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War on Drugs Policing and Police Brutality

Hannah LF Cooper, ScD

War on Drugs policing has failed in its stated goal of reducing domestic street-level drug activity: the cost of drugs on the street remains low and drugs remain widely available. (Baum, 1996; Bertram, Blachman, Sharpe, & Andreas, 1996; Gray, 2010; Tonry, 1994a) Evaluations of specific tactics, such as raids on crack houses and crackdowns, suggest that their effects on drug availability are minimal, decay rapidly, and may displace drug activity to other areas and increase drug-related violence. (Benson, Rasmussen, & Sollars, 1995; Sherman, 1990; Sherman et al., 1995; Werb et al., 2011) A large body of research, however, has identified significant unintended, negative consequences of the War on Drugs' policing strategies for the public's health, including increased risk of HIV transmission. (Cooper, Moore, Gruskin, & Krieger, 2005; Kerr, Small, & Wood, 2005; Maher & Dixon, 1999)¹ This paper seeks to expand this body of work by exploring the interconnections between specific War on Drugs policing strategies and police-related violence against Black adolescents and adults in the US, a topic that has received little attention thus far.

The World Health Organization (WHO) classifies police brutality as a form of violence, and defines violence itself as:

“the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.”

(Krug, Dahlberg, Mercy, Zwi, & Lozano, 2002, p. 5)

According to WHO, there are four types of violence: physical, sexual, psychological, and neglectful. (Krug et al., 2002) While police officers are empowered to use force, they should use the minimal amount of force needed to “control an incident, effect an arrest, or protect themselves or others from harm or death.” (The National Institute of Justice, 2012)

This paper provides historical context for considering the connections between race/ethnicity and policing in the US; reviews erosions to the 4th Amendment to the US Constitution (which protects against unreasonable search and seizure) and the Posse Comitatus Act (which prohibits the Armed Forces from performing law enforcement functions) that helped set the groundwork for two vital War on Drugs policing strategies: stop and frisk and Special Weapons and Tactics (SWAT) teams; and describes how stop and

Address all correspondence to: hcoope3@emory.edu.

¹The reader is referred to a useful review about “cause and effect” underpinnings. Hills's criteria for causation were developed in order to help assist researchers and clinicians determine if *risk factors* were causes of a particular disease or outcomes or merely associated. (Hill, A. B. (1965). The environment and disease: associations or causation? *Proceedings of the Royal Society of Medicine* 58: 295–300.). Editor's note.

frisk and SWAT teams create conditions conducive to police brutality, particularly brutality that targets Black communities. While many laws and policies have created the foundations for police brutality, I have chosen to focus exclusively on the 4th Amendment and the Posse Comitatus Act in order to delve into detail on both, rather than present brief summaries of several policies. Additionally, the rich literature on the intertwined nature of racism, social control, and decisions about which substances should be classified as “illegal” is beyond the purview of this paper. Readers interested in these topics could review David Musto’s “The American Disease: The Origins of Narcotic Control” and David Courtwright’s “Dark Paradise: The History of Opiate Addiction in America” to learn more about this important topic.(Courtwright, 2001; Musto, 2001)

Historical Context for Considering Race/Ethnicity and Policing

There are many different ways to narrate policing’s history. One narrative highlights the mutually constitutive nature of policing and race in the US: this narrative recognizes that policing has been integral to the construction and maintenance of racial hierarchies, and that police forces themselves were originally established to enforce these hierarchies.(Bass, 2001; Bell, 2000; Brown, 2005; Eitle & Monohan, 2009; Kelley, 2000; Nunn, 2002; Ritchie & Mogul, 2008) The roots of formal policing in the US lie in slave owners’ efforts to control slaves.(Bass, 2001; Bell, 2000; Kelley, 2000; Ritchie & Mogul, 2008; Russell, 2000) Slave patrols were the first state-sponsored police forces.(Ritchie & Mogul, 2008) These patrols consisted of White property-owning men who were charged with preventing slave uprisings and escapes.(Bass, 2001; Russell, 2000) Slave patrols were particularly vital to maintaining White control in areas where there were more slaves than Whites, and South Carolina, a state where Whites were outnumbered, became the first state to establish them in 1704. (Bass, 2001) Slave patrols had broad authority, and were permitted to enter slaves’ homes at will and punish fugitives.(Bass, 2001)

After the Civil War, states replaced slave patrols with police officers who enforced “Black codes;” in 1865, Mississippi and South Carolina became the first states to establish these codes.(Bass, 2001; Brown, 2005) Black codes were designed to control Freedmen and Freedwomen by making many activities that had previously been classified as petty offenses (and that remained petty offenses when committed by Whites) into serious crimes when committed by Black adults and children (e.g., loitering, breaking curfew).(Bass, 2001; Brown, 2005) Police generated enough arrests for violating Black Codes that the number of Black inmates in southern prisons skyrocketed;(Adamson, 1983; Johnson, 1995) in Mississippi, for example, the number of Black inmates tripled between 1874 and 1877. (Adamson, 1983)

The federal government dismantled Black Codes during Reconstruction, but after decades of slave patrols and police enforcement of Black Codes, the mutually constitutive nature of policing and race had been established in the US.(Bass, 2001; Brown, 2005; Ritchie & Mogul, 2008) Efforts to maintain racial hierarchies were woven into the fabric of policing strategies, and one dimension of “Blackness” was living with the persistent and pernicious threat of police intervention, while freedom from this threat helped to define “Whiteness,” particularly for affluent Whites.(Bass, 2001; Brown, 2005; Ritchie & Mogul, 2008) The

persistence of the relationship between policing and race through the 1900s is evident, for example, in police officers’ failure to stop lynchings of suspects in their custody, in their active participation in lynchings, and in their enforcement of Jim Crow laws².(Bass, 2001; Brown, 2005; Ritchie & Mogul, 2008)

The War on Drugs and Expanding Police Powers

Initially declared by President Nixon in 1973,(Lynch, 2012) President Reagan re-dedicated the United States to the War on Drugs in 1982 and escalated it using multiple strategies, including increasing anti-drug enforcement spending, creating a federal drug task force, and helping to foster a culture that demonized drug use and drug users.(Benson et al., 1995; Nunn, 2002) Between 1982 and 2007, the number of arrests for drug possession tripled, from approximately 500,000 to 1.5 million,(The Bureau of Justice Statistics of The Federal Bureau of Investigation, 2008) and drug arrests now constitute the largest category of arrests in the US.(Lynch, 2012) Racial/ethnic disparities in drug-related arrests have also intensified: while in 1976 Blacks constituted 22% of drug-related arrests and Whites constituted 77% of these arrests, by 1992 Blacks accounted for 40% of all drug-related arrests and Whites accounted for 59% of them; throughout these years Blacks comprised about 12% of the total population while Whites were about 82%.(Tonry, 1994b) Notably, arrests for all other offenses (excluding assaults, which increased slightly) declined during these years, and racial/ethnic disparities in arrests for these other offenses remained static or declined.(Lynch, 2012)

Police forces and funding increased dramatically to support the War on Drugs. For example, between 1992 and 2008, state and local expenditures on police doubled, from \$131/per capita to \$260/per capita;(Lynch, 2012) federal expenditures increased as well.(Meeks, 2006) Increased federal, state, and local funding for law enforcement translated into many more officers patrolling the streets. The number of sworn officers in the US increased by 26% between 1992 and 2008.(Bureau of Justice Statistics at the US Department of Justice, 2011) The number of officers patrolling the streets of New York City increased by 47% between 1990 and 1997.(Wynn, 2001) The War on Drugs was also facilitated by increases in the scope of police power and resources. We focus on two of these changes here: erosions of the 4th Amendment and of the Posse Comitatus Act.

Erosion of the 4th Amendment

Part of the Bill of Rights, Amendment IV asserts that

“[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

²Jim Crow laws in southern states established *de jure* segregation of Blacks from Whites in public facilities and were instrumental in maintaining White supremacy after the fall of slavery.

This Amendment was proposed by the US Congress in 1789 in response to the virtually unlimited power of British customs officers to conduct warrantless searches and seize property without specific authorization in the American colonies.(Saleem, 1997)

In the past few decades, however, the judicial and legislative branches have eroded “the right of the people to be secure in their persons, houses, papers, and effects” by creating what Thurgood Marshall has called “the drug exception to the Constitution.”(powell & Hershenov, 1990) In the 1968 *Terry v Ohio* case, the Supreme Court endorsed a new category of police intervention in civilian life.(Saleem, 1997) Previously, police intervention in civilian life had largely been limited to arrests; to arrest a civilian and deprive him or her of liberty, police first had to meet the relatively high standard of probable cause.(Saleem, 1997)³ In *Terry v Ohio*, the Supreme Court decided that officers could stop a civilian if they reasonably suspected, based on articulable facts, that the civilian was currently engaging in criminal activity or had engaged in criminal activity.(Saleem, 1997) “Reasonable suspicion” is a lower standard for intervention than “probable cause.”(Saleem, 1997) The Supreme Court permitted frisks (i.e., searches of the stopped civilian) if the officer reasonably suspected that the person was armed and dangerous; the frisk was designed to allow the officer to pursue the investigation without fear of violence.(Saleem, 1997) The lower standard for intervention into civilian life (reasonable suspicion vs probable cause) was permitted in part because a stop and search was believed to place a far lower burden on the civilian than an arrest.(Saleem, 1997)

In *Whren v US* (1996) and *Illinois v Wardlow* (2000), the Supreme Court further lowered the threshold for a police stop.(Barlow & Hickman Barlow, 2002; Nunn, 2002) Whren allowed officers to make “pretext stops,” that is, to stop someone for one violation when the officer’s true suspicion lay elsewhere (e.g., stop an individual for a minor traffic infraction when the officer’s true intent was to search the car for drugs).(Barlow & Hickman Barlow, 2002; Nunn, 2002) In *Wardlow*, the court expanded the legitimate grounds for a stop by ruling that simply running from a police car was suspicious behavior that justified a police stop and search.(Nunn, 2002)

As the thresholds governing when officers could stop and frisk civilians dropped, the cost of these encounters for civilians escalated. Initially stop and frisks were designed to be minimally invasive and brief.(Saleem, 1997) They differed from arrests (and thus has a lower precipitating standard) because a reasonable person would know that he or she could walk away from a stop and frisk without harm.(Saleem, 1997) A key component of this stipulation was that stop and frisks did not involve police force, such as handcuffs or guns. (Saleem, 1997) In *Terry v US*, for example, Terry was grabbed and his outer garments patted down but the officer did not draw his weapon and did not handcuff Terry until he arrested him.(Saleem, 1997) Over time, however, a series of court cases have allowed stop and frisks to involve handcuffs, police weapons, and long detentions, thus blurring the lines between a

³To meet the probable cause standard, “...the facts and circumstances within the officers’ knowledge, and of which they have reasonably trustworthy information, [must be] sufficient in themselves to warrant a belief by a man of reasonable caution that a crime is being committed.” (*Brinegar v. United States*, 338 U.S. 160, 1949).

stop and frisk and an arrest.(Saleem, 1997) Contraband (including drugs) found during a stop and frisk can be seized.

The Posse Comitatus Act

Passed in 1878, the Posse Comitatus Act made it a felony for the Armed Forces to perform the law enforcement duties of the civilian police.(powell & Hershenov, 1990) The law was passed in the aftermath of the US Civil War to maintain a clear division between the Armed Forces and domestic law enforcement, and recognized that the Armed Forces and the civilian police had distinct functions: while the Armed Forces are designed to destroy the enemy, civilian police are charged with protecting civilians and keeping the peace using as little force as possible.(Balko, 2006; Nunn, 2002)

The Posse Comitatus Act has been dismantled over the past 30 years to advance the War on Drugs. The first challenge to the Act came in 1981, over a century after it was passed, when the military was permitted to give civilian police departments access to military bases, research, and equipment to strengthen these departments' capacity to wage the War on Drugs.(Balko, 2006; powell & Hershenov, 1990) The military also became empowered to train civilian police departments in using military equipment. Five years later, Reagan declared drugs a national security threat; this declaration sanctioned greater collaboration between the military and police.(Balko, 2006) In 1993, the ban on the US Army's ability to train police departments in urban warfare and close-quarters combat was lifted.(Balko, 2006; powell & Hershenov, 1990) In 1994, the Department of Defense released a memorandum authorizing the large scale transfer of military equipment and technology to police departments.(Balko, 2006; powell & Hershenov, 1990)

The 4th Amendment, Posse Comitatus, and Police Brutality

This section traces pathways linking War on Drugs policing strategies – and in particular those strategies arising from the erosions of the 4th Amendment and the Posse Comitatus Act – to police brutality by synthesizing findings from several studies. One main source of data for this section is a qualitative paper that I wrote with several colleagues (Drs. Nancy Krieger, Sofia Gruskin, and Lisa Moore) that described drug injectors' (N=40) and non-drug-users' (N=25) experiences with police-related violence during a police drug crackdown targeting the 46th precinct of NYC in 2000; at the time of data collection the 46th precinct was a deeply impoverished community in which more than 95% of residents were Black or Latino.(Cooper, Moore, Gruskin, & Krieger, 2004) This paper is referred to as “the qualitative paper” below. This discussion is organized around the different types of violence identified by WHO: psychological, physical, sexual, and neglectful violence.(Krug et al., 2002)

Psychological Violence

Stop and frisks proliferated in the US during the War on Drugs, particularly in impoverished predominately Black and Latino communities. Between 2002 and the third quarter of 2014, 5 million New Yorkers were stopped and frisked; in any given year during this period between 82% and 90% of people stopped had committed no offense and just 9–12% of

people stopped were Non-Hispanic White, though approximately 33% of New Yorkers were non-Hispanic White in 2010.(New York Civil Liberties Union, ND) Stop and frisks can be highly geographically concentrated: in a single 8-block area of a predominately Black and Latino neighborhood (home to just 14,000 people), the police conducted 52,000 stop and frisks over a four-year period; 94% of people stopped had committed no offense.(Fabricant, 2011)

Participants in the qualitative study experienced these stop and frisks as a form of psychological violence. Relentless stop and frisks “for nothing” or for “no reason” (i.e., that did not result in arrest) were a primary source of concern for participants. According to participants, officers identified hotspots (i.e., spaces where drug activity occurred) and viewed anyone walking through that space as a possible criminal, often stopping and frisking them; these hotspots might be a corner, the path of sidewalk outside a bodega, or a stretch of sidewalk in front of an apartment house. Simple presence in these hotspots thus seemed to have precipitated “reasonable suspicion” for officers. The participants believed that the officers had usually correctly identified hotspots of drug activity; trouble arose, however, because these hotspots played many other roles in the lives of community residents. A resident might walk through a hotspot to reach the subway or pick up a child from school; a hotspot might be directly in front of the entrance to a local corner store, a laundromat, or the participant’s apartment building. Officers’ tendency to suspect *all* individuals who passed through hotspots thus led to many stop and frisks of people who were simply going about their daily (legal) lives. For many participants, the relentless stop and frisks for “no reason” became a routine and pernicious form of harassment.

Psychological violence also assumed other forms during these stops. During these stops officers might gratuitously insult participants, telling them to move their “black asses” or calling women “bitches.” When officers engaged in a sweep (i.e., stopping and searching all individuals who were in a hotspot at a given time) participants described being handcuffed and left on the sidewalk for a long time while they awaited their turn to be frisked. As a result of these stop and frisks “for nothing,” many participants – particularly non-using men and injectors – felt insecure whenever they were in the streets and public spaces of their neighborhood.

Physical and Sexual Violence

Challenges to The Posse Comitatus Act have led to the rapid growth of SWAT teams in civilian police departments. Only a handful of police departments had SWAT teams in the 1960s and 1970s.(Balko, 2006) By 1997, however, 89% of cities with populations >50,000 had at least one SWAT team, as did 70% of smaller cities.(Kraska & Cabellis, 1997; Kraska & Kappeler, 1997) SWAT teams are heavily armed with military-grade weapons.(Balko, 2006; Kraska & Kappeler, 1997) Between 1995 and 1997 alone, for example, the military transferred 3,800 M-16s, 2,185 M-14s, 73 grenade launchers, and 112 tanks to local police departments and trained police officers in how to use this equipment.(Balko, 2006)

The purpose of SWAT teams has evolved over time.(Nunn, 2002) Where they were once reserved to deal with hostage situations and terrorist attacks, their primary purpose now is to serve warrants for narcotics offenses, often low-level drug possession.(Balko, 2006; Nunn,

2002) SWAT teams are deployed approximately 40,000 times a year in the US.(Balko, 2006) These teams typically serve warrants late at night, when the target and the rest of his/her family/household are sleeping, and enter the home without warning (i.e., “no-knock warrants”).(Balko, 2006) During these nighttime raids, SWAT teams may be heavily armed and use battering rams to enter the home, diversionary grenades, and other urban warfare tactics.(Balko, 2006; Nunn, 2002) While police departments resist releasing data on SWAT team activities, an analysis by the American Civil Liberties Union (ACLU) of the approximately 500 drug-related SWAT team events occurring between 2011–2012 for which they had data identified 7 deaths and 46 injuries.(American Civil Liberties Union, 2014) Notably, drugs were found in just 35% of SWAT drug raids analyzed by the ACLU, indicating that SWAT teams violently invade the homes of many innocent families. (American Civil Liberties Union, 2014) People living in households targeted by SWAT teams are disproportionately likely to be Black or Latino.(American Civil Liberties Union, 2014; Nunn, 2002)

Returning to the findings from the qualitative study, stops and searches could also involve extensive gratuitous physical and sexual violence. By increasing the frequency of aggressive police/civilian interactions, stop and frisks increase the chances that violence will occur. This chance may be exacerbated if, consonant with the militarization of police departments, police officers have come to see civilians less as civilians they are charged to protect and more as the enemy.(Lynch, 2012; Meeks, 2006; Nunn, 2002) Moreover, when officers regularly treat civilians as enemies, civilians are less likely to comply with their orders, which may in turn further amplify violence.(Hinkle & Weisburd, 2008) Physical violence reported by participants in the qualitative study ranged from gratuitous kicks to beatings that broke ribs and teeth. Men who injected drugs reported the most extensive and frequent physical violence. Testifying to the questionable use of police force in these cases, none of the participants who described being beaten was arrested.

Participants in the qualitative study also experienced police-instigated sexual violence. Sexual violence arose in part out of an adaptive dynamic between officers and drug users. In response to the constant threat of a stop and frisk, drug users began storing drugs inside their underwear and inside their bodies, including in their rectums; officers in turn began to search civilians’ undergarments and rectums during stop and frisks in their effort to locate drugs. These extensive searches were humiliating for participants, particularly when they happened in public spaces where passersby could witness them.

Neglectful Violence

There are opportunity costs when officers dedicate extensive resources to stop and frisk activity to identify drugs: resources are shifted from other offenses to support these efforts. For example, analyses indicate that rates of property crimes and Index I violent crimes increase when officer attention and resources are diverted to War on Drugs efforts.(Benson, Leburn, & Rasmussen, 2001; Sollars, Benson, & Rasmussen, 1994)

Data from the qualitative study also suggest that civilian-instigated violent crime may receive less attention when officers are concentrating on drug-related offenses. Participants lived in a precinct with a high rate of violent crimes relative to the city as a whole.

Participants – both injectors and non-users – reported that officers often did not respond to civilian calls for help when civilians shot each other in public spaces, or that they responded too late to be of assistance. Women who called the police for help with intimate partner violence believed that the officers ignored their pleas for help. Another study has found that officers appear to believe that some level of violence is normative in impoverished predominately Black or Latino communities, and thus merits less aggressive intervention. (Brunson & Miller, 2006)

Many participants in the qualitative study experienced these different kinds of violence – psychological, physical, sexual, and neglectful – as forms of racial/ethnic discrimination. Several noted that the officers treated them brutally and ignored their calls for help because they lived in a “ghetto” community where their lives simply mattered less.

Conclusions

War on Drugs policing tactics appear to increase police brutality, even as they make little progress in reducing street-level drug activity. (Baum, 1996; Bertram et al., 1996; Cooper et al., 2004; Gray, 2010; Tonry, 1994a; Werb et al., 2011) In the wake of several recent police killings of Black men and boys, social movements are forming again to challenge aggressive police tactics, particularly those targeting Black communities. (Santora & Baker, 2014) Several states are also retreating from War on Drugs strategies, including reducing drug crime penalties. (Marcon, 2014) These are promising changes. One impactful way to reduce the damage caused by SWAT teams and stop and frisks is to restore the protections that were originally guaranteed by the 4th Amendment and the Posse Comitatus Act. Legal and judicial actions to restore these rights, however, will take time. In the meantime, police departments can dismantle most of their SWAT teams, and return their remaining SWAT teams to their original purpose: intervening in hostage situations and terrorist attacks rather than in low-level nonviolent drug offenses. There is precedent for this: in 1996, for example, a sheriff in Wisconsin disbanded his SWAT teams to protect civilians. (Balko, 2006) Police chiefs can also direct officers to cease using stop and frisks; they discover few real criminals; fray relations between civilians and the police, particularly in poor, predominately Black and Latino communities; and generate considerable police violence.

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Biography



Hannah LF Cooper, ScD. USA. Cooper is an Associate Professor in the Department of Behavioral Sciences and Health Education and in the Department of Epidemiology at Emory University's Rollins School of Public Health. Much of her work is on the structural determinants of health, including drug use and HIV.

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