

## “AT ONCE JUDGE, JURY, AND EXECUTIONER”: RIOTING AND POLICING IN PHILADELPHIA, 1838-1964

**Alexander Elkins**

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“[H]ere where universal suffrage is the rule, where that is the fundamental idea of the Government, to rule us out is to make us an exception, to brand us with the stigma of inferiority, and to invite to our heads the missiles of those about us ...”

—Frederick Douglass, “What the Black Man Wants”<sup>1</sup>

When a crowd of white Philadelphians in 1838 torched Pennsylvania Hall to the ground to protest whites and blacks meeting there together to advance the cause of abolition, the Committee on Police endorsed this action as expressing the “moral force” of the community or the will of the people. The Committee wrestled with the question of how to secure liberty in a democracy where the law and a handful of part-time constables lacked the police power to end the social harm of mixed-race sociality, “believed by many to be subversive of the established orders of society.” Thus it lamented that “our preventive police” were not “invested with greater powers” yet also feared exchanging the common-law posse (group of male citizens organized to apprehend outlaws and defend public order) for military police on the model of the French Gendarmerie which “would have had authority to close the building ... [and would have] placed a military force around it, and have guarded all the avenues to it.” However, the Committee observed that “such harsh measures are as inconsistent with the spirit of our people, and the genius of our institutions, as they are with the letter of our laws.” Lawless liberty to them was preferable to total security.<sup>2</sup>

By 1918, the Philadelphia Police Department could, under civil authority, preventively police public spaces and in theory stop disorder before it happened. Still, white Philadelphians gathered riotously in the street to police the conduct of African Americans. After Superintendent of Police William B. Mills declared that “martial law was virtually in effect,” he ordered saloons to close and sealed off the “riot belt”; officers searched every pedestrian in the area for firearms. Yet the police of this era — uniformed cops, plainclothes detectives, and riot squads — could not or were unwilling to keep public order among a white male population deputized in effect to enforce racial hierarchy.

1 Frederick Douglass, “What the Black Man Wants: speech of Frederick Douglass, before the annual meeting of the Massachusetts Anti-Slavery Society at Boston,” delivered in April 1865.

2 *Report of the Committee on Police* (Philadelphia, 1838), 13, 18.

Indeed, the *Ledger* approvingly cited the police chief's verdict: "The importation of southern negroes in great numbers for industrial reasons was ... the cause of the disturbances." "Held down in the South," Mills explained, "as soon as the negroes reached Philadelphia, they buy weapons ... and their newly gained freedom is too much for them." For many whites, including the majority-white police force, the mere public presence of African Americans disturbed the peace.<sup>3</sup>

This article brings together the history of African Americans, the police, and vigilantism to tell a story about the relationship between the meanings Americans have given to violent riotous justice and their practice of collective policing. A rich body of important scholarship on the "popular justice" of the lynch mob and the beat cop has advanced our understanding of American vigilantism. Yet few scholars have connected these histories into a narrative about riotous justice in American political culture up through the 1960s — arguably the most concentrated moment of riots in United States history. Organized police forces, this article will show, introduced the possibility of a riot-free civil society at the same time that their transformation along military lines directly curtailed the freedom of African Americans on the street. During the 1960s, a significant number of mostly poor, urban African Americans responded to the intrusive force of bureaucratic police power through street justice.<sup>4</sup>

Historians and political scientists have defined the term "vigilante" as referring to an individual or group who usurps the authority of the law through violence or coercion without official sanction. Just like official police forces, collective private policing thus always contains within it the potential to become extralegal. The "posse" of English common law, reinforced in the Second Amendment to the United States Constitution, mandated all able-bodied adult men to apprehend outlaws at the "hue and cry" and defend the public welfare. Another lineage of locally prescribed policing follows the slave patrols of seventeenth-century South Carolina through to the collective "rough justice" of the Ku Klux Klan of the late nineteenth and twentieth century. Although Americans historically have celebrated the rule of law as the foundation of their free society, "the concept of popular sovereignty," Richard Maxwell Brown has demonstrated, "also emerged as a powerful rationale for extralegal violence against those deemed to be enemies of the public good."<sup>5</sup>

The thin line between legal and extralegal has characterized official policing as well. When elites created municipal police departments

3 *Public Ledger*, July 30, 1918.

4 Representative publications include Manfred Berg, *Popular Justice: A History of Lynching in America* (Chicago, 2011); Samuel Walker, *Popular Justice: A History of American Criminal Justice* (New York, 1980).

5 Brown quote comes from Berg, *Popular Justice*, 22; see also Richard Maxwell Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism* (New York, 1975), chap. 4; Christopher Capozzola, *Uncle Sam Wants You: World War I and the Making of Modern America* (New York, 2008), chap. 4.

in the 1840s to corral the “dangerous classes,” they introduced into American public life what Samuel Walker deliberately has termed “delegated vigilantes.” By this Walker means state violence that middle-class Americans have tolerated as the legitimate use of force when directed against “the outcasts of society.” The professionalization of the police during the twentieth century instituted strict codes of conduct and bureaucratic routine to discipline the beat cop. But the “war on crime” launched during the 1920s turned him into a soldier. Public pressure and administrative resources provided additional incentives for police to deploy the lawless violence of “nightstick justice,” which was disproportionately directed against social outliers: the poor, nonconformists, and nonwhites.<sup>6</sup>

All commentators in 1838 and 1918 could agree on the need to protect persons and private property. But what defined “good order” — which is what *police* before the beat cop historically meant — and how to preserve it was another matter. White Philadelphians believed that black bodies represented potential disorder; that racial conflict was inevitable. Black Philadelphians looked to the law and eventually the police to enforce it, as the best available means to secure their well-being. Professionalized, legally authorized crime control in Philadelphia and the rest of the nation gradually eroded the legitimacy and efficacy of collective vigilante policing, turning the “lawless law” of lynching and rioting during the nineteenth century into merely “lawless” behavior by the middle of the twentieth. As state-directed police forces transformed after World War II into politically autonomous semi-military bureaucracies, the dissonance between their self-proclaimed public image of law enforcement and their riotous or vigilante behavior on the street became increasingly intolerable in an age of “rights” claims. The article takes this story right up to the brink of the direct outcome of these policies and practices: African Americans’ riotous response during the 1960s.<sup>7</sup>

## I. The Philadelphia Riot of 1838

In 1838 Philadelphia was home to the largest free black population in the North. The city’s profitable industries, comparatively egalitarian political culture, and well-trafficked location on the border between North and South drew many free African Americans into its orbit. Despite certain celebrated instances of interracial comity in the Revolutionary era, the suspect humanity of Africans in a republic of slavery rendered African Americans permanent strangers in the emergent

6 Police violence represents a kind of “delegated [or quasi-] vigilanteism” because it carries the legitimacy of the police power but is not officially sanctioned. Walker, *Popular Justice*, 4, 63; Nathan Douthit, “Police Professionalism and the War Against Crime in the United States, 1920s–1930s” in *Police Forces in History* (Beverly Hills, CA, 1977), ed. George L. Mosse, 317–333.

7 Franz-Ludwig Knemeyer, “Polizei,” trans. Keith Tribe, *Economy and Society* 9 (1980): 172–196; on police power in the United States, see Christopher Tomlins, *Law, Labor, and Ideology in the Early American Republic* (New York, 1993), chap. 2 and 3; “Lawless law” is part of the title to chapter 8 in Friedman, *Crime and Punishment in American History* (New York, 1993).

metropolis. Although the Pennsylvania legislature was the first to pass a gradual emancipation bill in 1780, slavery continued in the state until 1847. While the actual number of enslaved persons living in the city dwindled to only a handful by the 1830s, African Americans were still segregated from whites in residence, employment, and education; disproportionately represented among those convicted of crimes; and subject to violent assaults against their persons and property with little chance of legal recourse.<sup>8</sup>

Criminal justice was court-centered, highly localized, and mostly private. It was hardly a system at all. Criminal proceedings typically were initiated by private citizens who approached a neighborhood alderman with a complaint. Courthouse trials were a kind of popular theater where interested parties came to influence the judicial process or curious spectators assembled for a good show. Before the consolidation of the city in 1854, and the creation of the Philadelphia Police Department in the same year, approximately two hundred part-time constables and watchmen maintained order. Under the philosophy of “preventive policing,” vagrancy and disorderly conduct were the most common arrests. The criminal courts, as Allen Steinberg has shown, “stood virtually alone as the state’s everyday means for dissuading people from rioting.” For large-scale disorder, authorities summoned the militia or the *posse comitatus* — literally “the power of the county.” But these measures, to be effective, depended precariously upon the willingness of potential recruits to enforce the law impartially in usually partisan conflicts. The inadequacy of existing peace-keeping mechanisms during what historians have termed the “turbulent era,” from 1834 to 1849, inspired reforms to centralize police command and resources in Philadelphia and other cities. Pennsylvania Hall’s fiery end was such a turning point.<sup>9</sup>

The group of wealthy abolitionists who financed construction of Pennsylvania Hall wished to establish a space for free discussion of political matters, including but not limited to abolition. No matter: very quickly the Hall earned a reputation as a hotbed of radical abolitionism. After opening on Monday, May 14, 1838, William Lloyd Garrison and Angelina Grimke arrived to take part in discussions of the constitutional right to free assembly and free speech, the merits of immediatism versus gradualism, and women’s participation in the anti-slavery cause. Built in a neo-classical style, the large rectangular building could seat up to 2,000, though nearly 3,000 people crammed into those first few meetings.

8 Gary Nash, *Forging Freedom: The Formation of Philadelphia’s Black Community, 1720-1840* (Cambridge, 1988), chap. 1; Sam Bass Warner, Jr., *The Private City: Philadelphia in Three Periods of Its Growth* (Philadelphia, 2nd ed., 1987), chap. 7.

9 Daniel Bowen, *A History of Philadelphia, With a Notice of Villages, in the Vicinity, Embellished with Engravings, Designed as a Guide to Citizens and Strangers* (Philadelphia, 1839), 116-117; Allen Steinberg, *The Transformation of Criminal Justice: Philadelphia, 1800-1880* (Chapel Hill, 1989), chap. 1, 2, and 6; quotes, in order, are from *ibid.*, 134; Allan Silver, “The Demand for Order in Civil Society: A Review of Some Themes in the History of Urban Crime, Police, and Riot,” in *Police: Six Sociological Essays*, ed. David J. Bordua (New York, 1976), 1-24; Michael Feldberg, *The Turbulent Era: Riot and Disorder in the Jacksonian Era* (New York, 1980).

Trouble started almost immediately. By Tuesday, rumors of “amalgamation” inspired a hostile crowd to gather outside the Hall to intimidate those coming and going. Placards posted around the city raised the hue and cry about the plot to end slavery that had arrived at their doorstep, encouraging all concerned to meet in front of the Hall the following morning to “interfere, *forcibly* if they *must*” to save the Constitution and the system of private property. Truly incendiary to the local white community was the fact that blacks and whites of both genders sat together, side by side. On Wednesday night, May 16, a mob continually interrupted Grimke’s lecture to the Female Anti-Slavery Society, sending bricks and other “missiles” crashing through the windows, and breaking into the interior lobby before being turned back. The next morning, on Thursday, Mayor John Swift convinced the Managers to cancel that evening’s lectures and close the Hall; adequate police protection simply was not an option. Instead, Swift sent two constables to stand guard outside the doors. By dusk on Thursday, ten to fifteen thousand people had gathered in the vicinity of the Hall. Swift arrived to placate the crowd. On the business of peacekeeping, he reminded the Philadelphians assembled: “We never call out the military here.” Instead, he would entrust them to “abide by the laws, and keep order.” So much for that.<sup>10</sup>

Shortly past 8 p.m., the vast majority of Swift’s “fellow citizens” stood passively while a comparatively small number of young men, and some boys, tore open the grand doors, crashed into the interior, overturning benches and chairs and raiding the abolitionists’ library, then gathered all the flammable material into a pile, cut the gas line and lit the match. In total, perhaps 200 to 300 participated in the destruction. Others obstructed the fire companies, who then concentrated on saving nearby property.

<sup>10</sup> For background on the Hall that puts it in the context of abolitionist movement politics and a fuller description of the riot and its legal aftermath, see Beverly Tomek, *Pennsylvania Hall: A “Legal Lynching” in the Shadow of the Liberty Bell* (New York, 2013), chap. 7–10, afterword. For quotes, see *ibid.*, 150, 175.

**Destruction by fire of Pennsylvania Hall, the new building of the Abolition Society, on the night of the 17th May [1838]. Artist: J. T. Bowen. Courtesy of the Library of Congress.**





In less than two hours, the enormous hall was reduced to a shell of its exterior — just four days after it opened.

The meanings that Philadelphians ascribed to the affair often turned on what observers meant by police. *Police*, or “politics” in its original Greek and “good order” in 16th-century French, conveyed not only the institutional capacity of keeping order — our contemporary sense of the term — but also the entire informal or private network of collective restraint and surveillance that kept your neighbor in check.<sup>11</sup>

Every interpretation on record, it can be said, disparaged “mob rule” for trampling upon the “supreme law,” recommended the improvement of existing police capacities, and expressed concern over how “conduct in defiance of the laws” might consequently debase the “spotless character” and “reputation of our city” and possibly undermine “Republican Government and Free Institutions” before a world audience curious about American progress. All could agree that “mob rule” threatened the foundation of social order. It was taken for granted that a society where private property and personal integrity were preserved by “a moral force,” instead of a standing army, “which has heretofore always sufficed to preserve the public peace,” was “the happiest, soundest, and best of all.” “Police” referred to the officers under mayoral control, including the militia. But it also encapsulated an ethos of collective self-governance. Corraling crowds at bayonet point was monarchical, not republican. No account endorsed mob action, out of anxiety for the rule of law. Many, however, read riot as extralegal “public opinion.” Mob rule had no place in a democracy, in other words, no matter how legitimate its aims. But when it did crop up, as it often did in the 1830s and 1840s, many found a democratic statement in its expression. And the will of the people in Philadelphia in 1838 laid the blame for the riot at the feet of the abolitionists.<sup>12</sup>

Mainstream newspapers representing the perspective and interests of whites could not ignore the fact that the Hall was a public place where whites and blacks openly mingled in the company of women for the purpose of discussing political matters of a subversive nature. The *National Gazette and Literary Register* offered eloquent paeans to the law combined with visceral disgust “at the taste that prompts some young ladies to sit alongside of black beaux.” The matter extended beyond “sinful indulgence” of interracial “companionships.” White women also debased themselves by “attending useless discussions and listening to itinerant lecturers.” Instead, the *Gazette* counseled,

11 Franz-Ludwig Knemeyer, “Polizei”; Tomlins, *Law, Labor, and Ideology in the Early American Republic*, chap. 2 and 3.

12 “Supreme law” crops up again and again in the sources. See, for instance, *Philadelphia Inquirer* [hereafter *PI*], May 22; *Public Ledger* [hereafter *PL*], May 25; and excerpts from the testimony of Judge Fox given before the Grand Jury of Montgomery County, in *The Colored American*, June 23; “conduct,” “reputation,” and “free institutions” come from *PI*, May 19; “spotless” and “moral force” are taken from *Report*, 27, 18; see *National Gazette and Literary Register* (hereafter: *NGLR*), May 22, for the contrast drawn between the self-police of republican democracy and the police state of the Parisian gendarmerie; rule by “public opinion” became a source of contentious disagreement. See “Constitutional Right,” in *PL*, May 25. Significantly the black press took pains to condemn all “mob rule,” not only riot against abolitionists or blacks. Contemporaneous native Protestant assaults on a Roman Catholic school, likely attended mostly by immigrants, raised the alarming possibility that the rule of law was genuinely in crisis. See *Pennsylvania Freeman*, June 14.

“let them read at home.” “Above all,” furthermore, “let them remember that their roses do not need the soil of a dark ground.” Such racist paranoia over “amalgamation” animated much of the anti-abolitionist violence in the 1830s.

Still, so-called responsible commentators had limits. Despite being “thoroughly revolt[ed]” by the abolitionist practice of “self-degradation as a means of elevating the degraded,” the *Public Ledger* upheld the law as a neutral arbiter of private transactions. For the *Ledger* and others, “the very worst of all tyrants” was “the mob,” precisely because, like the military, it had no regard for due process. Its power was arbitrary even when its motive was pure and moral. The city paper could entertain a fantasy of the military massacring “all the ruffians in our city,” their “blood knee deep in the streets,” entirely for subverting the “great principle of freedom of speech and the press.” But in the final balance, keeping mixed-race company deserved “legal protection” from “violent interference” as did any other private matter.<sup>13</sup>

The popular character of both the mob and police posed a paradox that commentators struggled to resolve. The white press could, however, find resources for order within the people, whereas the black press placed more faith in the law itself. Thousands had attended the public tribunal against abolitionism. The crowd had coerced the fire companies to shower nearby property but to let the Hall burn. When Mayor Swift arrived with a small band of police, mostly deputized citizens, cries of “support the Mayor” were met with popular indifference. The few constables who tried to extinguish the flames were dragged away. In the days after, mobs attacked the Friends Shelter for Colored Orphans and black churches. This time, the Mayor, aided by a sizable posse, was able to halt the rioting because the milling crowd “answered by cheers” when the city recorder “called on the citizens to support the laws.” Editorialists called for “the most vigorous measures of prevention” in the future. They warned that the irrational mob that “never stops to reason” is “at once judge, jury, and executioner.” The “few resolute men, headed by authority” who joined the posse seemed to vindicate democracy itself. For without citizens willing to police their own, “the beautiful theory of our law” would, many feared, “become nugatory in practice.”<sup>14</sup>

To close the space between the theory of the law and the flesh-and-blood mob, the question of law enforcement took center stage. White and black papers invoked the same ideals but differed on where to

13 Quotes taken from *NGLR*, May 19; *PL*, May 21; the title of the *Public Ledger* editorial was “Scandalous Outrage Against Law and Decency,” which playfully and profitably combined public angst over lawlessness and “amalgamation”; Leonard Richards, *Gentlemen of Property and Standing: Anti-Abolition Mobs in Jacksonian America* (New York, 1970).

14 On police inefficacy and anti-black riots in the days after May 17, I have consulted the *Report* and the *PI* coverage from May 19; Warner, *The Private City*, 134-7; Du Bois, *The Philadelphia Negro*, 26-30; the accounts in *NGLR* and *PI*, May 22; see editorial “The Rule of Law and the Rule of the Mob,” *PL*, May 21.

place the blame. For both, the law represented “the sovereign power of the *whole* people” while the mob was “a portion utterly insignificant.” They relied upon similar rhetoric. The *Philadelphia Inquirer* warned that “there is no liberty or security for personal property, where the public order cannot be preserved.” The *Colored American* agreed: “[n]o man is safe, neither secure in life nor property, in a country subjected to such heathen outbreakings.” Yet realizing their subordinate status, black papers downplayed racial animus as “but a mere pretext” for the violence. Drawing from broadly shared civic language, they warned “men of property and standing, who look on the wink at these outrages” to “think how soon they and theirs may be the victims.” Without recourse to effective law enforcement, African Americans appealed to the “supremacy of the law.” They hoped to persuade the white majority to live up to founding ideals.

Still, it was impossible for that majority and its press to ignore the circumstances that had occasioned the disorder. And so, while every white paper refused to excuse mob rule, they still recognized “error elsewhere, that there has been cause for excitement.” In a world without professional police, offensive behavior carried the burden of blame. After all, the riot was just desserts.<sup>15</sup>

The Committee on Police captured this perspective in its final report when it condemned the Hall Managers and their allies for “openly promulgating and advocating ... doctrines repulsive to the moral sense of a large majority of our community ... heedless of the dangers which they were encountering, or reckless of its consequences to the peace and order of our city.” Fittingly, this committee on the “Police,” used here in its older sense, emphasized the role of “strangers, who, unconnected with our city and its institutions, came here merely” to “disturb the peace.” In the absence of a permanent military presence or a more robust, full-time police force, keeping watch day and night, posted on every corner, what could be done to mute the popular passions of the people, rightly exercised in their anger on this occasion? For the committee and undoubtedly most white Philadelphians, the rule of law could only keep the peace through the self-discipline of a homogeneous populace. Free society, in their sense, could only survive if all members maintained “a disposition to respect and submit to public opinion.” Patriarchal white supremacy was, in this context, the moral order of “the peace.”<sup>16</sup> The status quo *was* security.

15 *PI*, May 30; *PI*, May 22; *The Colored American*, June 2, 23.

16 *Report*, 12, 18-19.

When African Americans turned to the law, they did so in part because police simply was not an option. For one, the bureaucratized



force recognizable today did not exist. Neither was the older meaning of “Police” available for their use. This was a public privilege reserved for the white majority. It would have been inconceivable for African Americans to focus their protest, for example, on the creation of a more law-abiding and less vigilante posse. Freshly disenfranchised by the Pennsylvania state convention of 1837 and 1838, black Philadelphians faced the additional quandary of calling upon the force of the law without the sovereign power to use it to their ends. With little other recourse, black newspapers consistently sought the protections of the law, with the rhetoric of law’s “supremacy” more aspirational than concretely descriptive. For authority, they liberally cited well-known jurists such as Judge John Fox who appeared before the Grand Jury of Montgomery County to criticize “the late riotous proceedings” where “not an arm was raised to assist” the mayor. In his testimony, Fox condemned “avowals that the law shall be suspended and the mob govern” that were implicit in public support for the anti-abolitionist motives of the rioters. The logical implication, he feared, was that one day this “defiance” may “resist or punish the judge on the bench.” Illustrating the predicament confronting African Americans at this time, Fox was the judge who the year before had ruled to limit the franchise to white males; it was his authority that white Democrats invoked to exclude blacks from democratic society.<sup>17</sup>

In these public conversations, the idea of “law” as color-blind guarantor of individual rights in the marketplace and of “police” as a moral force that disposes the people toward good order turned on the idea and actual practice of “riot” as public opinion — as street justice. Sheriff John Watmough encapsulated the problems of this system of governance. In his 1838 letter to the governor, he observed that his “power consists and consists only, in the disposition, which, in almost all cases, exists among the people themselves, to support the officers of the law.” “When that disposition unfortunately fails,” Watmough explained, the rubble of Pennsylvania Hall still a ready reminder, the sheriff “will find himself without the means to suppress any considerable assemblage of violent or turbulent persons.” For his power was “purely a moral one,” flowing from “the most beautiful principle in the theory of the laws.” On the anti-black riots after the Hall’s destruction, the sheriff could offer only an apology: he had “placed more reliance upon the principle of appeal to the free citizen than upon the clubs and badges of an organized police.” Watmough’s lament was an early iteration of a position that over the next two decades would become settled. More riots paved the way.

<sup>17</sup> *Pennsylvania Freeman*, June 14; *Colored American*, June 23.

The disastrous blunders of the state militia, which turned its guns on civilians in July 1844, would provide another meaningful spark. Since May 1844, Irish Catholics and Anti-Catholic nativists had battled in the streets, in part over the use of the Protestant King James Bible in the public schools. The violent climax in July left at least twelve nativists and four militiamen dead. Many Philadelphians responded by demanding a permanent military presence in the city, provisioned at state expense. Before such a law could be passed, a group of elites, including former mayor John Swift, circulated a pamphlet condemning the military solution, the “police of the bayonet,” as they put it. They asked, quite simply: “shall law-givers thus by violence attain their ends?” They could not fathom democracy surviving military occupation. Instead, they insisted: “Give us a little prevention, and we will ask less cure.” They opposed exchanging the rule of law for rule by the gun. Clarifying, they wrote: “We want peace, to be sure — we want to be quiet, but not upon these hideous terms.” Civil police for them squared the circle of law and order. Their view won the day, though curiously it ignored the propensity for violence and lawlessness of the citizen wearing a uniform and badge. Civil police seemed to preserve the freedom that Americans so cherished. It preserved the fiction that law could reign on the street as equally and as justly as it did in the courts.<sup>18</sup>

Moreover, the courts themselves hardly provided a tribune of equal justice. The grand juries convened to decide the punishment of those arrested for participating in the riot and also whether to rebuild the Hall reached a conclusion reflecting the twin commitments of the time: that mob law dangerously usurped proper justice while communal policing protected the interests of the white majority. On September 27, 1838, the city’s leading colonization advocate Elliott Cresson explained the jury’s verdict that the Hall should not be rebuilt, which several petitions also had demanded. Because abolitionists “naturally tend to offend the nicer feelings of the public,” Cresson and the jury reasoned, “‘the peace, tranquility, and safety,’ of the community will be endangered by its reconstruction.” Recognizing the irony of due process duplicating mob law, William Garrison called the decision what it was — a “Legal Lynching.”<sup>19</sup>

## II. Vigilante Violence and Policing, 1850-1918

The 1850 law that established the first executively coordinated and unified police force of Philadelphia combined the mundane and the

18 “Street talk about an ordinance of councils passed the 11th July, 1844, organizing a military force for the government of Philadelphia” (Philadelphia, 1844), 7, 12, 13. On the circumstances that led to the creation of the Philadelphia Police Department, see Michael Feldberg, *The Philadelphia Riots of 1844: A Study of Ethnic Conflict* (Westport, CT, 1975).

19 For the quotes from Cresson and Garrison, see Tomek, *Pennsylvania Hall*, 225-226. On the legal aftermath of the Hall’s destruction more generally, see *ibid.*, chap. 10.

exceptional in putting police powers on the street. The law authorized the new “Marshal of police” and other city officials, including the mayor, to “command all ward constables, and citizens of age and ability ... [and] to use all necessary force and all means whatsoever” to disperse unlawfully assembled crowds in putting down riots. The new law also directed police “to arrest idle, suspicious, or disorderly persons” and to suspend law as it “may think proper and necessary.” Out of bloodshed and ashes, the riot curfew was born. So too was preventive police.<sup>20</sup>

This story of the creation of civil police suggests that to Americans at the time the most crucial issue was the maintenance of public order without corroding the institutions and customs that made Americans free in the first place. Hence the idea that police should have a basis in civil authority. But Americans may have substituted one form of street justice for another. For the mob, dangerously “at once judge, jury, and executioner,” was given new official life. From the beginning, civil police helped maintain the state-legitimated white racial order. They served at the whim of politicians but also often at the direction of the white majority, especially when the aims of crime control dovetailed with the aims of that white racial order. Looking out on the landscape of a post-emancipation United States, Frederick Douglass wrestled with this question and proposed the franchise as a partial solution. By “mingling with the mass,” he believed, African Americans might “partake of the strength of the mass.” To be cast out, excluded, he recognized, was to invite not only the violence of the mob, but also the state’s complicity in street justice. In other words: the story of policing and rioting for the next century and more.

The structure of policing riots and disorder transformed during the Civil War era. The Fugitive Slave Law of 1850 extended to the federal government the police power to compel every citizen of the United States to assist in the recapture of fugitive slaves. It established what legal scholar Gautham Rao has termed the “federal *posse comitatus* doctrine.” Before, federal power over persons was limited to “emergencies.” The Calling Forth Act of 1795 had granted the President considerable authority to use state militias “whenever the laws of the United States shall be opposed ... by combinations too powerful to be suppressed” by either civilian courts or the *posse comitatus* in order “to cause the laws to be duly executed.” State militia service, which was compulsory during the nineteenth century, also operated on the principle of the *posse comitatus* as it obligated “each and every

20 The “arrest idle, suspicious ...” quote belongs to Allen Steinberg. See Steinberg, *The Transformation of Criminal Justice*, 149 and also more generally chap. 6 (“The Origins of Police Authority”); Act 309, *Laws of the General Assembly of the Commonwealth of Pennsylvania, Passed at the Session of 1850* (Harrisburg, PA, 1850): 666-72, 668, 671, 670; Glenn C. Freese, “The Riot Curfew” *California Law Review* 57 (1969): 450-89.

free able-bodied white male citizen of the respective States” between the ages of eighteen and forty-five to enlist. During the so-called turbulent era and in the period after, the militia was the primary peace-keeping force for mass disorder, usually called in to protect property. The rise of city and state police forces, and the National Guard after 1877, eventually supplanted the militia in this role. The state overall began to assume more responsibility for maintaining order, which no longer depended as much on the effort of private volunteers.<sup>21</sup>

During Reconstruction, the Radical Republicans employed the military as a federal *posse comitatus* to enforce the new constitutional guarantees of civil rights. The United States Army, stationed throughout the South, provided a service similar to the civil police. Military occupation so defined the era that abandoning this practice, along with other radical experiments in federalism, helped to mark its end. The Posse Comitatus Act of 1878 was the crucial law in this regard as it forbade the military from acting in a law enforcement capacity. Representing a truce between North and South, the law ceded enforcement of the Reconstruction Amendments to the states. The Ku Klux Klan Act of 1871, however, still preserved some authority for the federal government, in times of “emergency,” to use the military whenever “domestic violence opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.” In fact, in 1961, the United States Supreme Court would draw upon this law to allow citizens to sue police departments for violations of their civil rights. Overall, however, after Reconstruction the federal government returned to being a distant bystander to local street justice. Private acts of violence between persons now were wholly a state matter.<sup>22</sup>

During the fifty years after Reconstruction, police departments typically were, to borrow from historian Robert Fogelson, “adjuncts of the machine.” Political patronage often determined employment in a municipal police department, an arrangement that led predictably to widespread corruption. It also was the era of the beat cop who walked his assigned area and protected neighborhood custom. More generally, the rise of “machine” police, as Allen Steinberg has shown, dramatically altered criminal justice. Citizens not only had more contact with the state; lawless police practices also reached new systemic proportions. Philadelphia joined other cities around the nation when it delegated greater authority and power to its police department. Eager to preserve a

21 For a detailed legal history of the *posse comitatus*, see Gautham Rao, “The Federal *Posse Comitatus* Doctrine”; on the militia, see Reinders, “Militia and Public Order in Nineteenth-Century America”; quotes, in order, are from the Calling Forth Act of 1795 and the Militia Act of 1792.

22 Rao, “The Federal *Posse Comitatus* Doctrine,” esp. 46-53; David E. Engdahl, “Soldiers, Riots, and Revolution: The Law and History of Military Troops in Civil Disorders,” *Iowa Law Review*, 57 (1971): 1-73; *Monroe v. Pape* 365 U.S. 167 (1961).

turbulent capitalist order, elites commonly “instructed the police to arrest persons based on their appearance.” With this mandate, nuisance, vagrancy, and disorderly conduct arrests climbed. Resort to the “third degree,” or brutal and excessive use of force to extract confessions, increased as well. On the pervasiveness of this practice, a well-placed observer in 1929, the start of the reform era, concluded that police “appoint themselves judge and jury,” deciding in advance that a suspect has “no rights, constitutional or legal.” No doubt mid-nineteenth-century critics of “mob rule” would have sympathized. Additionally, beginning in the 1890s, African American mass migration to northern and southern cities put special pressures on a system already predicated on lawless police. “Mob rule” would flourish in these conditions, as it did in Philadelphia in 1918, as whites struggled to preserve the customs and way of life that for them defined neighborhood order.<sup>23</sup>

Political mobilization for World War I unleashed the terror always latent in the posse. Americans on the home front established vigilance societies to police the patriotism of their neighbors. Major “riotous mass lynching[s]” struck northern and Midwestern cities — places like East St. Louis where African Americans had recently settled as part of the first Great Migration. In 1918, 68 lynch mobs bypassed the rule of law for “rough justice.” The following year, the NAACP tallied 25 “major” riots and at least 52 black lynching deaths. By 1920, Southern lynchings were on the wane due to national media attention and civil rights activism led by the NAACP. Local police departments began to make some effort to protect black defendants from the mob. Though criminal justice still served racist presumptions about black criminality, state courts had become more prominent — and more black defendants actually made it past the lynch mob to trial, which would enable the Supreme Court during the 1920s and 1930s to review local criminal procedure. It would take the lynching of a German American finally to elicit a response from President Woodrow Wilson. Employing the traditional American rhetoric that easily could have come from domestic riot conversations, Wilson condemned mob murder as antidemocratic. “Lawless passion,” he chided, was precisely the crime committed by the international outlaw, Germany, who “has made lynchers of her armies.” Agreeing with the President, the Philadelphia *Public Ledger* published an editorial reminding Americans “that their civilization is based on the observation of law and the security of justice for all through the orderly processes of the court.”<sup>24</sup>

23 Allen Steinberg, *The Transformation of Criminal Justice*, chap. 8 and 9 and the epilogue; quote is on p. 225; Robert Fogelson, *Big-City Police* (Cambridge, MA, 1977), chap. 1; Samuel Walker, *A Critical History of Police Reform: The Emergence of Professionalism* (Lexington, MA, 1977); Gurney E. Newlin is the well-placed observer and his quote comes from his presidential address to the American Bar Association, reprinted as “Conservation of the Traditions of the Legal Profession,” *Annual Report of the American Bar Association* 52 (1929): 171-187, 186; Christopher Thale, “The Informal World of Police Patrol: New York City in the Early Twentieth Century” *Journal of Urban History* 33 (2007): 183-216.

24 Between 1880 and 1940, mostly in the South, roughly 80% of lynching victims, or 2,960, were African American. Arthur Waskow, *From Race Riot to Sit-In, 1919 and the 1960s: A Study In the Connections Between Conflict and Violence* (Garden City, NY, 1975); Christopher Capozzola, *Uncle Sam Wants You: “riotous mass lynching” belongs to Christopher Waldrep, African Americans Confront Lynching: Strategies of Resistance from the Civil War to the Civil Rights Era* (Lanham, MD, 2009), 73; *Public Ledger*, July 27, 1918.

The special claim of vigilante violence on American law and custom helps to explain how lynch mobs and police departments coexisted in the same political culture. Here the posse can bring clarity. Volunteer and private law enforcement had been a tradition of rural areas and small towns from the start of English settlement. Yet the posse proved ill-equipped to keep order in the city with a more transient population. The direct inheritors of the custom of private peace-keeping, the public police, at least at first, showed similar weaknesses and were as capable of partisanship. Despite its passing, the posse lived on as part of political culture as Americans held on to their vigilante roots, with important ramifications for police. According to legal historian Joshua Stein, the “methods of defense Americans employed as individuals and vigilantes became guiding principles for police who were quick to turn to violence to keep the peace.” As Stein shows, over the course of the nineteenth century the law had given “an ever-increasing amount of authority to private individuals,” turning “citizens into little kings.” The posse therefore epitomizes the situation confronting police in 1918: a population of white men who saw themselves as already, at least *potentially*, deputized to employ violence on behalf of the public welfare.<sup>25</sup>

Though lacking a monopoly on violence, the state still exercised considerable power over the narrative of events, especially in moments of disorder. Public police supplied the boots-on-the-ground capacity for authorities to characterize the social order in seemingly neutral, comprehensive terms. Even amid a crisis of legitimacy, as Philadelphia’s department was experiencing in July 1918, the police version of events became the narrative that other accounts had to contest. News stories adopted the conventions of the police report. “Riots” consequently became a problem for the forces of “law and order” to manage. Changing the public conversation on the causes and consequences of a riot was of critical importance for those with the most to lose if blamed and consequently punished for the disorder.

To Philadelphia’s African American population in 1918, the challenge would have seemed impossible to overcome. By 1920, their number had risen by 58% from a decade earlier but they still accounted for only 7% of the total population. Most of the 134,229 black Philadelphians had arrived after 1915. A large majority settled in the Northwest and South districts, in ghettos apart from whites. Despite their relative isolation and small number, the mainstream press and city officials depicted black migration as an “invasion.”

25 Legal scholar Jerome Hall long ago noted: “Paramount is the fact that until quite modern times police duties were the duties of every man.” Hall, “Legal and Social Aspects of Arrest without a Warrant,” *Harvard Law Review* 49, no. 4 (1936): 566-592, 579; David Sklansky, “The Private Police,” *University of California Law Review* 46 (1998-9): 1165-1288; Joshua Stein, “Privatizing Violence: A Transformation in the Jurisprudence of Assault,” *Law and History Review* 30 (2012): 423-448. Quotes are found, in order, on 447, 437, and 448.



“The race problem” was a problem of order — a police matter. By 1918, the North had become home to over a million southern-born African Americans. The race riot was a customary white response to black newcomers, a vigilante means to a public-order end.<sup>26</sup>

### III. The Philadelphia Riot of 1918

On Wednesday, July 24, 1918, Adella Bond moved onto a mostly white block in South Philadelphia. Bond, a black woman, had not recently arrived in the city from the South. She worked as a probation officer for the Municipal Court of Philadelphia. Located in one of the poorest districts, her new neighborhood drew white gangs to the nearby railroad tracks to steal cargo from passing freight trains. It also was a Republican stronghold for the political machine of recent mayoral candidate William Vare. Philadelphia’s government was notorious for being corrupt. At the time of Bond’s move, city papers were reporting steep personnel losses in the police department, blaming Vare’s meddling. The police were known to control elections at the ward level to keep Republicans in power. The last serious effort at reform, by Rudolph Blankenburg, mayor from 1912 to 1915, had introduced the first police manual since 1897 and established the School of Instruction for new officers. Once Republicans had returned to office in 1916, however, graft had resumed. But the Progressive ideal of efficiency survived the election and the corruption. As idealized among, at first, a select number of police executives, the cop would become less a social worker than a crime-fighter. Philadelphians would come to expect their police to prevent crime and maintain order. This process already was underway by the summer of 1918.<sup>27</sup>

Two days after Bond settled into her new home, on Friday, July 26, a hundred white men and women, possibly more, gathered in the street outside. More than a few openly carried guns. According to Bond, a man arrived carrying a baby. In a surreal move, he handed the baby to a woman, then picked up a brick and tossed it through one of her windows. Expecting more to follow, Bond said she “fired one shot out of [her] window then to alarm the police and summon necessary assistance.” When an officer finally showed, “he wouldn’t try to cope with that mob alone, so he turned in a riot call.” With the police gone, the mob resumed, stoning the homes of Bond and her two neighbors. Before backup could come, a group of black men living nearby heard Bond was in trouble and rushed to protect her. It was then, according to the *Afro-American*, a few days later, that the riot began.

<sup>26</sup> Klaus Mladek, ed., *Police Forces: A Cultural History of an Institution* (New York, 2007), introduction; Vincent P. Franklin, “The Philadelphia Race Riot of 1918” *The Pennsylvania Magazine of History and Biography* 99 (1975): 336-50, 337; Victoria Wolcott, *Race, Riots, and Roller Coasters: The Struggle over Segregated Recreation in America* (Philadelphia, 2012). Arnold Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960* (Chicago, 1998), chapter 1.

<sup>27</sup> Warner, *The Private City*, 183-5; Walker, *A Critical History of Police Reform*, 61-70; on Vare’s influence over the police department, see *Public Ledger*, July 25 and 27, 1918; Franklin, “The Philadelphia Race Riot of 1918.”

For her part, Bond expected violence from the beginning. As she told the *Public Ledger*, when movers arrived with her furniture, on Wednesday, she appeared in her doorway armed with a revolver. Her white neighbors claimed that by this action, she had invited conflict. However, as Bond explained, she was only taking “the usual means to protect” herself, as “a gang of hoodlums had thrown [her] inside [her] doorway.” Moreover, she soon observed that “the women went from door to door ... and incited their neighbors to violence and to negro baiting,” perhaps, she suggested wryly, to shield criminal activity from an officer of the law. In interviews conducted by the *Ledger*, Bond’s white neighbors accused her of plans to assert undue authority: “that she would put all the children in their homes, make them stay indoors and otherwise boasted of her power.” As for the realtor who sold Bond the house, he was guilty, they charged, of “colonizing the block with negroes.” Altogether, to borrow the *Ledger*’s unknowingly choice pun, it was a black person’s “appearance among the whites that stirred” the rioting that followed. Both sides declared their right to self- or community-defense, with varying degrees of legality. But it fell to the police to restore order and ultimately to decide on the spot which claims were credible.<sup>28</sup>

The papers described the siege at Bond’s home as a “race riot” in part because blacks were active participants in nearly equal number. Whites also did not allege a crime. By contrast, on Saturday, an “angry mob” of white men chased William Box, a black man, in South Philadelphia “crying ‘Stop thief!’” Standing nearby, Louis Sacks, a storehouse police clerk, helped to apprehend Box, who in turn drew a “villainous looking knife” on Sacks, slashing his arm and shirt. One of the policemen who aided in arresting Box apparently struck him with a blackjack on top of his head, an injury that later required hospital care. The *Philadelphia Inquirer* led with the headline “Police Save Negro from Furious Mob.” In their view, the whites were “would-be lynchers,” Box the hapless villain, and police the heroes. The *Inquirer* did not note whether Sacks was in uniform; that Box possibly mistook him for a member of the lynch mob. The whites met the official definition but did not carry the label of *rioters*. Many, in fact, managed to hit Box as Sacks and other police attempted to take him to the station. Given the prejudices of the era, it is unsurprising that the *Inquirer* assumed the guilt of a black man. It is more revealing that they — and the police — took the “would-be lynchers” at their word. For the whites at the scene, including the police, justice had been served: with the crowd as jury, the police delivered the sentence. Here,

28 Bond’s address was 2936 Ellsworth Street; all quotes, except the second, are found in *Public Ledger*, July 30, 1918; the second is from *Philadelphia Inquirer*, July 31, 1918; “Race Riots in Philadelphia,” *Afro-American*, August 2, 1918; it is important to note that the events recounted here were only later identified by mainstream and black papers as a primary cause of the riot. Other narratives prevailed for a short while, as we will see.

quite obviously, police work affirmed the popular belief in black criminality so evident in the practice of “lynch law.” This cultural work of policing would inform the narrative of the “race riot” later that night.<sup>29</sup>

The Philadelphia Riot of 1918 represented William Box’s arrest and Adella Bond’s encounter on a larger scale. Some mystery remains about the immediate catalyst, the killing of Hugh Lavery, a white policeman, by Jesse Butler, a black civilian, in the early hours of Sunday, July 28. Butler was returning from a party, or he was sitting inside making “insulting remarks to white men who passed.” Either way, a white mob chased and caught him. In the struggle, he fired a revolver, his own or one wrested from an assailant. The bullet killed Hugh Lavery, on his way toward the noise that had awakened him. Butler, beaten and disarmed by the white mob, was arrested by the police and taken to the station, then to the hospital. In their accounts the following day, city papers printed rumors designed to deepen the tragedy. The *Public Ledger* claimed that Mrs. Lavery died “from the shock of her husband’s sudden death.” According to the *Philadelphia Inquirer*, she died during childbirth, the baby, too. Neither was true.

Evidently, while the city’s house was in disarray, the mainstream press trusted the forces of “law and order,” the white mob and the police, for their account of events on the ground. Headlines such as, “Insult to White Girls, Killing of Two Men and Wounding of Many Others in Last 24 Hours, by Negroes, Enrages Whole Section,” endowed the “hue and cry” with the authority of news. Even the timeline was fraught. Several hours after Lavery’s death, rioting apparently resumed when “two negroes ... made insulting remarks” to “two white girls” of teenage years. “[A]t their cry half a dozen men standing on the corner rushed to their assistance,” the *Inquirer* reported. Here white “posses” policing black “crime” indicated the return of order.<sup>30</sup>



**Whites surround a patrol wagon that police used to carry African American “rioters.” Note that many in the crowd appear to pose, some smiling, as victors of the “race war.”** *Evening Public Ledger*, July 29, 1918.

<sup>29</sup> *Philadelphia Inquirer*, July 28, 1918, with the subtitle of “Colored Man Being Chased as Thief Stabs Bureau Clerk Who Stops Him; Threatened by Would-Be Lynchers, He is Rescued and Taken to Hospital”; Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, Mass., 2010).

<sup>30</sup> Quotes taken from *Philadelphia Inquirer*, July 29, 1918; *Public Ledger*, July 29, 1918. Also see *Evening Public Ledger*, July 29, 1918 for other initial coverage; for a chronology, see Franklin, “The Philadelphia Race Riot of 1918,” 339-343.

Intermittent conflict continued throughout the day. Around 3pm, another riot led to the death of another white policeman, Thomas McVay. White civilians and police again shaded into each other in pursuit of a black “outlaw.” Henry Huff allegedly was “brandishing a revolver and patrolling the sidewalks, inviting white men to come and be whipped,” when McVay arrived, drawn by the noise. Though dressed like a civilian, McVay still tried to disarm Huff, who freeing himself, ran into a nearby house. McVay and others followed. Huff fired blindly in their direction, killing McVay instantly and injuring Thomas Myers, a plainclothes detective, and Frank Donohue, a white civilian, who later died as a result. Two other plainclothes detectives finally apprehended Huff, after beating him severely.

McVay’s death was, in retrospect, a turning point. Afterward, whites seemed to gain more organized force. The following day, Monday, July 29, possibly a hundred men went to Huff’s house. Using axes to gain entry, “the vengeance-seeking crowd started to wreck the place,” setting fire to furniture they had dragged into the street. They did the same to “the homes of half a dozen other colored families” in the vicinity. Whites attacked blacks riding trolley cars that happened to stop in the area. Blacks alleged to have insulted a white woman or challenged a white man’s authority were pursued into their homes, disarmed by the mob and arrested by the police. By the end, late on Monday, the arrest ratio was sixty blacks to three whites. The *Public Ledger* summed it all up in describing one scene: “a crowd of policemen fortified by a number of white people were trying to quell riotous negroes.” All blacks had become rioters; all whites, police.<sup>31</sup>

Police pronouncements redrew the line between citizen and cop that blurred in the mob. The authority of the state lent their description of the world the power of objective truth. The controversy around the mysterious death of Riley Bullock, a black civilian, while in the custody of Officer Roy Ramsey, powerfully illustrates this phenomenon. On the morning of Monday, July 29, Ramsey and Officer John Snyder were sent to arrest Bullock for allegedly “brandishing a revolver.” Bullock then apparently lunged at the patrolmen with a “razor.” Only after “repeated clubbing” by Ramsey and Snyder was Bullock finally “subdued” and brought to the station. A lynch mob followed. The city papers reported that “[a]s the trio mounted the steps a shot was fired by a negro, who escaped.” Bullock died less than an hour later. The next day the press acknowledged that “a bullet from the service

31 Quotes can be found in *Public Ledger*, July 29, 1918; *Philadelphia Inquirer*, July 30, 1918; see also *Evening Public Ledger* and *Public Ledger* for July 30, 1918; and Franklin, “The Philadelphia Race Riot of 1918.”

revolver of Patrolman Roy Ramsey” had killed Bullock. Hoping to avoid more violence, Acting Superintendent of Police William B. Mills cited state necessity to justify letting the false story stand. Lieutenant Myers, Ramsey’s superior, claimed that Ramsey “accidentally discharged” his gun, pressed against Bullock’s back, when he slipped walking backwards up the station steps, keeping the crowd at bay. G. Edward Dickerson, a lawyer who defended many of the black defendants accused of rioting, publicly charged that police murdered Bullock to avenge Officer McVay’s death. During the crisis, however, little could be done to change the story.<sup>32</sup>

Police vernacular blanketed the public meanings of the riot, including interpretations critical of their conduct. It could be matter-of-fact, as when the *Inquirer* announced that the riot “eclipsed all records of the Police Department.” More often, it was less benign. City papers dutifully reported that “[t]he police declared that a majority of negroes were under the influence of liquor.” They concurred when Superintendent Mills explained that “[s]outhern negroes, ‘running wild’ after long periods of restraint in the South, are the cause of the rioting.” They approved when U.S. District Attorney Francis Kane admonished the city for not expecting disorder despite being “cognizant of the immense invasion of negroes from the South.” All were critical but still lobbied for more police. The *Ledger* could not fathom why police had not disarmed black migrants upon arrival, who not being “accustomed to the restrictions of [city] life,” had weakened “the forces of everyday discipline.” After all, a “riot doesn’t begin as a riot,” just as a “fire doesn’t become a conflagration,” i.e. on its own.<sup>33</sup>

A race riot evidenced, at base, police failure. A group of black ministers, in a public letter to Mayor Thomas Smith, “put the whole blame upon” the “incompetent police force.” Their “hobnobbing with the mob” allowed what “would have been nothing more than a petty row” to become “the disgrace of Philadelphia.” Citing inadequate police protection for “citizens of color,” the *Philadelphia Tribune* recommended hiring more black officers to keep order in black neighborhoods. “As usual, when riots occur,” the *Afro-American* observed, “the colored people were disarmed by the officers, while no serious attempt was made to deprive the whites of their weapons.” Better policing, all could agree, meant truly sorting “law-abiding” citizens from “hoodlums.”<sup>34</sup>

Disagreement over the proper response to disorder rested upon a deeper divide over whether a “race war” was underway. City papers

32 City papers initially reported Bullock’s death on July 29. They published revisions on July 30 and 31. Much later, a judge revealed that in fact Bullock died inside the police station. Despite considerable black protest, Ramsey and Snyder never were convicted. Mention of the trial is in *Philadelphia Inquirer*, September 21, 1918. For more on the legal challenges against Ramsey and Snyder, led by the Colored Protective Association, see Franklin, “The Philadelphia Race Riot of 1918,” 344-7.

33 *Philadelphia Inquirer*, July 29, 1918; *Evening Public Ledger*, *ibid*; *Philadelphia Inquirer*, July 31, 1918; *Evening Public Ledger*, *ibid*.

34 Every city paper printed the ministers’ letter. *Philadelphia Tribune*, August 3, 1918; *Afro-American*, August 2, 1918. Major lynch riots in East St. Louis and Chester, Pennsylvania, were cited in *Afro-American*, August 3, 1918; see also Waskow, *From Race Riot to Sit-In*.

referred to black-owned homes as “veritable arsenals.” As many as 5,000 white and black men were fighting “a series of street battles.” Crowds of blacks responded to white attacks “fully armed” and “marched” against “advancing bluecoats” who “charged through the fusillade of bullets.” Black papers also mentioned the “bitter racial warfare” but with different emphasis. Generally, they avoided the logic that interracial contact led inevitably to conflict. Blacks and whites, they maintained, can “live peaceably together.” Instead disorder was more a problem of class. Adella Bond had moved onto a block where “a low class of whites” lived — the “brutes” that attacked her. For too long, police had allowed “irresponsible white hoodlums” to harass “law-abiding” black citizens. The law could cut through the confusion caused by “color prejudice.” It could be an equalizer. Black leaders noted that “a white man carrying a concealed weapon is as much a violator of the law as is a colored man doing the same thing.” Police had failed precisely because in siding with the mob, they had taken the law into their own hands.<sup>35</sup>

In the event that law failed, certain black leaders were prepared to adopt “Dixie Methods” as well. Weeks before the riot, the *Philadelphia Tribune* published a fiery editorial that promised a vigilante response should whites attempt further physical violence against the black community. “We favor peace,” G. Grant Williams declared, “but we say to the colored people of the Pine Street warzone, stand your ground like men.” Williams peppered his manifesto with the gendered rhetoric of a classic American vigilante: “A man’s home is his castle.” He reminded his white antagonists that African Americans also “stand for law and order,” but, he told his readers, “when they tread upon your rights fight them to the bitter end ... and if the law is insufficient we’ll meet the rowdies of the town and give them shot and shell.” After the street battles of July, Williams returned to similar themes: “I would and will shoot any man who attempts to enter my home by force,” including a policeman, he noted.<sup>36</sup>

For Williams and many African Americans, police misconduct threatened not only the peace but also black manhood and the dignity of the wider black community. Violence for some was the requisite response. For the black press, riots were less evidence of a “race war” than the tragic consequence of lawless police. The beat cop needed to position himself above the mob but under the law. Only then would persons and property be secure. This ironically would become the position of police professionalization advocates in the decades after.<sup>37</sup>

35 *Public Ledger and Philadelphia Inquirer*, July 29, 1918; *Afro-American*, August 2, 1918; “Lone Woman Holds a Mob of 500 White Brutes at Bay” and “The So-Called Race Riot,” *Philadelphia Tribune*, August 3, 1918.

36 “Dixie Methods in Philadelphia,” *Philadelphia Tribune*, July 6, 1918.

37 “Lone Woman,” August 3, 1918; the *Tribune* concluded: “Riots, happening everywhere, particularly in Northern cities, gain a headway [sic] only when the sworn officers of the law fall in the performance of their sworn duty.” “The So-Called Race Riot,” August 3, 1918.



#### IV. Policing, Rights, and the Origins of the 1960s Riots

Philadelphians invoked the law in an era before “civil rights” held significant legal standing at the local level. During the 1918 riot, Henry Huff’s attorney, G. Edward Dickerson, charged city police with violating the Fourth Amendment’s warrant requirement at a time when state courts did not strictly apply the Bill of Rights to police, especially when the suspect was black.<sup>38</sup> Perhaps it did not much matter anyway. Many states, Pennsylvania included, authorized martial law in “emergencies.” Police could close stores, seal off city streets, and arrest anyone who defied their orders. Executive privilege certainly shielded many departments. More important than law, however, was custom. Like many white Americans, most police believed in the inherent criminality of African Americans. As policeman Callahan explained to the Chicago Commission on Race Relations one year after the 1919 Chicago Riot, “[i]f a Negro should say one word back to me or should say a word to a white woman in the park, there is a crowd of young men ... who would procure arms and fight shoulder to shoulder with me.”<sup>39</sup>

Blacks’ “rights talk” still challenged white dominance even though it appealed to a power that did not yet exercise much local force. The national surveillance state that developed during World War I also was wary of the social ends of “rights” claims. Reporting military intelligence on “the negro problem,” Major J. E. Cutler warned that the NAACP had encouraged “the colored people to insist upon equality with white people ... in order to establish their rights.” “‘Fight for your rights,’ is the new slogan,” Cutler worriedly observed. “Rights” discourse won an ally in the American Civil Liberties Union, established in 1920. But it would not enter the mainstream and gain legal force until the late 1930s and 1940s. Later still did constitutional law attach concretely to policing.<sup>40</sup>

Placing faith in the rule of law to reign in police held both promise and peril. Vagrancy law is instructive. Until the early 1970s, police and politicians used broad anti-vagrancy ordinances to clear the streets of the poor and other “undesirables.” Arrests for disorderly conduct and breach of the peace also were common. African Americans were especially vulnerable. A 1926 survey found that one-third of all black Philadelphians arrested were let go because police lacked evidence to charge them with a crime. A 1952 study discovered that “[t]hree-quarters of the arrests for disorderly conduct appear to be illegal, in that the charge is used to cover lawful conduct of which

38 *Evening Public Ledger*, July 29, 1918.

39 *Philadelphia Tribune*, August 3, 1918. Corinna Barrett Lain, “Countermajoritarian Hero or Zero? Rethinking the Warren Court’s Role in the Criminal Procedure Revolution,” *University of Pennsylvania Law Review* 152 (2004): 1361-1452; Frese, “The Riot Curfew”; many black Chicagoans blamed the riot on Callahan’s failure to arrest the white man who drowned the young African American Eugene Williams. *The Negro in Chicago: A Study of Race Relations and a Race Riot* (Chicago, 1923): 451.

40 Cutler’s full memo is in William Cohen, “Riots, Racism, and Hysteria: The Response of Federal Investigative Officials to the Race Riots of 1919,” *The Massachusetts Review* 13, no. 3 (1972): 373-400, 388; on “rights” claims, the ACLU, and legal change during the World War I-era, see Walker, *Popular Justice*, chap. 7.

the police disapprove” such as mixed-race “fraternization.” After World War II, the African American population grew to 18% of the city total. Police commented in a post-war survey that black crime was “the result of housing, employment, and heredity.” “You don’t have too much trouble with Negroes if you keep them in their place,” one high-ranking official explained. Black respondents noted that police “frequently give the third degree” and “pick up people easily, use violence.” The “third degree” refers to police use of excessive force, even torture, in pre-trial interrogations. A 1931 government report found it to be nationally “widespread.” As journalist Ernest Hopkins put it at the time: “In every city our police hold what can only be called outlaw tribunals — informal and secret inquisitions of arrested persons — which are, terminology aside, actual and very vigorous trials for crime.” Over the next thirty years, the Supreme Court slowly recognized that the routine street stop existed largely outside courtroom law — and that this had to change.<sup>41</sup>

The law of policing transformed as the nation became a more important organizing frame in political culture. The International Association of Chiefs of Police (IACP), established in 1893, increased coordination among police agencies. The Bureau of Investigation, founded in 1908 and renamed the Federal Bureau of Investigation in 1935, introduced national record-keeping through the Uniform Crime Reports and set a premium on scientific crime-fighting. Gradually, police departments replaced torture with lie-detection as more scientific and efficient. Crime-control became more central to their mission. Arrest quotas and the patrol car encouraged the “police practice of arresting first and building a case later.” Prohibition introduced a failed national experiment in policing but left an important cultural precedent. Public hysteria over the violence of bootlegging led to a national “war on crime.”<sup>42</sup>

During the 1920s and 1930s, the Supreme Court took the unprecedented step of intervening in state criminal trials. The Justices focused on poor black defendants sentenced to death by southern juries who in effect were acting as proxies for the lynch mob. Even so, their decisions barely affected police procedure on the street. The U.S. Commission on Civil Rights could report in 1961 that police brutality was “still a serious problem throughout the United States.” The language of the rights of persons suspected of crime had, however, taken hold. One officer captured the sentiment of many in the 1960s when he observed that “[i]t’s getting harder to work in these neighborhoods now than it used to be because we send the kids to school and teach

41 Risa Goluboff, *People Out of Place: The Sixties, the Supreme Court, and Vagrancy Law* (forthcoming, 2014); Caleb Foote, “Vagrancy-Type Law and Its Administration,” *University of Pennsylvania Law Review* 104 (1956): 603-650; Karl E. Johnson cites the 1926 survey, by Anna J. Thompson, in “Police-Black Community Relations in Postwar Philadelphia: Race and Criminalization in Urban Social Spaces, 1945-1960,” *The Journal of African American History* 89 (2004): 118-134, 120, 119; Paula R. Markowitz and Walter I. Summerfield, Jr., “Philadelphia Police Practice and the Law of Arrest,” *University of Pennsylvania Law Review* 100, no. 8 (1952): 1182-1216; G. Gordon Brown, *Law Administration and Negro-White Relations in Philadelphia: A Study in Race Relations* (Philadelphia, 1947): 100, 103; National Commission on Law Observance and Enforcement, *Report on Lawlessness in Law* (Washington, 1931), 4; Ernest Jerome Hopkins, “The Lawless Arm of the Law,” *Atlantic Monthly* (Sept. 1931): 279-87, 80.

42 Walker, *Popular Justice*, chap. 6, 7, and 8; Richard A. Leo, *Police Interrogation and American Justice* (Cambridge, MA, 2008), chap. 2; “arresting first” quote is from Markowitz and Summerfield, “Philadelphia Police Practice,” 1194.

them about rights.” Nationally televised state-sanctioned racist southern violence against peaceful Civil Rights marchers deepened the rift between the police and black communities. Amid a national war on poverty and injustice, black rioters would have their stage.<sup>43</sup>

The methods that police typically used in high-crime urban areas would provide the spark. A national study by the American Bar Foundation discovered that legislatures, courts, and police commonly deployed “substantive criminal law ostensibly designed to control ‘suspicious’ persons.” New York passed the first stop-and-frisk statute in 1964 — later implicitly affirmed by *Terry v. Ohio* — that allowed police to “stop any person abroad in a public place who he reasonably suspects is committing, has committed or is about to commit a felony.” Police had relatively free reign to invoke public safety concerns to disperse “suspicious” persons. “Move on!” worked by command not consent, less to enforce the law than to maintain order. The growing field of “Police Science” turned to preventive patrol to keep the overcrowded metropolis safe. One popular guide recommended that a beat cop should closely observe “[p]eople who do not ‘belong.’” By the 1950s, the public profile of “people who do not ‘belong’” encompassed the poor, the nonconformist, and the nonwhite migrant, city dwellers all.<sup>44</sup>

The public happily entrusted police with this responsibility because cities appeared to be changing for the worse. For the white majority during the 1950s, many of whom now lived in the suburbs, the disorder and delinquency they found in cities where millions of African Americans and other nonwhite populations recently had settled constituted a national threat. At the same time, big-city police departments began to complain that their officers lacked legitimacy in certain neighborhoods. Stanley R. Schrotel, Cincinnati Police Chief and IACP president, reported that “people assembled as spectators where an arrest is being made tend to side with the prisoner” and “sometimes ... openly attack the police in an attempt to free the prisoner.” Police from Los Angeles and San Francisco affirmed this worrying trend. Encountering the systemic issue of black poverty, police responded with the tools at their disposal. To their dismay they discovered that stop-and-frisk, whatever its legality, elicited more and more a vigilante response.<sup>45</sup>

Most of the 1960s riots arose out of routine interactions between police and citizens. For police the routine was normal departmental policy. In the early 1960s, police chiefs in Los Angeles, Detroit, and

43 Michael J. Klarman, “The Racial Origins of Modern Criminal Procedure,” *Michigan Law Review* 99, no. 1 (Oct., 2000): 48-97; United States Commission on Civil Rights, *1961 U.S. Commission on Civil Rights Report: Book 5: Justice* (Washington, D.C., 1961), 1; police officer quoted by Jerome H. Skolnick in *Justice Without Trial: Law Enforcement in Democratic Society* (New York, third ed. 1994), 85.

44 *Terry v. Ohio* 392 U.S. 1 (1968); Walker, *Popular Justice*, chap. 8; Lawrence Tiffany, “Field Interrogation: Administrative, Judicial and Legislative Approaches,” *Denver Law Journal*, 43 (Fall 1966): 389-438, 425; Tiffany co-authored the ABF study with Donald M. McIntyre, Jr., and Daniel L. Rotenberg. See Frank J. Remington, ed., *Detection of Crime: Stopping and Questioning, Search and Seizure, Encouragement and Entrapment* (Boston, 1967); for the New York statute, see Tiffany, “Field Interrogation,” 433; Thomas F. Adams, “Field Interrogations,” *Police* (March-April 1963): 26-29, 28.

45 “Will City Streets Ever Be Safe Again?” *U.S. News & World Report*, April 8, 1963, p. 80; “Terror in the Streets: Behind the Rise in U.S. Crime,” *U.S. News and World Report*, December 24, 1962, p. 54.

46 Robert Fogelson, "From Resentment to Confrontation: The Police, the Negroes, and the Outbreak of the Nineteen-Sixties Riots," *Political Science Quarterly*, 83 (June 1968): 217-47; the Los Angeles and Detroit hearings were held January 27-28 and December 14-15, 1960, and the Newark hearings, September 11-12, 1962; for the Parker quote, see Mary Frances Berry, *And Justice for All: The United States Commission on Civil Rights and the Continuing Struggle for Freedom in America* (New York, 2009), 33; for the quotes from Spina and Hart, see *The Police and the Blacks: U.S. Civil Rights Commission Hearings* (New York, 1971), 475, 399.

47 For the quotes from the Detroit officers (Jesse Ray and Joynal Muthler) and Willis Ward, see *The Police and the Blacks*, 375, 323, 380.

Newark — the cities that would experience the most destructive uprisings of the decade — offered the same simple message in their testimony before the U.S. Commission on Civil Rights: there is no police-community relations problem. William Parker of Los Angeles confidently asserted "that there is no desegregation or integration problem." Rather, "genes" hinder Mexican Americans' assimilation to city life. Dominick Spina of Newark denied the existence of any "great tension between any minority group, so called, and the police department." Herbert Hart of Detroit dismissed allegations of police brutality against black citizens altogether, as "an uninformed misstatement."<sup>46</sup>

Yet the view from the street looked very different. For African Americans across the nation, their routine police treatment had become intolerable. A former Detroit patrolman cited the belief among city cops "that if you stop and search fifty Negroes and you get one good arrest out of it that's a good percentage." Another former officer testified that "the Negro is living in a police state." And the Assistant U.S. Attorney in Detroit argued that the "police department seems to be working under a program of containment of the Negro citizen by brute force." Four years later riots swept through black neighborhoods in seven northern cities. When North Philadelphia resident Florence Mobley climbed on top of an overturned fridge in late August 1964, she represented what had been and what was to come. She encouraged the black men nearby to forget the NAACP, nonviolence, and the rest. Mobley and the black rioters of the 1960s called upon a long American tradition of vigilantism to remedy perceived injustice. Except now community police was oriented against official police.<sup>47</sup>

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**Alex Elkins** is a Ph.D. Candidate at Temple University. He was the Doctoral Fellow in African American History at the German Historical Institute for the first half of the 2013-2014 academic year. His dissertation is entitled "Battle of the Corner: The 1960s Riots and the Triumph of 'Get-Tough' Policing." His publications include "Rioting in America" in *The Encyclopedia of Criminology and Criminal Justice* (2014) and an extended book review on rioting in the twentieth-century United States for the *Journal of Urban History* (forthcoming).