Society for the Anthropology of Work • Policing and Labor

Police Work versus Police Action: Justice, Discretion, and Arendt's Theory of Politics

Jeffrey T. Martin

Published on: Dec 01, 2020

DOI: 10.21428/1d6be30e.fa89ed05

License: [Creative Commons Attribution 4.0 International License \(CC-BY 4.0\)](https://creativecommons.org/licenses/by/4.0/)

All efforts at a transition from the *ought* to the *is* can be achieved speculatively only by unwarranted and arbitrary inferences, with the result that those who begin by talking amicably suddenly and unaccountably find themselves locked in bitter enmity without knowing when their seeming agreement collapsed.

—Egon Bittner

Facts and norms, description and evaluation, are often seen as opposite sides of a chasm. On the one side is material nature, objective forces, and amoral consequences capable of determining who lives and who dies without regard for the value of those lives or the tragedy of those deaths. On the other is the subjective reality of human experience and activity, suspended in the web of ideas and values that endows our biological existence with its distinctive being as a world of historical meanings.

This chasm is bridged by the leap of faith people make when they trust in the world. It is an ongoing, collective leap. The integrity of the resulting bridge, the security of this trust, is maintained laterally, between those who live upon it. Such shared worlds are delicate arrangements, sustained by an active enterprise of finding ways to live together on common ground. If we were looking for a name to give this enterprise of holding a world together in the space between facts and norms, we might call it *justice*.

There are many ways to approach the study of policing. The most urgent questions concern how police fit (or should fit) into the enterprise of justice. The process by which people find ways to keep faith in one another is often directly at stake in the problems police are called to handle. How these problems are actually handled, and what contribution is thereby made to the justice of the world, is a profoundly complex question. As an ethnographer, I believe such questions are best taken up empirically, by reference to specific events. Commitment to this kind of fine-grained empiricism has produced an ethnographic literature distinguished by its engagement with the “low visibility” aspects of policing practice elided by other methods of accounting for police. The center of this literature is a theoretical debate concerned with the dynamics of discretion. The link between ethnographic methods and theories of discretion is not accidental. Indeed, the logic of this connection is a good starting point for a discussion of the way in which philosophical questions of justice become significant to empirical studies of police practice. In this essay, I draw on Hannah Arendt's theory of politics—and specifically her distinction between violence and power—to suggest that police discretion should be treated as a site in which the violence of

state *imperium* is balanced against and integrated with the power of community as *polis*.

Ethnography, Worlding, Discretion

The anthropological tradition in which I am trained can be thought of as a project of throwing one's being into a radically unfamiliar world and seeking to acquire a new language, cosmology, and habitus all at the same time, effectively "becoming someone new" (Tsing 2010: 63). It is a method that seeks to understand the relationship between subject and world by reference to the process of becoming a subject in another world. This boundary-crossing mode of knowledge production is centrally concerned with the politics of boundaries as foundational elements in the creation and maintenance of social worlds. Indeed, worlding itself, as a theory of the political, is centrally concerned with these dynamics. It involves the "always experimental and partial, and often quite wrong, attribution of world-like characteristics to scenes of social encounter" (Tsing 2010: 48). Worlding as ethnographic method is a process of learning how to get these attributions right, that is, acquiring the common-sense habits of thought and action through which people inhabit a shared social world.

Doing ethnography with police raises the question of *whose* world their powers serve. The urgency of this question is a good index of the quality of justice sustained by those police. A world fully bound together by shared trust—a *just* world—is one which belongs equally to all who dwell in it. This is an aspirational ideal, seldom if ever fully realized. Most worlds are stabilized by the coercive dynamics of cultural hegemony. Such social order involves a kind of conspiracy by which some critical mass of the participants in a shared life maintain trust in the world through commitment to a common ideal, and impose this ideology onto unbelievers by force. The boundary between the consent-based sphere of authentic trust and the coercive domain of hegemonic force marks the limit at which justice gives way to something else. Understanding the role of police in maintaining this boundary, as well as the role of this boundary in maintaining the pretension of a shared world, form the point of departure for most critical police ethnography.

Ethnographic literature on policing in the United States began in the 1950s. The first wave produced a theoretical event known as the "discovery of discretion" (Reiner 1994: 708; cf. Martin 2018). Insofar as ethnography in general affords a unique angle of vision into the indeterminacy of the human condition, the ethnography of policing identified the profound significance that this indeterminacy has for the interface between law on the books and order in the streets (Bittner 1990). From the point of

view of an agent of police power, the recapitulation of indeterminacy into order is baked into their institutional mandate to domesticate exceptional situations, rectify transgression, and prevent insoluble contradictions from threatening regime stability. This last responsibility is the most troublesome, especially in putatively self-governing democracies where police power itself embodies a contradiction between freedom and control. The tensions and contradictions involved in the enterprise of finding ways to live together on common ground become concrete in the microdramas of police discretion.

This endows the discretionary aspects of policing with a distinctive mode of practical reason. David Thacher (2001) has described police discretion as an arena in which the instrumental means-ends rationality of ostensibly apolitical administrative work necessarily gives way to an authentically political engagement with value pluralism. In theory, police are supposed to serve law but not make it; they are thought of as the executors of decisions made by authorized legislative and judicial agents. Actual policy formation, however, is riddled with “incompletely theorized agreements” (Sunstein 1995) hidden within the ambiguous language of statute and code. In Thacher’s analysis, this makes police discretion a mode of political *action* in an Arendtian sense: it cannot be contained within an instrumental means-end logic that realizes a given end, for it necessarily participates in the enterprise of deciding between mutually inconsistent ends. Discretion moves policing from the instrumental domain of work into the political sphere of action (see Feldman 2019).

Policing as Work versus Policing as Action

Arendt proposed a three-dimensional model of the human condition. Labor is associated with our biological being, work with our historical being, and action with our political being; we are, simultaneously, *animal laborans*, *homo faber*, and *vita activa*. The argument of *The Human Condition* (Arendt 1958) concerns the relationship between these dimensions. Our ability to build a durable home for ourselves—that is, our capacity for work—affords us a degree of relative autonomy from the natural environment. This transforms our bare animal survival into a more properly human/historical form. However, the durable infrastructure of the built environment is purely utilitarian. It acquires meaning only through action. And meaning, for Arendt, is what holds a world together as a world; it is action that realizes our potential to become fully political (world-making) beings.

Arendt’s vision is expansive, and some of her positions are controversial. For example, her characterization of work is as always, unavoidably, and intrinsically violent. This is

based on the way that the instrumental logic of work uses things as means to the end imposed onto them by the worker, in violation of their dignity as self-determining elements of the world. This idea, which is central to her discussion of the nature of politics and its relationship to violence, has profound implications for any study of policing that defines the practice by reference to violence (see Martin 2020).

Theorizing action and its role in modern politics is the focus of *The Human Condition*. Arendt takes the inequalities of pluralism as fundamental to the political qualities of action. This makes her a critic of certain modern ideals about political equality, particularly the biopolitical valorization of life itself as the end of politics. For her, the constitutive meaning of a political action only becomes evident in historical retrospect, sometimes (say, in martyrdom) after the actor is dead. Following this logic, in an argument resonant with Charles Taylor's (1992) distinction between the classical politics of honor and the modern politics of dignity, Arendt (1958: 215) proposes that "political equality . . . is the very opposite of our equality before death."

This opposition between the material facts of life and death and the normative ideals of a political world is precisely what is mediated by police discretion. In other words, the Arendtian qualities of discretionary activity define the unique and specific role police have in maintaining collective faith in a shared world, or justice. However, consider the circumstances under which police are characteristically called upon to exercise these discretionary powers. As the last resort for civil interaction, police force is deployed when the persuasive aspects of hegemony fail to stabilize the structural inequalities of a social world. Wherever the underlying contradictions of the historical world become concrete, they are treated as police problems, pushing police institutions to the front lines of a society's relationship to its deepest and most unmanageable contradictions. As case in point, consider the contradiction between the biological "equality before death" of the human body per se and the structural inequalities of killability and grievability created and maintained by the political infrastructure of a historical world. The racial reckoning catalyzed by George Floyd's murder is an example of what happens when police fail to effectively manage this foundational contradiction: cultural hegemony collapses. The bridge holding a world together between facts and norms can only tolerate so much naked violence. Or, to shift metaphors, the sewers processing the surplus population of an extractive economy can only handle so much waste. Worlds are historical; they end.

Conclusion: Criticism versus Critique of Policing

Webb Keane (2020) describes criticism as a kind of moral polemic that “take[s] the facts as knowable and assume[s] that the critic and the audience share some moral bearings.” He contrasts this to the project of ethical critique, which aims to unsettle received understandings of both fact and norm, and thus to “open up what we can imagine.” In moments of crisis, the quick sureties of the critic dominate public attention, and the slow unsettling project of critique can appear politically perverse. Nonetheless, there are vitally important lessons about policing to be drawn from ethnographic critique. These lessons concern the cultural politics of boundary work and the role that discretion, as Arendtian political action, plays in the project of justice. The police institutions of a modern state operate in a space between facts and norms, where the justice of a world stands or falls, while also functioning as an absorptive drain through which social problems are reconciled within the parameters of political hegemony. The capacity of this drain to filter or suppress the injustices, contradictions, and antinomies of a historical world is limited. When the threshold is crossed, people revolt and engage police powers as a pure instrument of terror and repression with no constituent connection to processes of trust and repair.

The spectacular violence of this shift illuminates policing in the worst possible light, as a sort of unthinking mechanism for repressing legitimate grievances grounded in authentic injustice. But the image of police as violence workers revealed by a political uprising is a partial truth, and one that can be misleading if not considered in fuller context. The natality that renews the qualities of justice in a world, be it as a restoration of old ideals or the creation of something new, requires human agency to manage the intersection between the occasional necessity of coercive work and the perpetual possibilities of political action. Understanding policing in these terms is crucial to the project of reimagining its role in our aspirations for justice.

Preview Image

Photo by [Chris Henry](#).

References

- Arendt, Hannah. 1958. *The Human Condition*. Chicago: University of Chicago Press.
- Bittner, Egon. 1990. *Aspects of Police Work*. Boston: Northeastern University Press.

Feldman, Gregory. 2019. *The Gray Zone: Sovereignty, Human Smuggling, and Undercover Police Investigation in Europe*. Stanford, CA: Stanford University Press.

Keane, Webb. 2020. "[For the Slow Work of Critique in Critical Times](#)." *Public Books*, September 8.

Martin, Jeffrey T. 2018. "Police Culture: What It Is, What It Does, and What We Should Do With It." In *The Anthropology of Policing*, edited by Kevin Karpiak and William Garriott. New York: Routledge.

_____. 2020. "[Weak Police, Strong Democracy: Civic Ritual and Performative Peace in Contemporary Taiwan](#)." *Current Anthropology*, ahead of print.

Reiner, Robert. 1994. "Policing and the Police." In *The Oxford Handbook of Criminology*, edited by Mike Maguire, Rodney Morgan, and Robert Reiner. New York: Oxford University Press.

Sunstein, Cass. 1995. "[Incompletely Theorized Agreements](#)." *Harvard Law Review* 108: 1733– 72.

Taylor, Charles. 1992. "The Politics of Recognition." In *Multiculturalism: Examining the Politics of Recognition*, edited by Amy Gutmann, 25–73. Princeton, NJ: Princeton University Press.

Thacher, David. 2001. "[Policing is Not a Treatment: Alternatives to the Medical Model of Police Research](#)." *Journal of Research in Crime and Delinquency* 38(4): 387–415.

Tsing, Anna. 2010. "Worlding the Matsutake Diaspora, or, Can Actor-Network Theory Experiment with Holism?" In *Experiments in Holism: Theory and Practice in Contemporary Anthropology*, edited by Ton Otto and Nils Bubandt, 47–66. Malden, MA: Wiley-Blackwell.