

## The Police Are the Punishment

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“It was not a desire for vengeance, but a desire for justice,” the lawyer told the court at a trial I attended a few months before I started my ethnographic research on urban policing in the *banlieues* of Paris.<sup>1</sup> The defendants were seven police officers indicted for acts of violence that had occurred a year earlier. The photographs of the plaintiff, a man from Turkey, whose swollen and bruised face appeared on the front page of a Turkish monthly soon after the incident, left little doubt about the brutality he had endured at the hands of the law enforcement agents. Based on the complete case file given to me by the public prosecutor after a conversation we had later on, I could piece together the story of the unfortunate man.

On New Year’s Eve, the local police station had received a phone call from the resident of a housing project who was reporting a scuffle that had started at a family party after intruders had tried to get into the community hall where it was held. It was late in the night. The officers on duty, who had been celebrating the holiday and were by then fairly intoxicated, rushed to the scene ten miles away, lights flashing and sirens wailing. More than two dozen agents from neighboring precincts hurriedly joined them. All were heavily equipped with riot gear, hel-

This essay is based on the keynote lecture that I gave at the conference “Policing the City: Violence, Visibility, and the Law,” at Stanford University on March 30, 2017, but I have almost entirely rewritten it. I am thankful to Caren Kaplan and Andrea Miller for their helpful comments on an earlier version. I also express my gratitude to the commissioner of the precinct and the prosecutor of the jurisdiction for having facilitated the research on which this essay is based, the former by giving me permission to conduct fieldwork for fifteen months with the police of his district, the latter by providing me the hundreds of pages of the case file of the court case reported here. I finally want to manifest my appreciation to the officers for their patience and candor as they have accepted my presence with them on patrols during these many days and nights.

1. The trial and the events that led to the prosecution of the officers are narrated and analyzed in detail in *Enforcing Order: An Ethnography of Urban Policing* (Fassin 2013).

nets, and batons. When they arrived on the premises, the project was calm, with only the distant voices of a group of people conversing near the place where the party had taken place. At the sight of the sudden and impressive deployment of the police force rushing into the alleys, these bystanders started to run away. They were immediately chased by the agents. After a few minutes of stampeding and shouting, which generated angry protests from inhabitants at the windows of their apartments, the meager prey was brought back to the cars and taken into custody: two men, one of Caribbean origin, the other from Turkey. The former was apparently walking away from the community hall, the latter was also quietly returning home after another family gathering. Both were badly hurt, the Turkish man being later diagnosed at the hospital with a perforation of the eardrum, periorbital hematomas, and acromioclavicular strain.

It appeared during the investigation conducted by a judge during the following months that the two men had experienced similar physical assaults. As they were trying to flee from the aggressive and inebriated officers, they were brutally stopped, pinned to the ground, beaten with batons and sprayed with tear gas. Even after they had been handcuffed, they continued to be roughed up, punched, and kicked, first in the street, then in the car, and eventually at the station. Rather than being taken to the hospital for a medical examination, they were initially held in custody. Only the following day were they permitted to see a physician, who wrote impressive forensic reports. The accusation of insulting an officer and resisting arrest that was filed against them should have led to an immediate appearance trial and a probable prison sentence, but, as the public prosecutor told me, because of the international resonance of the incident, the Ministry of Justice requested that, in contrast with what usually happens in similar situations, this case of police violence be treated in an exemplary manner by the judicial system. In fact, only the Turkish victim, supported by his community, lodged a complaint, the Caribbean man deciding to avoid the expenses and troubles of a lawsuit.

To affirm that the investigation was a model of fairness would be an overstatement, as all seventy-nine witnesses interviewed were police officers with the exception of a few firefighters; no one from the project was heard by the judge. During the trial, it was revealed that at the beginning of the intervention, the sergeant major had galvanized his troops with this conspicuous encouragement: "We lost the Algerian War. Forty years ago, we chickened out. We're not going to do it again today. Take no prisoners! It's no holds barred!" Despite this acknowledgment by the accused officers, the public prosecutor chose not to consider this cry to be an aggravating circumstance, which should have been invoked if it had been deemed racist or discriminatory. As he told me, the case would have been more

difficult to establish in court, although the aggressive call by the officer in charge of the squad having been uttered as his men were bursting into a neighborhood whose residents were for the most part North and sub-Saharan Africans from former French colonies, its racist meaning and discriminatory implications were blatant.

Partly as a result of this choice, the verdict was lenient, as it is almost always the case when the police are indicted. One officer was acquitted. Six, who had acknowledged their involvement in the assaults, received four-month suspended prison sentences without mention in their criminal record, which meant that the punishment had no consequence on their future professional activity. They were also required to collectively pay twelve thousand euros to the victim for bodily injury and moral wrong. Three years later, however, the Turkish man had still not received one cent from his aggressors, who had in the meantime been posted in other precincts. When his lawyer inquired of the Ministry of the Interior where the officers were then working so as to be able to claim the payment of the damages, the official answer he got from the administration was . . . that it did not know.

In light of these well-documented events, the counsel's statement that the use of force by the officers expressed their "desire for justice" may sound surrealistic. One has to simply imagine the two men being beaten up during their arrest even after having been handcuffed and again roughed up while in custody, while there was absolutely no evidence of their involvement in any wrongdoing and while, moreover, it was not even clear from the testimonies collected on the spot that there had ever been more than a verbal altercation at the party. However, I want to take seriously the lawyer's claim or rather explore the possibility that such violence be thought as ordinary punishment, and therefore as a form of retributive justice.

In the present case, as in many others that I have witnessed or been told of, the punishment takes two forms: physical, with the thrashing in the street and at the station; and legal, with the initial accusation of insulting an officer and resisting arrest. It also often includes a moral dimension, via the debasement and humiliation of the individual arrested. My assertion undoubtedly goes against common-sense, according to which such acts are pure brutalization, although the officers' counsels pleaded that they should be excused in the allegedly warlike context of public housing, as well as against a long tradition of both legal theory and moral philosophy, whose definition of punishment precisely excludes these acts for being outside the judicial realm.

Against these views, I want to examine the retributive dimension of the exertion of violence in policing. Because it is a justified or justifiable practice in the

eyes of many officers, because it is effectively protected by the institution, because it is treated with clemency by the judges, because it may even be encouraged by the state, and perhaps above all because it targets certain populations, namely, low-income categories belonging to ethno-racial minorities—all affirmations that I will develop—I argue that it should be regarded as a form of punishment. Far from being a deviant practice, it reveals that, for what concerns its lower segments, society delegates a significant part of the retributive justice process to the police. This shift of the perspective on punishment has major theoretical as well as political implications.

### The Problem with the Dirty Harry Problem

Such argument is nevertheless not entirely new. If the word *punishment* does not appear as an entry in the indexes of most classics on the police written by criminologists, from William Westley, Jerome Skolnick, and James Q. Wilson to Peter Manning, Albert Reiss, and Jean-Paul Brodeur, the idea of punishment is sometimes present between the lines as a potential manifestation of the discretionary power of law enforcement agents, although it is generally presented as a moral justification of their seemingly deviant practices.

The best illustration of this indulgent interpretation is Carl Klockars's (1980) famous paper "The Dirty Harry Problem." It is inspired by Inspector Callahan, alias Dirty Harry, the hero played by Clint Eastwood in the eponymous 1971 crime thriller directed by Don Siegel. A man of few words and bad temper who has the reputation of dealing with difficult cases his own way, Callahan is involved in the case of a serial killer who terrorizes the city. As the justice system proves incapable of stopping the criminal from committing murders and even releases him because of procedural issues after he has been arrested, Callahan ends up substituting himself for it. Against his superiors' orders, he tails the criminal, at one point uses torture to have him confess where he is keeping a young woman who is later found dead, and finally, after an epic chase, as the man has taken a dozen children hostage in a school bus, shoots him dead. By executing the criminal in cold blood, he thus administers justice: he punishes the odious culprit.

For Klockars (1980: 33), the story illustrates a fundamental dilemma: "Policing constantly places its practitioners in situations in which good ends can be achieved by dirty means." In the film, this dilemma, the insolvability of which is epitomized in the last scene by Callahan throwing his badge into the water of the pond where the serial killer's dead body is sinking, takes an extreme and almost caricatured form as, on the one hand, the criminal is a dangerous and sadistic

psychopath, and on the other hand, both law enforcement and judicial institutions prove to be impotent. Under these circumstances, the viewer is expected not only to feel sympathy for the solitary righter of wrongs but also to understand that the police need to use dirty means for good ends if they want to protect society from crime. Significantly, the more general questions raised by Klockars (39) on the basis of the story concern only the dirty means. Can they be justified as punishment? Should they in turn be punished? But he never challenges the good ends. Even in the less dramatic case of stops and frisks, for which racial profiling has long been documented, he finds arguments to exonerate the officers from their discriminatory practices: “Although the probability of coming upon a dangerous felon is extremely low, policemen quite reasonably take the possibility of doing so as a working assumption on the understandable premise that once is enough.” There is no questioning of the real grounds of such practices, that is, the imposition of a social order targeting racial minorities belonging to disadvantaged neighborhoods. Instead, the official explanation provided by the agents is accepted. This interpretation of policing, based merely on the reproduction of the agents’ justifications, is not infrequent in criminological writings, in particular in the literature on police culture.

Yet, in the fifteen months of my ethnographic research in the largest French police district, where crime rates were significantly higher than the national average, I have far more often observed dirty means for dirty ends, as was the case in the assaults against the Caribbean and Turkish men, than dirty means for good ends, as in *Dirty Harry*’s scenario.<sup>2</sup> But I contend that in both cases, from a sociological perspective, the violence perpetrated—on innocent passers-by or on the serial killer—should be regarded as a form of retribution. The argument that I want to make here is that in the eyes of law enforcement agents as well as, in many cases, from the perspective of their institution, the excessive use of force can find its justification as a legitimate, if not legal, way to dispense justice on the street.

2. The research was carried out from May 2005 to February 2006 and from February 2007 to June 2007 in a district of the Paris region with levels of poverty and unemployment, a proportion of foreign and immigrant populations, and crime rates all significantly above the national average. There were both middle-class residential areas and lower-class housing projects. As was the case in many urban districts, the police were composed of regular officers in uniform patrolling in marked vehicles and of special anticrime squads with plain-clothes officers driving unmarked cars. Although they had somewhat distinct missions, the former covering the entire range of law enforcement activities and the latter being specialized in red-handed arrests, they participated most of the time in the same operations, with the main difference being that the anticrime squad officers had the justified reputation of being more aggressive than their colleagues and also of being more effective in terms of arrest, not least because they provoked youths, especially those from an immigrant background.

In 1979, Malcolm Feeley (1992) published a book that had a profound influence on court studies and soon became a classic in the sociolegal field. *The Process Is the Punishment*, subtitled *Handling Cases in a Lower Criminal Court*, shows that, contrary to common representations of the administration of justice, in the great majority of cases, especially those regarding minor offenses, decisions are made and sentences imposed outside procedural justice. Only one-third of the defendants facing jail time have a counsel. Bails imposed on arbitrary criteria lead to defendants being detained before adjudication twice more often than as the consequence of jail sentences. Plea bargaining rather than adversarial confrontation with prosecutors results in the fact that only a minority of defendants have a fair trial. Costs, both direct, related to the bail, the lawyers' fees, and the court's procedures, and indirect, in terms of time spent within the judicial bureaucracy and risk of losing one's job, imply a profound inequality before the justice system. It should be noted that, the study having been conducted four decades ago, that is, before the hardening of the penal system, the enactment of mandatory sentencing laws, and the further pressure on defendants to accept to plead guilty rather than exercise their right to stand trial in court, most of its findings would look even more valid today.

The crucial conclusion drawn by Feeley is that the pretrial phase, which most of the time is paradoxically not even followed by a trial, is where justice is commonly dispensed, that multiple social factors unrelated to the case appear more determining than the alleged offense itself, and that the combination of these elements produces profound disparities. I want to extend these conclusions by showing that even before what Feeley calls "the process," with its attorneys and judges, bailiffs and sheriffs, bail bondsmen and bail commissioners, representatives of family relations and drug treatment programs (or the equivalent major players and supporting actors in other parts of the world), there are the police, which play a crucial role, in the street and at the precinct, as part of the punitive system. It is a sort of pre-pretrial, which may or may not precede a trial—or even a pretrial—and can be either a contributing factor to the judicial process (the framing of the person and/or his indictment) or entirely self-contained (a corporeal and/or moral chastisement). In other words, for many of those who, whether guilty or not, have regular encounters with them, the police are the punishment.

### **Bypassing the Definitional Stop**

But what is punishment? To affirm that it is part of police practices, one has to circumscribe what it is. Legal theorists and moral philosophers have long attempted

to give an answer to this question. The most widely accepted definition, that of H. L. A. Hart (1959), half a century ago, provides five decisive criteria. Punishment is (1) the infliction of a pain or of an unpleasant equivalent (2) to an actual or supposed offender (3) in response to an offense against legal rules (4) that are intentionally imposed by a legal authority and (5) administered by human beings with appropriate roles. Although the definition is said to be independent from any justification, it assumes that punishment is both legitimate, since it sanctions an offender for the offense he has committed, and legal, since it is applied for a violation of the law by appropriate means defined by the law. Under this normative definition (which describes not what punishment is, but what ought to be regarded as punishment), law enforcement has no place, except as the lawful provider of cases for the judicial system. The police are not supposed to inflict pain on individuals suspected of having committed a misdeed, and their legal authority does not imply that such would be an appropriate role for them.

But should we limit our inquiry to the verification of the matching of actual practices with the a priori definition? In fact, Hart himself insisted that one should never use what he called a “definitional stop”—allowing one to say whether a given action is or is not a punishment—to elude a more radical and critical questioning about the nature and rationale of the act of punishing. To avoid this pitfall, I will reverse the reasoning by approaching the delimitation of punishment not through an a priori definition but via an ex post facto reconstitution based on the observation of reality. I will not start with the ideal of what punishment ought to be but instead analyze actual scenes to try to apprehend what it is.

One late winter afternoon, in a middle-class neighborhood, two young men were coming home from a basketball game when they saw two of their friends being searched by two motorcycle officers on the side of the road. As they passed by, they greeted them jokingly with a “Salaam alaikum!” to which one of the law enforcement agents aggressively retorted, “We’re in France here, we speak French.” The two youths were indeed French and born in France, but their parents were Senegalese. They talked back to the officers, who insulted them in return, calling them “filthy apes” and “fucking niggers,” to which the youngsters responded with “French assholes.” At this point, the police jumped on their motorcycles, and the two boys ran off toward their home. A few minutes later, the one-level detached house where they had found refuge was surrounded by several police vehicles with flashing lights, which had been called in for reinforcement. Helmeted, batons in hand, the officers broke the front window and rushed into the living-room where the terrified mother of the two youngsters, trying to protect them, was thrown to the floor. They grabbed the boys, took them to the ground,

and started to hit them while handcuffing them. The pastor, who belonged to an evangelical church in the United States, later told me that the assault was so violent that it reminded him of the infamous beating of Rodney King.

In the meantime, alerted by the cries, a crowd of local residents had gathered, indignantly protesting against the brutality of the officers. Several were in turn shoved aside and threatened to be apprehended. In the middle of the turmoil provoked by the intervention, the two youngsters were taken into the police station and kept in custody under the accusation of insulting an officer and resisting arrest. In the evening, the event was reported in the news on television, as a neighbor had filmed the scene on his telephone. The following day a demonstration against police violence took place in the center of the city, and three weeks later a meeting was held with inhabitants of the family's neighborhood, representatives of the municipal council, and religious leaders, but no one from the law enforcement agency attended. People declared that they had been particularly appalled by the racist slurs hurled by the officers not only at the youth but also at the neighbors, several of them belonging to ethnoracial minorities. The pastor told me that he had been all the more shocked since he knew the boys whom he described as well-educated and well-behaved students. The commissioner said to me that his men had simply reacted to the offensive attitude of the youngsters. As I was discussing the event with members of the anticrime squad, one of them commented that he had not been surprised by how the incident turned out, the motorcycle officer who was at the origin of the disorder being known to be "a crazy brute." The boys' parents filed a complaint against him and his colleagues. However, both charges against the youths for insulting an officer and resisting arrest and against the police for aggravated assault were abandoned a few months later after the agent who had been the most confrontational and brutal died in a traffic accident.

Such events were common during my research. Similar ones are regularly reported all over the country. They do not generally exceed a local confrontation with bruises, slurs, and arrests. They sometimes end in deaths, however, almost always of young men of color from disadvantaged environments, and lead to urban disorders.<sup>3</sup> This is how the 2005 riots started: a group of adolescents being chased by the police in a project for a theft they had not committed; three of them finding refuge in an electric transformer where two died while the third one was severely burnt; the police, although aware of the danger, deciding not to intervene; the gov-

3. A list of the individuals killed as a result of an interaction with the police between 2005 and 2015 has been established by Urgence-notre-police-assassine en toute impunité 2019. For the year 2017, nineteen persons died after having been shot by the police, and fifteen more casualties resulted from other circumstances (Jean-Marc B. 2018).

ernment, instead of expressing sympathy for the victims, defaming them as thugs. Fortunately, most of these incidents have less tragic outcomes and even remain ignored by the public, except in the neighborhoods where they have happened and whose inhabitants often remain traumatized. The originality of the present case is that the young men did not belong to the working class, did not live in a housing project, and were not school dropouts—hence the fact that they did not expect to be treated by the police as they were. But they were black. In a certain sense, the racial—and racist—dimension was pure, not mixed with the other two with which it is usually intertwined: the social and the spatial. Hence the consternation of the local residents who thought that upward mobility and neighborhood gentrification protected them from police mistreatment. They were proven wrong.

But should we consider the violence deployed by the police in this incident to be punishment? Is it not mere abuse of power, sheer domination, pure repression? And since it is in response to an alleged offense against the police, is it not simply reprisal? Let us examine these two interpretations. According to the first option—the violence hypothesis—such set of actions would simply be an excess in the use of force, which is how authorities often tend to minimize such incidents, or, in legal language, would be inappropriate and disproportionate use of coercion, which is what the defendants' lawyers try to dismiss. That there is brutality cannot definitely be doubted, but is it just that? According to the second option—the vengeance hypothesis—the operation is a mere retaliation by the police against the youths who have talked back to them. That the reactions of the officers be a form of reprisal leaves little doubt, but should we be satisfied with this analysis? My argument is that there is more to the incident than violence and retaliation. Revisiting the first hypothesis, we can affirm, in accordance with Egon Bittner (1980: 37), that “the police authorization” to use force is “essentially unrestricted,” rendering the “talk about the lawful use of force practically meaningless.” Second, in agreement with Émile Durkheim (1984: 47), we can state that “punishment has remained for us what it was for our predecessors,” meaning that it is “an act of vengeance.” In other words, the fact that, in the incident recounted, there be acts of brutality and a sense of revenge does not exclude the possibility that it is also a form of punishment, that is, the administration of a form of justice in the street meant to correct an alleged wrong. What evidence can we have of such intention? They are of two sorts: one, subjective, refers to the meaning given by the officers to their action; the other, objective, concerns the interpretation that we can make of the course of action. In the case of police abuse, both strongly speak in favor of punishment.

**The Moral Argument for Police Abuse**

From their subjective viewpoint, the agents themselves consider their violent verbal and physical practices to be just deserts. It is not only that they try to mask their reprehensible practices because they fear the consequences from their hierarchy or the judges. They do find moral justifications for their acts. These are of two kinds, having to do with their public and with the judges.

Officers view the lower classes, which constitute the main part of their public, as criminal, with little capacity of discernment when they deal with ethnoracial minorities, since they are “not attuned to the signs of respectability” within them, as Robert Reiner (2000: 93) writes. They know of course that not all the inhabitants of the projects commit crime, but they have a hard time differentiating among them those who should be deemed suspect, largely because of ethnoracial prejudices that are reinforced during their training in the academy and their socialization with older colleagues. Indeed, eight out of ten officers come from rural areas and small towns where they hardly ever have contact with anyone from immigrant origin and are all the same posted for their first position in urban districts with high proportions of minorities. “They are unable to recognize thugs from honest people,” the commissioner told me. “They cannot imagine that a black guy with a hoodie can be a PhD student and not a hoodlum,” the mayor observed in one of our conversations. Moreover, in their eyes, even when people from these neighborhoods have not done anything wrong, they are viewed either as potential criminals, who may not have been arrested for a previous offense, or as mute accomplices, who do not tell what they supposedly know. Their belief does not seem to be affected by the dual evidence that, on the one hand, the great majority of the inhabitants of the housing projects where they patrol have never had dealings with the police, and that, on the other hand, they receive calls and sometimes information from residents about local dealers or gangsters. But this confusion is effective in justifying that, even if they do not arrest the right person, those who are caught either have committed some offense for which they may not have been punished or have been aware of it without reporting it to the police. Like the wolf in La Fontaine’s fable, replying to the lamb who protests his innocence, the officers could retort: “If not you, then your brother. All the worse . . .” Or “someone else in your clan. For to me you’re all of you a curse.” This representation of the lower classes as composed of actual criminals, potential criminals, and accomplices of criminals thus legitimizes the harsh treatment they received.

Such negative generalization is in line with the officers’ view that the population in general is hostile. Despite opinion polls showing that they are the most

appreciated civil servants, they remain convinced, or persuade themselves, that the public has no sympathy for them. This misperception is, again, differentiated: it mostly concerns the youths of immigrant origin, in particular those from disadvantaged neighborhoods. “They don’t like us, the bastards,” commented the chief of the anticrime squad as we were slowly driving by a group of African and Arab youths who were watching us. The term *bastard* was the common way of designating young people belonging to ethnoracial minorities that they dealt with. After a short pause, he added, “But we don’t like them either.” This imagined or actual antagonism serves two functions. First, it makes reciprocity reasonable, as the officers’ animosity seems to them a relevant response to the population’s animosity, the badges of the anticrime squads clearly attesting to their worldview: one of them depicts, against the background of the French national flag, the tall blocks of a stylized representation of a housing project seen through a gun sight, while another shows a spider trapping a complex of high buildings in its web. Second, it reinforces group solidarity and “*esprit de corps*,” as officers consider that they have to defend themselves against these potential enemies, both when they confront them directly in the street and when they have to testify about the deviant acts committed by one of their colleagues. Seeing their publics as hostile definitely makes abuses easier to produce and cover.

Moreover, officers regard judges as too lenient toward the suspects they arrest, since “in their eyes their decision to lay a charge or charges deserves to be supported by judges by punishment that establishes the authority of the law enforcement machinery,” as Richard Ericson (1982: 68) explains. “We arrest criminals and the next day they are outside again. The judges have freed them. One wonders what we work for.” Such was the lament often heard during our patrols through the projects. Again, evidence contradicts this assertion. National statistics demonstrate that the justice system is particularly severe, that this toughness increases over the years, and that it focuses on petty crime. In fact, the reason the police believe that judges are sabotaging their work is that they often arrest suspects without minimal proof. As a sergeant told his men one evening: “There have been too many police abuses, we have taken too many liberties. It’s like us with the youngsters: we don’t trust them. Well, you know what? The judges feel the same way about us.” But his call for probity could not be heard because the police’s misrepresentation had an important social function: disqualifying the judges as merciful legitimizes their own eagerness to dispense justice in their stead.

As a result of their prejudices regarding both crime in the lower classes and clemency of the justice system, officers find a moral justification to what they deem just retribution toward individuals who, in their view, definitely deserve it

but might not be punished otherwise. This retribution can be inflicted on a suspect. But it often affects innocent people in two ways—randomly or collectively. Random punishment, exemplified by the Caribbean and Turkish men, means that anyone in the group, usually the slowest runner or the least lucky passer-by, gets beaten up, arrested, and indicted in place of the supposed culprit. It is blind justice. In these situations, the retribution can be both immediate and deferred. On the spot, individuals are roughed up as they try to run away or even simply happen to be present at the scene, with an outcome in some cases of severe injuries. Then, they can be taken in to the station where intimidation goes on with threats of being kept in custody and referred to the prosecutor. Generally, however, for lack of evidence of wrongdoing, they are released, as the officers are content with the distress caused by the handcuffing in front of friends, relatives, and neighbors and the questioning dotted with menaces. This daunting experience ends up with their being back in the street far from their home, sometimes in the middle of the night, a practice that has been denounced by a judges' union as a common form of iniquitous punishment. In other cases, especially when the individuals have been injured and might be tempted to file a complaint for police violence, the officers indict them for insulting an officer and resisting arrest, an offense that can lead to up to two years in prison and a thirty thousand euro fine. Such practice is doubly beneficial from the police's perspective, since punishment is inflicted firstly in the street, where the person has been thrashed, and secondly in court, where he faces serious consequences. Collective punishment consists in abusing the whole group, with its members being scared, reviled, pushed, thumped, and menaced with weapons, as was the case in the arrest of the two young men of Senegalese origin. A deputy commissioner told me that she was aware of the deleterious effects of such actions and often tried to avoid them, but she conceded that it was usually in vain, as her troops wanted immediate retribution. In fact, such brutal operations could further affect the assaulted neighborhood, by creating a breach of trust among the inhabitants, especially when it is a resident who calls the police in the first place.

Remarkably, whether it is targeted on a suspect, random or collective, such retribution selectively concerns youth from the working class belonging to ethnoracial minorities and living in public housing. This is why the subjective approach does not suffice to grasp the broader meaning of police abuse not as mere oppression or reprisal but also as punishment.

### The Political Context of Policing Excesses

Indeed, on the objective side, the institution, the state, and, in the end, society as a whole participate in this idea that the police should be part of the punitive apparatus. Since the 1970s, the discourse of law and order has progressively swamped the public sphere and the political realm in France. The historic victory of the left in the general elections of 1981, after twenty-three years of conservative domination, led to the restructuring of the French political landscape, with the rapid rise of the far right and the weakening of the traditional right. The National Front based its success principally on two issues, immigration and security, often mingling them by presenting immigrants or their children as the major source of insecurity (Albertini and Doucet 2013). The response of conservatives was to radicalize their discourse, in their turn adopting xenophobic themes and producing alarmist statements. Two men, both ministers of the interior, were pivotal in this process: Charles Pasqua in the 1990s and Nicolas Sarkozy in the 2000s, the former having been the political mentor of the latter, who is remembered for having promised to “cleanse” the housing projects and having described their youths as “scum”—this was just before the 2005 riots. In hindsight, this strategy paid off in terms of electoral successes in the following three decades. In this context, the police benefited from expanded human and technical resources, with new so-called nonlethal but definitely maiming weapons such as Flash-balls and Tasers; special units, the anticrime squads in particular, were created in an increasing number of urban districts; and new prerogatives, notably in terms of stop and frisk as well as use of firearms, were added in the code of criminal procedure.

These policies were not meant to be implemented everywhere toward everyone. The *banlieues* with their housing projects were their main focus. Their residents, especially the working-class youth belonging to ethnic minorities, were their principal target. One night, as we were cruising in the city center, the sergeant major recognized an Arab man in his thirties in the street. Since his men had arrested him several weeks before, he manifested his surprise, but was told by his colleague that the man had received a suspended prison sentence: “Don’t worry, he’ll get it! We will have no problem finding something to make him break his suspension order. I tell you: he’ll serve his time.” Indeed, their interactions with these publics included various forms of provocation, either verbal, via racist slurs, or physical, via harsh treatment during stop and frisk. Such harassment sometimes led to responses from the youths who, under pressure, either talked back to the law enforcement agents or pushed them back, thus opening the way to the accusation of insulting an officer and resisting arrest.

This offense, which, as the officers themselves and their superiors admitted to me, was viewed as a situation much more revealing of police misconduct rather than of youth misbehavior, has skyrocketed in the past two decades. The institution has forcefully backed this practice as the Ministry of the Interior has encouraged its agents to file complaints and request financial compensation from the accused, even paying the fees of the officers' lawyers and requesting severity from prosecutors. One evening, in a conversation at the station, a young officer explained to his colleagues that he had found a decree, dating to the time when tuberculosis was endemic in the first half of the twentieth century, that imposed a fine for spitting in a public place. Excited at the idea of reviving this offense, he sardonically declared: "It's great. If I see anyone spitting, I slap a charge on him and with a bit of luck it'll end with resisting the police!" The agents never ran out of imagination in that regard. They knew they would be supported by their institution.

These punitive policies and practices of law enforcement selectively oriented against ethnoracial minorities evoke the punitive law enforcement policies and practices toward colonial subjects, in particular Algerians residing in France (Blanchard 2011). From 1925 to 1945, the North African Brigade of the Prefecture of Police exercised strict control of the Algerian population living in the metropole. It was part of the Service for the Surveillance and Protection of North African Natives, the actual work of which had more to do with surveillance than protection. The activity of the brigade was indeed mostly devoted to monitoring and suppressing nationalist aspirations, deviant acts, and even the simple fact of residing in the metropole. Accused of racism and violence as well as of complicity with the German occupier, the infamous unit was dissolved after the Second World War. Two factors played a major role in the aftermath of this conflict. The first one, on May 8, 1945, was the brutal repression of the riots of Sétif, Guelma, and Kherrata that broke out after the killing of a young man by the police during a demonstration celebrating the liberation of Paris (the massacre of several thousands of Algerians fueled the independence sentiment that later led to the insurrection against the colonial power). The second one, on September 20, 1947, was the enactment of a new statute for Algerians who were no longer "natives" but "French Muslims" (although a legal improvement, this statute gave them rights that were distinct from those of the "French non-Muslims" who resided in Algeria, making them second-class citizens). The two elements were linked, as the new statute was a concession after the massacres, but they revealed the increasing predicament that the French government was facing with its colonial subjects.

In this context, the political and social tensions were exacerbated in the metropole, and a special police unit called the Anti-Assault and Violence Brigade was created in 1953 after the deadly repression of a demonstration on the fourteenth of July in Paris. Composed of members of the earlier-dissolved brigade, it extensively and brutally practiced checks and searches, raids and arrests. Rather than containing crime as its mission was supposed to be, it punished not only the political activity but also the mere presence of a population often described as “undesirable.” The culmination of this repression was the massacre that occurred on October 17, 1961, in Paris when thousands of peaceful Algerian demonstrators defying the curfew were arrested and kept in custody in an arena and a stadium while hundreds of others were thrown and drowned in the river Seine.<sup>4</sup> The prefect of the Paris police in command of this operation at the time was Maurice Papon, who had been responsible, as head of Bordeaux’s police, for the deportation of hundreds of Jews to concentration camps during the Second World War and, as prefect of the Constantinois, for the torture of prisoners during the Algerian War.

Although it would be incorrect to establish a direct link between yesterday’s Anti-Assault and Violence Brigade and today’s anticrime squads, and more generally between police practices toward the so-called natives in the colonial period and toward the ethnoracial minorities in the present time, one cannot deny the existence of a pattern and a genealogy. A pattern, with the creation of special units with extended prerogatives, the targeting of populations and territories more than individuals, the discriminatory treatment of stigmatized groups, the abuses endorsed by the government, the mode of surveillance and intervention. And a genealogy, explicitly referred to by the sergeant’s rallying cry in the episode evoked at the beginning, implied in the injunction and insults of the motorcycle officer, and more broadly present in the language commonly used by the police to speak of their public designated as “savages” or “apes” whose neighborhood was called a “jungle,” as well as in the countersubversive strategies employed by officials for the control of riots.

### **The Banality of Extrajudicial Retribution**

In light of the subjective and objective elements gathered to interpret the meaning of police violence, it is clear that it has multiple dimensions of retorsion, repres-

4. The exact number of deaths has never been acknowledged by the French state. According to Jean-Luc Einaudi (2001), 200 people died that night, while another 325 were killed by the police during the autumn of 1961.

sion, domination, and retribution, but that the latter occupies a central role as justification both at the level of the officers, who consider themselves to be entitled to dispense justice on the street or at the station, and at the level of the institution and the state, which protect them from legal actions and even facilitate judicial retaliation. Crime or even suspicion of crime is not even necessary when the mere presence of certain groups is deemed dubious or simply undesirable.

Apprehending police violence as a form of punishment has two important theoretical implications. First, rather than attempting to verify that facts match the definition, one should strive to adapt the latter to the former. Here, the meaning that the agents give to their acts and the analysis that one can make of what underlies them lead one to contest the criteria proposed by normative theorists. When a reality does not fit its definition, it is the definition that should be revised. Second, while it is conceptually relevant to try to separate definition from justification, as these scholars do, it is empirically difficult as well as politically problematic to do so. Officers and their institution do need arguments, albeit fallacious, to legitimize what would otherwise appear as deviance. It is not the task of the social scientist to help them in this endeavor. Both these theoretical implications were implicit in Hart's critique of the definitional stop.

Putting together the various pieces of the puzzle in light of the classical definition of punishment, one can see that such police operations are conducted by a legal institution that is not designed to punish but considers itself entitled and is incited by public authorities to do so; that the offenses sanctioned do not match the initial motive of the intervention and can even be fabricated so as to neutralize potential complaints; that in the absence of an identifiable or suspicious offender, retribution can translate into punitive expedition or random punishment; and that extralegal forms such as physical and moral abuse are adopted.

What I have analyzed about France is in no way specific. In recent years, law enforcement agencies have increasingly appeared, in various parts of the globe, as suppliers of extrajudicial punishment. In Brazil, human rights organizations calculated that more than five thousand people were killed by the police between 2005 and 2014 in Rio de Janeiro as part of the so-called pacification of the favelas. In the Philippines, official statistics reveal that just within the months of July and August 2016 more than eighteen hundred suspects were shot dead, including seven hundred by the police, as a result of the war on drugs declared by the newly elected president. In the United States, 1,134 deaths caused by the police were registered in 2015, that is, forty times more than those by capital punishment during the same period, and remarkably, the socioracial profile of victims is

similar.<sup>5</sup> The local interpretation of these homicides as extrajudiciary punishments varies according to the context: in some cases, the statements made by politicians and the positive reactions from part of the population leave no doubt about the existence of what is often called penal populism; in others, the support of these practices by the authorities, their facilitation by the institution, the impunity they benefit from, and the complacent silence that accompanies them reveal latent or veiled expressions of this populism.

However, the punitive function of law enforcement should not be reduced to these extreme manifestations. On a daily basis, for many belonging to the most vulnerable groups, it translates into harassment, provocations, humiliations, racist slurs, undue stops, unjustified searches, abusive fines, painful handcuffing, groundless arrests, arbitrary custody, blows leaving no traces, and sometimes even torture—all forms of mistreatment that must be accepted without flinching, since any form of response or rebellion would immediately be punished physically and legally. If the Black Lives Matter movement started with the killings of African Americans by the police in the United States, it soon extended its denunciation to the ordinary forms of oppression of ethnoracial minorities rendered invisible to the mainstream population.

The trivialization and normalization of extrajudiciary punishment by the police are a major unrecognized fact in contemporary societies. In fact, this very trivialization and normalization as a form of punishment could even be deemed part of the judicial system. In the same way that the immense majority of people who are indicted are not sentenced in court by a judge or a jury but accept plea bargaining even if they are innocent, the immense majority of people from certain groups who have interactions with the police are punished in the street or at the precinct even when they are not guilty. The informal and even illegal judicial system is thus much more extended than the formal and legal one. But the two are not separated. By arresting people and handing them over to the prosecutor, that is, by selecting whom they decide to arrest under their discretionary power and by forging accusations to conceal their own misbehavior, the police participate in the judicial system, which, by giving precedence to the word of sworn-in officers over the word of suspects, grants them legitimacy.

5. Sources for these statistics are to be found in the following documents and articles: Anistia Internacional Brasil 2015; Lema 2016; *Guardian* 2015; Death Penalty Information Center 2019; Karabel 2014.

**Beyond Philosophical Justifications**

But why would the police punish? And why would society expect from them that they play this role?<sup>6</sup> Two theories of justification prevail in philosophical and legal literature. For utilitarians, following Jeremy Bentham, only consequences that punishment may have for society should be taken into account. It should therefore be justified if it contributes to a decline in crime either by incapacitating the criminal, by rehabilitating him, by deterring future crime, or by combining the three. For retributivists, after Immanuel Kant, only the act that has been committed should be taken into account, punishment being just deserts. It should only be justified if it causes pain to the offender so as to pay for his offense in a degree equivalent to the suffering he has caused. Focused on reducing crime, the utilitarians look toward the future. Concentrated on the atonement of the offense, the retributivists are mainly oriented toward the past. Is one of these justifications applicable in the case of the police?

Let us examine one of the various similar interactions that I witnessed or heard about during my fieldwork. Three adolescents are talking and laughing joyously in a small square near the hostel of the youth protection service where they stay. Like the other minors residing in the three-floor house, they have been placed in this institution by a juvenile judge either because they have committed a misdemeanor or because they are deemed endangered. The three teenagers are of African origin. Two police officers on patrol stop by and ask for their papers. Such a check is banal but illegal, since there is no indication of a crime being or having been committed and since it is moreover established that such a stop is often based on racial profiling. The adolescents present their travel passes, which are normally regarded as sufficient since it has their name and photograph. Not satisfied, the agents demand their identification cards. The adolescents, who do not have the documents with them, explain that they live in the hostel some fifty yards away and propose the officers accompany them to fetch them. The police ruthlessly refuse and threaten to take them into the precinct for further verification. Panicked at this prospect, one of the teenagers escapes, runs to his lodging, takes the requested card and swiftly returns to prove his good faith. But the reception is not what he expects. The officers scold him harshly, using racist slurs while slapping him. Alerted by the shouting, one of the social workers of the service comes out, only to hear one of the officers viciously threaten the boy: "I'm going to kneecap you!" and hurtfully yell at him: "You're a failure in your family! You're a failure

6. The discussion of the justifications for punishment and the presentation of the anecdote are developed in more detail in my Berkeley Tanner Lectures published as *The Will to Punish* (2018).

at school! You, little faggot!” Not without difficulty, the social worker interposes herself and finally manages to bring the adolescent back to the hostel. There, with the director of the institution, she tries to convince him to file a complaint against the agent, telling him how important it is to defend his rights. Still shaken and distressed by the aggressive and humiliating handling he just endured, the teenager keeps repeating in a low voice that it does not matter. Obviously, he knows how much weight the word of a black minor under the care of a youth protection service would carry when confronted with the word of two officers, how easily his complaint could be reversed into a case against him for insulting an officer and resisting arrest, and in the end how costly it could be to try to assert his rights. He impatiently returns to his room.

How to interpret this scene? Added to the socially and racially grounded hostility, which is commonly expressed in words and acts by the police toward adolescents with this profile, is in this case a moral aspect. Being under the supervision of the judicial institution, the teenagers have already had dealings with the penal system, either as delinquents or as victims or, more often than not, as both. Although the agents pretend to ignore that the boys live in the hostel, as they refuse to let them fetch their identity cards there, they evidently know where they come from, imagine what may have been their history, and mistreat them accordingly: hence the hassle about the documents, the threat to arrest them, the nasty comments, the slaps. It is hardly imaginable that such a scene could have happened in a residential area, for the simple reason that, as the head of the anticrime squad unit told me, they never went there, except in the very rare cases when a crime had been committed. Their activity was limited to certain territories and populations.

In the present incident, the level of violence is all the more remarkable in that there has been no wrongdoing: only messing around in a public space. In fact, the officers punish the adolescents not because of what they do but because of what they are or represent: lower-class black boys of migrant origin, moreover with probable dealings with the judicial system. This combination of social, racial, and moral attributes is sufficient to presume their culpability, or at least to assume that they deserve a lesson. The psychological harassment and physical abuse do not only allow the police to exert and display their discretionary power. They also serve to inculcate a hierarchical order, as the youths learn, through the repetition of such experiences, their inferior social, racial, and moral position. Neither the justifications proposed by philosophers and legal theorists nor the justifications provided by the police suffice to account for the scene. In the absence of offense committed, it is difficult to resort to the utilitarian and retributivist arguments, in a strict sense, to justify the punishment.

Even if the officers pretend that they are strictly enforcing the law by verifying the identity of individuals in public spaces and teaching them to abide by the rules, it is difficult to justify the verbal and physical violence in the interaction. One must resort to a more general interpretation considering the function that they are assigned by society, which consists in using their discretionary power to call to social order the purportedly dangerous classes. The adolescent understood it, and this is why, for him, it made no sense to file a complaint. With whom? With the very institution whose members harass him? To be adjudicated by whom? By a justice system in which the word of young men of color has no weight against the word of sworn-in officers? Schooled by an already long experience of interaction with law enforcement, the adolescent knew that he was “police property,” in John Alan Lee’s (1981: 53) words.

Yet, the analysis must go further. Rationality—that provided by the law, that offered by officers, that elaborated by social scientists—does not exhaust the reasons the police punish as they do. Indeed, as one can see in the case of this adolescent, punishment is always in excess of what it is supposed to be. But why is it the case? Why would officers purposely put handcuffs incorrectly on to suspects they have arrested so as to painfully twist their arms and make fun of their complaint while taking them into the precinct for questioning, sometimes causing nerve compression that can be irreversible? Why would they take them into custody in filthy and cold rooms without letting them go to the toilets, have something to eat, or even sometimes take their medicine? Why would they intentionally drive their vehicle in a rough way when they extradite prisoners to a faraway jurisdiction so as to have them bang around or get car sick? Why would they debase them with offensive remarks and threaten them with dismaying prospects? In the act of punishing, something resists rational analysis or, better said, resists being analyzed as rational. There is almost inexorably an emotional dimension, which Friedrich Nietzsche (1989: 5) describes as “the voluptuous pleasure *‘de faire le mal pour le plaisir de le faire’*, the enjoyment of violation.” To punish is to produce a gratuitous suffering, which adds to the retribution, for the mere satisfaction of knowing that the culprit—or the one presumed such— suffers. In the assimilation of punishment with pain and, even more, in the unnecessary torment that is added to it, one cannot not recognize the expression of cruelty.

### Conclusion

On February 2, 2017, in a housing project outside Paris, a twenty-two-year-old local educator of Congolese origin was violently arrested for having interfered

with the brutal stop and frisk of three of his friends who were simply hanging around in his neighborhood.<sup>7</sup> As he was resisting the handcuffing, he was pushed against a wall and hit from behind by one of the officers with an expandable baton. The blow caused a tear of the sphincter muscle of the anus, a four-inch-deep wound of the rectum, and a perforation of the intestine. The prosecutor opened a criminal investigation for “voluntary violence,” and the investigating judge indicted the guilty officer for “rape.” Police experts tried, however, to explain that the gesture was part of normal police practice “to create a physical destabilization and bring the recalcitrant under control.” One year later, not being able to defecate, the young man still had a colostomy with a plastic bag to collect his waste. In the meantime, one learned that the commissioner of the same district had received a six-month suspended prison sentence for not having stopped one of his agents who was threatening to sodomize a man with a hubcap, and that in a neighboring town an officer was indicted for having caused with his baton a one-inch-long anal wound to an inebriated young man as he was pushing him into the police car whose back seat had been folded down so as to force him to bend forward as he was handcuffed.

There seems to be in these cases a common pattern of humiliation of young men, especially of color, through the negation of their masculinity by these specific forms of violence. In this sense, they can neither be reduced to deviant acts of sadistic officers nor interpreted as mere techniques of control. It is part and parcel of retribution. In fact, following Everett Hughes’s (1962) disturbing but lucid observation, one can say that society delegates to certain institutions and professions, notably the police, the dirty work of punishing with the implicit permission to exceed the moral and legal limits of punishment.

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7. The so-called Théo Affair and its developments are discussed in various articles, including in Pascual 2018. The sentencing of the commissioner is described in *Le Monde* 2017. The little publicized case of the other young man wounded by an officer can be read in Saviana 2018.

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