinates. However, the record of Black mayors

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140 Moss, Black Political Ascendency, p. 141.
141 Comment by Florynce Kennedy, in Harry, "Attention MOVE!" p. 191.
143 Remark of Sam Evans, head of Black Family of Leaders in Lynn Washingtons' "Police Abuse of Citizens is Widespread," Philadelphia Tribune 7 May 1977, p. 16.
throughout this country reveals their lack of control over the policing functions. Carl Stokes, former Mayor of Cleveland, noted efforts to control police as a failure. Police defiance and racial practices toward the Black community that even he as mayor was unable to prevent.144 In Los Angeles, Mayor Bradley has had little control of one of the most abusive police forces in the nation as evidenced by massive litigation against their tactics. In this case, Mayor Goode abdicated his authority and turned the matter over to the police without specific guidance and/or direction.145 "If the mayor does not have effective control of the police the people do not have effective control of the police. If the people do not have effective control of the police, freedom is dead."146

Goode took full responsibility for the bombing and burning as ". . . almost in a fit of pride, or almost like dancing on the graves of the children and the people who had burned to death and had been shot," he then added that ". . . he would do it again."147 Justice would have been more properly served to the race if there had been a known


145 Bowser, "Dissenting Opinion," p. 11

146 Ibid., p. 22.

147 Response of C. Vernon Mason, in Harry, "Attention MOVE!" p. 197.
racist at the helm. 148 Since Goode is Black, the acceptance of this action was forced on the people as they had to "... swallow this message of terror without protest and resistance. 149 The confusion spread by this incident and the divisions within the Black community are evidenced through lack of emphasis by the press on the heinous nature of this crime in a free society.

In order to gain insight into this observation the opinion of Philadelphians was assessed through a survey. In defining the overall nature of MOVE, the majority of both whites and Blacks viewed them as a disruptive, radical cult, only 20 percent of the Blacks saw them as a peaceful, back to nature organization. It was believed by the writer that the media was largely responsible for instigating the conflict through the negative portrayal of MOVE that the public absorbed as reality. All of the whites disagreed with this position; yet one-half of each group based over 80 percent of their opinion on media accounts. This query was based on the presupposition that public perception was a primary criteria in how the group was treated.

MOVE dominated the scene in Philadelphia and paralyzed efforts of Blacks to focus on other political

149 Response of Carl Dix, in Harry, "Attention MOVE!" p. 194.
issues in 1978 and again in 1985.\footnote{Comment by Florynce Kennedy, in Harry, "Attention MOVE!" p. 190.}

In 1978 the Black community was more willing to aide MOVE in their struggle with city officials as opposed to 1985 when that tactic had been almost completely abandoned. This proposition is difficult to test because in 1978 Rizzo was mayor and his name was synonymous with police brutality.\footnote{One hundred percent of Blacks agreed to this position in survey yet 78 percent of whites disagreed.} There was strong anti-Rizzo/police fervor amongst those who mobilized after the barricade was erected. The historical environ and the disadvantage of a time lapse clouds the cause of the MOVE/police encounters, 87.5 percent of Blacks held MOVE's behavior was a reaction to police provocation as contrasted to 80 percent of whites who believed MOVE had threatened public officials as a means to exhort their philosophy and gain attention. In 1985, only 44 percent of Blacks surveyed held that violence could have been avoided through negotiations; whereas in 1978 the major effort of Black community leaders was through negotiations.

Conclusion

For those who regard litigatory pursuits as the effective vehicle to redress police misconduct, the eviction of MOVE constituted excessive force and a
violation of substantive due process through unreasonable seizure. However, the rule of law is inapplicable to them as they are considered an aberration in the realm of human behavior and are certainly to blame for the circumstances of their fate.

MOVE was somewhat progressive in the sense that they had brought attention to the injustices of the capitalist system. However, this effort was counteracted by the negative portrayal of their personal habits which made their critique appear as some form of psychosis. In addition, MOVE's appearance as an aberration of sorts, created a vacuum in the transformation and applicability of their critical philosophy and termination to the Black community at large. By 1985 their focus was constricted to the fate of their membership which made them static and ineffective. MOVE of itself is an example of reactionary politics of some Black organizations; however, within the historical legacy of violence on Blacks, the MOVE experience highlights those methods used to suppress recalcitrants.

The efforts lodged against MOVE culminated in a military attempt to stifle resistance to the status quo. It also served as a strong message to any future contemplators of rebellion. The MOVE massacre is not unique behavior of the Philadelphia police and fire fighters, only in the methods employed. "The fact is that
no one controls the Philadelphia police except the Philadelphia police."\(^{152}\)

\(^{152}\)Remark by Stanley Vaughn, in Harry, "Attention MOVE!" p. 204.
SUMMATION AND CONCLUSION

The purpose of this study was to examine the historical evolution and status of police violence on Blacks in this country. The hypothesis under investigation was whether brutality is sanctioned through legal mechanisms that appear to provide punitive and preventive measures to end such systemic abuse. The determinant variable, sanction, was tested through the absence of misuse of existing guidelines governing the use of force and litigatory efforts that favor the violators as maintenance of the status quo. This theory was illustrated by an analysis of general policing and brutality in Philadelphia which showed the legal mechanisms, internal police structure, and external vehicles implanted to oversee police as mere reform efforts to provide an illusion of eradication. The significance of this total endeavor, particularly MOVE, was to explicate the continuing trend toward nullification of protection from expansive police power and the extent of force as a commentary on future revolutionary movements.

The theoretical premise as developed in the review of the literature was the dialectical nature of Blacks and violence as prescribed by the economic order of capitalism.
It was held by many that the police function was linked to the maintenance of the socioeconomic order to repress and control labor, legitimated by the politicolegal structure. There is an "... umbilical connection between formal legal rationality and capitalism; indeed, that it is precisely the combination of formal legal equality and extreme economic inequality which is the distinctive characteristic of the liberal state."\(^1\) The function of policing as a tool of the state is evidenced by the historical efforts by the working class to control police which only "worked to restrict anti-working class police activity, never to redirect the police against the bourgeoisie."\(^2\) Crime control tactics work to doubly exploit the workers as they are not protected from crime and they are closely monitored by the police.\(^3\) Some members of the police force have actually joined the lumpens as professional criminals which further inhibits any inclination towards the elimination of crime in these areas.\(^4\) The problematic of the demand of increased police protection, coupled with increased protection from the


\(^3\) Ibid., p. 236.

\(^4\) Ibid.
police, makes the likelihood of resolving the tension between civil order and civil rights slight. Particularl, if, as it has been argued, that depressed economic conditions precipitate violence which serves to proliferate police violence, than wider socioeconomic issue will have to be addressed in order to solve the overall problem of abuse.

In the second chapter, the status of police abuse was determined through the actions of the federal government as provided by Supreme Court decisions, legislation, and lack of executive initiation on this issue. The codification of Black rights as an amendment is verification of the fact that Blacks are merely an addendum to this country's constitutional foundation. This tenet is reflected by the myopic view of Blacks by the court, especially the offender, as superfluous to this society, evidenced by the lack of prosecution of those that commit violence on Blacks. This theory is further substantiated by the constraints on litigation as a means to actualize civil rights in a society that regards the juridicopolitical process as qualifiable democracy. The tests used by the courts mirror their perception of Blacks, for the measurement of the extent of brutality and which

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evidence should be included are moot points as the cause and nature of such illegalities should be abolished.\(^6\) The Rizzo ruling barring injunctory relief reflected the court's unwillingness to view police misconduct as an institutional, as opposed to an individual, problem. There is also a need for an understanding of the internal structure and mechanisms through which the "... structure induces patterns of constitutional violations."\(^7\) The failure of the court in formulating specific rules to discern police brutality and the limitations on sec. 1983 which cannot be invoked to compel officials to implement reform has exemplified the absence of a constitutional imperative to eliminate abuse.

All efforts aimed at attaining relief are positive but working through the system will not be totally effective for its goals are diabolically opposed to the interests of minorities. This decade has not only witnessed the erosion of civil liberties by an ultra conservative court in this area but also the limitation of access to federal court. Some civil libertarians have stopped taking cases to the Supreme Court and are now more inclined to stay in state courts, that were once avoided,


\(^7\)Ibid., p. 532.
as they are more hospitable to civil rights claims. Black petitioners have found that they may fare better through legislators, state houses, and lower courts for answers to this unending battle. ⁸ If the federal government would make an effort to intervene and address racially motivated violence then that would demonstrate a federal commitment to stem the tide of racism for the goal of complete freedom to all of society. ⁹

Other avenues for redress were examined in the third chapter that focused on police brutality in Philadelphia proper. It was found that the civilian review board, District Attorney efforts, and U.S. v. Philadelphia were acts taken by the ruling forces to further manipulate Black oppression for political advancement. The grass root efforts yielded some positive results; yet, there is a current lull in activities even after the MOVE massacre, which speaks to obfuscation of the issues and apathy among the majority.

MOVE exemplified that not only will the system react to rebellion by a show of force, through sophistication of tactics, but also the consolidation of federal, state, and local levels to counteract it. It also

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served as a message to future rebellions, if the intensity of a rebel can be adjudged by the force used to repress, the fate of MOVE was clear to any semblance of a revolution. "Every instance of collective violence confronts political authorities with certain crucial decisions--involving varying modes and degrees of repression and/or reform which help determine the future course of the protest "'below.'"  

By way of prescriptive remedies, all efforts towards eradication of brutality have some redeeming value in that quantitatively they may add up to a qualitative change. In litigation, what could be tested is a class-based institutional brief which would concretize a linkage between department hierarchy and daily patterns of police behavior. The perspective of the judiciary needs to be altered to relate the "... requirement of the Equal protection doctrine to the organizational realities of police work."  

One misinterpretation of the court has been that federal intervention in this area would impede upon the autonomy of the states. What is needed is "creative federalism ... that would help police social and economic problems that neither private action nor state

10 Balbus, Dialectics of Repression, p. 2.

and local governments can solve alone."12

Departmental policy making and police accountability continue to be the focal points of reform and encompass the major legal issues involving police. The authority of the police to select enforceable laws, gain access to information about violators and violations, disciplinary measures, and constraints on personnel recruitment practices need to undergo scrutinization and subsequent change.13 There is a mistaken belief that individualized justice produces a more equitable result, however, it has only equated increased oppression of Blacks due to the discretion of law enforcers.14

Police investigations through internal review boards are ill-equipped to redress concerns of the complainants. The overall effectiveness of civilian review boards has been difficult to determine due to their short life term and subjugation to police commanders. One critique of such boards is their lack of professional knowledge on policing; however, even the police are miffed on their overall role and extent of power. Acker has


suggested the use of social scientists to examine law enforcement to determine standards relevant to their prescribed function which would lead to the amelioration of many problems.15 Chicago's police made a step towards the unification of civilian review with professionals in their Office of Professional Standards which hired civilians, trained them on policing and constitutional rights, and assigned them the task of adjudging police misconduct. Yet, "the final decision on discipline is left to the Superintendent."16 The viability of review boards is dependent upon the local governing apparatus, its relation to, and the attitude of the police, but most importantly, the extent of community concern.

The disposition of the Black community is the most important determinant for redress and eradication of abuse. The evidence of crime in the Black community cannot be used to justify abusive tactics used by the police. Although Blacks are perturbed with increasing street vice, the community must not relinquish all control to policing; for, violence on criminals has a spill-over effect on the average law-abiding citizen. Therefore, the full


parameters and nature of this problem must be addressed. Some Blacks need to be deprogrammed from the bonds of cultural imperialism and break the chains of mass consumption to assess their true status in this system. The very nature of this study shows the citizenship of Blacks in this country, with all the rights, privileges, and protection thereof is as questionable now as it was when Dred Scott approached the bench. The mystification of the Black bourgeoisie heralded as individual mobility has projected the illusion that Blacks are accepted as full fledged Americans. Blacks need to be educated on continual exploitation and convert the aims of existing organizations to a revolutionary basis to effect civil treatment. The accommodationist view that focuses on the government to acquiesce liberty has to be abandoned, if only in part. Blacks have to look to themselves for an end to violence and to advance the cause of humanitarianism.
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APPENDIX

RESIDENTIAL SURVEY ON POLICE BRUTALITY
IN PHILADELPHIA AND MOVE

The following questionnaire has been designed for use solely in a research paper. It would be helpful in collating data to know more about the participants from the following questions:

A. Please indicate street address.

____________________________________________________

____________________________________________________

B. Please give number of your political ward.
WARD ______________________

C. What is your age?

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<td>36</td>
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<td>2. 31 to 45</td>
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D. Your sex.

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<td>64</td>
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<td>1. female</td>
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<td>36</td>
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<td>2. male</td>
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E. What is the highest level of formal education you have completed?

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1. Some high school
2. High school graduate
3. Some college
4. College graduate
5. Advanced degree
6. No formal education

F. Ethnic background.

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<td>13</td>
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<td>b.</td>
<td>13</td>
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<td>c.</td>
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1. Afro-American
2. White
3. Hispanic
4. Other Lithuanian

G. What is your political affiliation?

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1. Democrat
2. Republican
3. Socialist
4. Independent
5. Non Partisan

H. How long have you lived in Philadelphia?

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<td>4.</td>
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<td>58</td>
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1. One to three years
2. Four to seven years
3. Eight to eleven years
4. Twelve and over
1. In regard to police abuse, i.e., use of excessive force by the police, please indicate whether you agree or disagree with the following statements. Check the box in the appropriate column.

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<tr>
<td>Agree</td>
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<td>10</td>
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<td>78</td>
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<td>90</td>
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- a. Abuse cases only involves people suspected of crimes.
- b. The problem of abuse involves a large number of people.
- c. Minorities are primarily involved in abuse cases.
- d. Police abuse was problem during Rizzo's tenure as police commissioner.
- e. Frank Rizzo's name is synonymous with police abuse.
- f. Media is responsible for exaggerating abuse issue.
- g. Police abuse is no longer a concern.

2. What percentage of your opinion of MOVE is based on media accounts?

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3. For each definition of MOVE please check the one that is closest to your opinion of what the group is.

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<th>Black</th>
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<th>a. Peaceful back-to-nature organization</th>
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<tr>
<td>20</td>
<td>0</td>
<td>b. Disruptive radical cult</td>
</tr>
<tr>
<td>60</td>
<td>83</td>
<td>c. Religious cult</td>
</tr>
<tr>
<td>0</td>
<td>0</td>
<td>d. Terrorist organization</td>
</tr>
<tr>
<td>10</td>
<td>0</td>
<td>e. Other (please describe)</td>
</tr>
<tr>
<td>10</td>
<td>17</td>
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</tbody>
</table>

4. In 1978, a barricade was constructed in Powelton Village to force MOVE members from their home because of health code violations. Please indicate if you agree or disagree with the following statements relating to the incident.

<table>
<thead>
<tr>
<th>Black Agree</th>
<th>Black Disagree</th>
<th>White Agree</th>
<th>White Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>50%</td>
<td>50%</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>56%</td>
<td>44%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>40%</td>
<td>60%</td>
<td>44%</td>
<td>56%</td>
</tr>
<tr>
<td>25%</td>
<td>75%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>87.5%</td>
<td>12.5%</td>
<td>0%</td>
<td>100%</td>
</tr>
<tr>
<td>22%</td>
<td>78%</td>
<td>70%</td>
<td>30%</td>
</tr>
</tbody>
</table>
The police stakeout and use of munitions was a waste of city funds.

5. In your opinion of the televised beating of Delbert Africa during surrender/apprehension, would you say the police

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</tbody>
</table>
| 0%    | 58%   | a. acted accordingly due to the nature of the situation
| 100%  | 25%   | b. overreacted and in fact abused Delbert
| 0%    | 17%   | c. other

6. Concerning Delbert Africa and the manner in which he was apprehended, I think the officers involved should have been

<table>
<thead>
<tr>
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</tbody>
</table>
| 20%   | 38%   | a. left alone as they were only doing their job
| 0%    | 15%   | b. commended for bravery
| 20%   | 32%   | c. suspended from the police force
| 40%   | 0%    | d. imprisoned for aggravated assault
| 20%   | 15%   | e. other

7. In May 1985, MOVE members and city officials had a confrontation on Osage Avenue in which the area was destroyed. Please rank the conditions in the order in which you believe caused the incident: 1 being most important, 2 for secondary importance, and 3 for least important.

<table>
<thead>
<tr>
<th>Black</th>
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</tbody>
</table>
| 22%   | 42%   | a. MOVE's construction of pill box and warlike atmosphere.
| 1%    | 16%   | b. MOVE's demand for release of imprisoned members over the bullhorn.
| 67%   | 42%   | c. Osage residents' insistence that MOVE be evicted.
8. Please indicate whether you agree-or disagree with the following as they relate to the 1985 occurrence.

<table>
<thead>
<tr>
<th>Black</th>
<th>White</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree Disagree</td>
<td>Agree Disagree</td>
</tr>
<tr>
<td>44% 56%</td>
<td>17% 83%</td>
</tr>
<tr>
<td>22% 78%</td>
<td>75% 25%</td>
</tr>
<tr>
<td>88% 11%</td>
<td>18% 82%</td>
</tr>
<tr>
<td>0% 100%</td>
<td>50% 50%</td>
</tr>
<tr>
<td>56% 44%</td>
<td>64% 36%</td>
</tr>
<tr>
<td>50% 50%</td>
<td>73% 27%</td>
</tr>
</tbody>
</table>

- a. The violence could have been avoided through negotiations.
- b. The fire department was used to perform police functions.
- c. Police overreacted in the use of firearms.
- d. City acted accordingly due to nature of the threat.
- e. Mayor Goode relinquished his decision making powers to others.
- f. MOVE Commission was instrumental in revealing facts in order to make the city accountable.