

## THE REGULATION OF PRIVATE POLICE

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### ABSTRACT

Private police assume many of the same roles as traditional law enforcement. But courts and legislatures regulate public and private police very differently. This Article evaluates the statutory and judicial regulation of private police. By collecting and coding all state statutes related to the regulation of private police, I theorize on the inadequacies of the current regulatory scheme. I show that most state statutes only regulate a certain category of private police officers, leaving a substantial portion of the private policing industry virtually unregulated. Many state regulations of private police misunderstand, and thus inadequately protect against the threat posed by the private policing industry. I argue that while most state regulations facilitate predictable transactions for security services, few statutes protect individuals from the potential social harms of the privatized police. Based on these descriptive observations, I make several normative recommendations for future regulation. In doing so, I borrow from the sociological literature on organizational regulation. I conclude that judicial attempts to control private police behavior through the expansion of the state action doctrine would be ineffective at deterring private police misconduct. Instead, state legislatures should expand the depth and breadth of current statutes.

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## I. INTRODUCTION

Over the last several decades, law and social science scholars have written extensively on the privatization of traditional state functions.<sup>1</sup> This so-called “era of privatization”<sup>2</sup> has transformed American governance and elicited serious concerns about accountability and regulation.<sup>3</sup> Perhaps no traditional government function has evolved more during this era of privatization than policing. For much of modern American history, public law enforcement monopolized policing.<sup>4</sup> But organizations have increasingly internalized traditional policing functions by hiring private security personnel.<sup>5</sup> Indeed, American policing has become “pluralized” as traditional police have

<sup>1</sup> See generally David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165 (1998).

<sup>2</sup> Laura A. Dickerson, *Privatization and Accountability*, 7 ANN. REV. LAW & SOC. SCI. 101, 102 (2011).

<sup>3</sup> Sklansky, *supra* note 1, at 1191 (noting that “[t]he frequency with which this complaint is raised serves as a reminder that the supposed accountability of private policing has a troubling side as well”).

<sup>4</sup> David H. Bayley & Clifford D. Shearing, *The Future of Policing*, 30 LAW & SOC’Y REV. 585, 586 (1996).

<sup>5</sup> Lauren B. Edelman & Mark C. Suchman, *When the “Haves” Hold Court: Speculations on the Organizational Internalization of Law*, 33 LAW & SOC’Y REV. 941, 972 (1999).

been “supplanted by more numerous private providers of security.”<sup>6</sup> Private police presently outnumber sworn public police.<sup>7</sup> And these private police officers engage in many of the same coercive social control tactics such as searches, seizures, arrests, investigations, interrogations, and surveillance.<sup>8</sup> But the law regulates the private security industry differently than public law enforcement—private police are generally subject to minimal licensing requirements and receive little in-service training.<sup>9</sup>

While various scholars have addressed the historical development,<sup>10</sup> conceptualization,<sup>11</sup> and paradoxes<sup>12</sup> of private police, very little scholarship has thoroughly addressed the regulation of this emerging agent of social control. The literature correctly recognizes that state statutes increasingly require the licensing of some private police officers or private police agencies.<sup>13</sup> The burgeoning number of state licensing requirements has led some writers to paint a modestly positive picture of private police regulation.<sup>14</sup> In this Article, I use a simple coding scheme to assess the current state of private police regulation. I collect and analyze statutes regulating private police in all fifty states. I then code each of these laws based on the statute’s definition of private police officer and the statute’s regulatory breadth. This methodology allows me to recognize aggregate patterns in private police regulation. In doing so, I uncover fundamental assumptions present in many of these statutes. I borrow from the sociological literature on organizational regulation in arguing that the current state of the law inadequately addresses serious regulatory concerns such as accountability, redress for misconduct, and managerial oversight.

As I demonstrate, if a private company internally employs a private police officer, many states exclude these private officers from regulation. State laws consistently fail to regulate these so-called internalized or proprietary

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<sup>6</sup> Bayley & Shearing, *supra* note 4, at 588, 597.

<sup>7</sup> Edelman & Suchman, *supra* note 5, at 958.

<sup>8</sup> *Id.* at 959–60.

<sup>9</sup> Sklansky, *supra* note 1, at 1279 (citing WILLIAM C. CUNNINGHAM ET AL., HALLCREST SYSTEMS, INC., PRIVATE SECURITY TRENDS 1970-2000, 148 (1990); JAMES S. KAKALIK & SORREL WILDHORN, PRIVATE POLICE IN THE UNITED STATES: FINDINGS AND RECOMMENDATIONS 38 (1971); Brae Canlen, *Insecurity Complex*, CAL. LAW., June 1998, at 32).

<sup>10</sup> See Sklansky, *supra* note 1.

<sup>11</sup> See Elizabeth E. Joh, *Conceptualizing the Private Police*, 2005 UTAH L. REV. 573 (2005).

<sup>12</sup> See Elizabeth E. Joh, *The Paradox of Private Policing*, 95 J. CRIM. L. & CRIMINOLOGY 49, 50 (2004).

<sup>13</sup> See, e.g., Jeff Maahs & Craig Hemmens, *Train in Vain: A Statutory Analysis of Security Guard Training Requirements*, 22 INT’L J. OF COMPARATIVE & APPLIED CRIM. JUSTICE 91, 99 (1998).

<sup>14</sup> *Id.* (noting that the increase in state statutes purporting to regulate private security officers between 1981 and 1998 represents “a positive trend”).

officers. This fact is especially perplexing because empirical evidence suggests that internalized private police are substantially more likely than other security personnel to wield substantial discretion and engage in coercive behaviors. I theorize that this demonstrates a consistent pattern evident across state-level statutory arrangements: a concern for the facilitation of predictable business transactions between large organizations and third-party security contractors. State licensing procedures for private police ensure that businesses purchasing third-party security services will receive a reasonably consistent product throughout a state marketplace. This sort of statutory framework ignores the potentially serious harms posed by private police—particularly internalized personnel. In order to ameliorate these possible threats, I offer several normative recommendations. Unlike many scholars who argue for the expansion of the state action doctrine to private police, I emphasize the need for legislative arrangements. Because private police are primarily motivated by the desire to protect private assets, private officers likely care about the prevention of loss more than the successful prosecution of wrongdoers. As such, any attempt by the courts to extend the application of the Fourth or Fifth Amendment to non-state actors like private police through the use of the exclusionary rule would not effectively deter private police wrongdoing. Instead, legislatures should create laws that mandate private police transparency, afford aggrieved parties with an efficient means of redress, and ensure public accountability.

I have divided this Article into three parts. Part II details the evolution of private police. In this Part, I discuss the growth and purposes of private police. In this section, I also provide a brief literature review of past research on private policing. Part III evaluates the state regulation of private police. Finally, Part IV theorizes on the several patterns evident from the statutory analysis. In this final Part, I offer several recommendations for future statutory regulation of private police.

## II. THE EVOLUTION OF PRIVATE POLICE

For much of the twentieth century, the police, public, and government “viewed private security companies as a dangerous and unauthorized intrusion by private interests into a government preserve.”<sup>15</sup> But over the last two decades, governments have come to accept and even encourage private police as a necessary tool for crime prevention and the protection of property.<sup>16</sup> In this Part, I first examine the expansion of private police as an accepted compliment to traditional law enforcement. In doing so, I also address the different purpose and logics driving public and private police—an important consideration in judging the efficacy of current statutory regulations. Second, I examine how the

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<sup>15</sup> Bayley & Shearing, *supra* note 4, at 587.

<sup>16</sup> *Id.*

law has permitted private police to act as coercive agents of social control, engaging in many of the same behaviors as traditional police. Common law permits private police to execute limited arrests, detentions, interrogations and searches. States have reified these permissive common law doctrines by passing statutes that permit private police wide discretion to act as law enforcers and protect private police from civil liability.

A. *The Expansion and Responsibilities of Private Police*

In his impressive article entitled *The Private Police*, David Sklansky offers a sweeping historical analysis of private police, as well as the most thorough literature review on the subject to date.<sup>17</sup> Sklansky identifies three possible explanations for the growth of private police: (1) a broader ideological shift in the United States favoring privatization,<sup>18</sup> (2) the expansion of “mass private property,”<sup>19</sup> and (3) the failure of public police to provide sufficient security services.<sup>20</sup> Sklansky identifies this third potential reason as the most dominant explanation for the rise of private police.<sup>21</sup> Private police are cheaper to hire than public police.<sup>22</sup> Private police also serve unique roles that public police cannot possibly fill. Private police focus specifically on the organizational needs of private companies. While the “client” of the public police is society generally, the “client” of the private police is a specific organization.<sup>23</sup> This means that private police typically focus on preventing asset loss as opposed to crime control. Once more, private police often turn to private justice systems instead of relying on the traditional criminal justice system.<sup>24</sup>

Private police come in various forms, including but not limited to private residential patrols,<sup>25</sup> private security guards,<sup>26</sup> and private detectives or

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<sup>17</sup> See Sklansky, *supra* note 1.

<sup>18</sup> *Id.* at 1221.

<sup>19</sup> *Id.* (quoting Clifford D. Shearing & Philip C. Stenning, *Private Security: Implications for Social Control*, 30 SOC. PROBS. 493, 496 (1983)).

<sup>20</sup> *Id.* at 1222 (explaining that “for over two centuries privately paid entrepreneurs in both Britain and America have been filling gaps in the police protection offered by public law enforcement”).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 1223 (citing CUNNINGHAM ET AL., *supra* note 9, at 156). According to Cunningham et al., public police earn about 50% more than private officers. CUNNINGHAM ET AL., *supra* note 9, at 156.

<sup>23</sup> Joh, *supra* note 11, at 587.

<sup>24</sup> See *id.* at 587–88.

<sup>25</sup> Sklansky, *supra* note 1, at 1173 (citing Jay Apperson, *Scared suburbia finds peace of mind in private security Neighborhood patrols: Fear of crime has communities turning to private companies for added protection. Such security firms could be the wave of the future*, BALTIMORE

investigators.<sup>27</sup> Today, Americans encounter private security officers at private “buildings, factories, warehouses, schools, sports facilities, concert halls, train stations, airports, shipyards, shopping centers, parks, government facilities—and, increasingly, residential neighborhoods.”<sup>28</sup> Indeed, Sklansky believes that an average person interacts with private police more frequently than public police on a day-to-day basis.<sup>29</sup>

Surprisingly though, despite the important role of private police in American society, few scholars have empirically analyzed the private policing movement. A small amount of recent legal academia addresses private policing. Sklansky published his comprehensive legal and historical piece on private policing in 1999, introducing future avenues for research.<sup>30</sup> Elizabeth E. Joh has since attempted to conceptualize the institution of private policing and introduce some peculiar paradoxes.<sup>31</sup> Ric Simmons has situated private police as part of a broader movement toward the establishment of a private criminal justice system.<sup>32</sup> Others like M. Rhead Enion and Cooper J. Strickland have assessed the potential usefulness of regulating private police through the expansion of the state action doctrine.<sup>33</sup> But legal academics on the whole have failed to thoroughly assess how states regulate private police.

Criminal justice scholars have made several important contributions to the study of private policing. Clifford Shearing and Philip Stenning have written on the reasons for the recent growth in private policing.<sup>34</sup> David Bayley and Shearing put the private police movement in historical context within the broader shifts in policing generally.<sup>35</sup> And perhaps most notably, William Cunningham, Todd Taylor, and Hallcrest Systems, Inc. have released two of the most complete empirical assessments of the private policing industry in

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SUN, Apr. 1, 1996, at A1; *see also* Hillary Durgin, *Crime pays: At least, it does for rent-a-cop firm*, CRAIN'S CHICAGO BUS., Nov. 29, 1993, at 4; Larry Hicks, *Private Security Patrols Ease Homeowners' Fears*, SACRAMENTO BEE, Mar. 4, 1994, at A1).

<sup>26</sup> *Id.* at 1174–75 (stating that “uniformed private officers guard and patrol office buildings” throughout the country).

<sup>27</sup> *Id.* at 1217–21 (discussing the rise and transformation of private detective agencies).

<sup>28</sup> *Id.* at 1175.

<sup>29</sup> *Id.*

<sup>30</sup> *See id.*

<sup>31</sup> *See* Joh, *supra* note 12. *See generally* Joh, *supra* note 11.

<sup>32</sup> *See* Ric Simmons, *Private Criminal Justice*, 42 WAKE FOREST L. REV. 911 (2007).

<sup>33</sup> M. Rhead Enion, *Constitutional Limits On Private Policing and The State's Allocation of Force*, 59 DUKE L.J. 519, 519 (2009); *see also* Cooper J. Strickland, *Regulation Without Agency: A Practical Response to Private Policing in United States v. Day*, 89 N.C. L. REV. 1338, 1342 (2010–2011).

<sup>34</sup> *See* Shearing & Stenning, *supra* note 19, at 496.

<sup>35</sup> *See* Bayley & Shearing, *supra* note 4, at 587.

1985<sup>36</sup> and 1990.<sup>37</sup> While these accounts advanced the study of private police, they are increasingly outdated, and also fail to connect the study of private police back to legal academia.

I hope to fill the gap left in the legal and criminal justice scholarship on private police by offering a contemporary assessment of the size, regulation, and legal power of private police. The next section will begin this exploration by calculating the approximate number of private police officers in the United States today.

### B. *The Size of the American Private Police Force and Historical Trends*

Private police substantially outnumber sworn public police.<sup>38</sup> Only a few empirical studies over the last several decades have comprehensively examined the size and scope of private police forces. These studies have used different definitions of private police and different methodological measurements.<sup>39</sup> Many studies have included in the definition of private police any individual occupied in a protective service role. This broad, imprecise definition fails to recognize that certain private security personnel serve more coercive purposes than others. For the purposes of this study, I distinguish between *private protective personnel* and *private police officers*. The term private protective personnel refers to any individual privately employed in the security industry. Locksmiths, alarm-monitoring services, armored car drivers, private correctional officers, and even lifeguards all fall under the category of private protective service occupations.<sup>40</sup> Individuals employed as private protective personnel are generally responsible for some facet of private organizational safety, but do not necessarily wield particularly coercive powers similar to public law enforcement.

This article only purports to study private police officers. By this, I refer to private protective personnel that take on roles similar to public law enforcement. The most common examples of private police officers include

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<sup>36</sup> WILLIAM CUNNINGHAM ET AL., THE HALLCREST REPORT: PRIVATE SECURITY AND POLICE IN AMERICA (1985).

<sup>37</sup> CUNNINGHAM ET AL., *supra* note 9.

<sup>38</sup> Sklansky, *supra* note 1, at 1174.

<sup>39</sup> For example, Professor Sklansky cites to statistics compiled by William Cunningham of Hallcrest System. These studies define private security or private police as interchangeable with “guards.” Sklansky, *supra* note 1, at 1174 n.27. Meanwhile, Professors Edelman and Suchman appear to cite to the number of individuals employed among the individuals engaged in “private security,” a potentially wider definition that includes many more protective personnel. Edelman & Suchman, *supra* note 5, at 957 n.21.

<sup>40</sup> See *Occupational Employment and Wages, May 2011*, BUREAU LAB. STAT., <http://www.bls.gov/oes/2010/may/oes330000.htm> (last visited Sept. 19, 2012) (the Bureau includes firefighters, alarm monitoring, armored car drivers, lifeguards, and other security-oriented personnel in its definition of private protective services).

security guards, private investigators and private detectives. As I demonstrate in Part III.B, the law has facilitated the transformation of private police officers into coercive agents of social control comparable to public police. The majority of organizations hire private police officers from third-party contractors.<sup>41</sup> Often these third-party contractors exclusively market themselves as sellers of private security forces. I refer to the employees of these security contractors as *third-party private police*. Conversely, a sizeable minority of organizations employ their own proprietary police force, which I will refer to as *internalized private police*.<sup>42</sup> These internalized officers are not employed by a third-party security contractor, but instead hired and employed exclusively by a single proprietary employer. As I will discuss in Part III and IV, state statutes give great importance to the distinction between internalized and third-party private police.

In order to accurately assess the size of the private police force in the United States, I collected statistics from various sources: the Bureau of Labor Statistics (“BLS”),<sup>43</sup> the United States Economic Census (“USEC”),<sup>44</sup> the Employment and Training Administration (“ETA”),<sup>45</sup> and previous empirical studies. Through reference to these different resources, I roughly calculate the current size of the private police force in the United States, as well as the number of private police officers employed by third-party security contractors compared to the number of private police officers employed internally by proprietary companies. Finally, I examine some intriguing historical trends in private police employment over the last several decades.

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<sup>41</sup> KEVIN STROM, ET AL., UNTIED STATES DEP’T OF JUSTICE, THE PRIVATE SECURITY INDUSTRY: A REVIEW OF THE DEFINITIONS, AVAILABLE DATA SOURCES, AND PATHS MOVING FORWARD , 4-3–4-4 (2010), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/232781.pdf>.

<sup>42</sup> *Id.*

<sup>43</sup> *Occupational Employment and Wages, May 2011, supra* note 40.

<sup>44</sup> See UNITED STATES ECONOMIC CENSUS BUREAU, INDUSTRY STATISTICS SAMPLER, NAICS 5616: INVESTIGATIONS AND SECURITY SERVICES, available at <http://www.census.gov/econ/industry/ec07/a5616.htm>; UNITED STATES ECONOMIC CENSUS BUREAU, INDUSTRY STATISTICS SAMPLER, NAICS 561611: INVESTIGATIONS SERVICES, available at <http://www.census.gov/econ/industry/ec07/a561611.htm>; see also STROM ET AL., *supra* note 41, at 4-4 (roughly verifying my calculations).

<sup>45</sup> See *Details Report for: 33-9032.00-Security Guards*, O\*NET ONLINE, <http://www.onetonline.org/link/details/33-9032.00> (last visited Sept. 19, 2012) (finding there were approximately 1,036,000 private security guards in the United States); *Details Report for: 33-9021.00-Private Detectives*, O\*NET ONLINE, <http://www.onetonline.org/link/summary/33-9021.00> (last visited Sept. 19, 2012) (finding that there are 35,000 private detectives and investigators). I calculated the number of private police by adding together the number of security guards, private detectives, and private investigators.



### 1. Size of Private Police Force

Various empirical measures suggest that private police outnumber public police forces. The BLS, USEC, and ETA private police employment estimates are remarkably similar. The USEC estimate is the most conservative, estimating that there are approximately 830,702 private police officers in the United States.<sup>46</sup> The BLS and ETA place the number at 1,035,090<sup>47</sup> and 1,071,000<sup>48</sup> respectively. By averaging the three estimates, we can say with reasonable confidence that the private police force in the United States nears 1,000,000 officers.

Only the BLS breaks down this private police force between internalized and third-party forces—according to the BLS, approximately 61% of private police forces work for a third-party contract security company, while the remaining 39% are employed internally within a proprietary company.<sup>49</sup> This roughly comports with previous empirical research. Two separate studies from 1982 and 2010 confirmed that around 60% of private police forces worked for a third-party contractor—with the rest presumably working internally.<sup>50</sup> Based on these three studies, we can safely conclude that third-party security contractors, indeed, employ around 60% of private police, or nearly 600,000 officers, with the proprietary employers internally employing the remaining 40%, or almost 400,000 officers.

Private police in the United States dwarf the number of sworn public law enforcement officers—the Federal Bureau of Investigations (“FBI”) Uniform Crime Reports (“UCR”) reports that state and federal law enforcement agencies employed 705,009 sworn officers, and 308,599 civilian personnel in 2010.<sup>51</sup> Figure 1 compares the size of the private and public police forces.<sup>52</sup> I

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<sup>46</sup> UNITED STATES ECONOMIC CENSUS BUREAU, *supra* note 44.

<sup>47</sup> *Occupational Employment and Wages, May 2011*, *supra* note 40. Again, I calculated the number of private police by adding together the number of security guards, private detectives, and private investigators.

<sup>48</sup> *Details Report for: 33-9032.00-Security Guards*, *supra* note 45.

<sup>49</sup> *Occupational Employment and Wages, May 2011*, *supra* note 40.

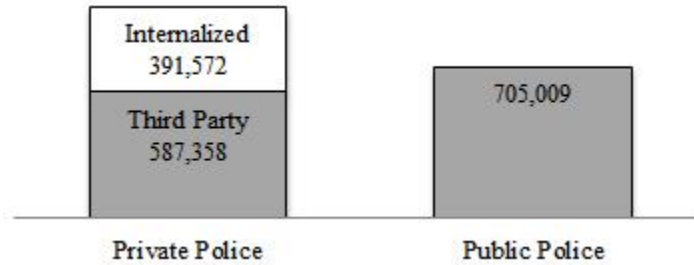
<sup>50</sup> WILLIAM C. CUNNINGHAM ET AL., UNITED STATES DEPARTMENT OF JUSTICE: NATIONAL INSTITUTE OF JUSTICE, CRIME AND PROTECTION IN AMERICA: A STUDY OF PRIVATE SECURITY AND LAW ENFORCEMENT RESOURCES AND RELATIONSHIPS 15 (Daniel Ford, 1985); *see* STROM ET AL., *supra* note 41, at 4-4.

<sup>51</sup> *FBI Releases 2010 Crime Statistics*, FEDERAL BUREAU OF INVESTIGATIONS 2, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/2010%20CIUS%20Summary.pdf> (last visited Sept. 19, 2012) [hereinafter FBI UCR].

<sup>52</sup> The data for this figure comes from two sources: Bureau of Labor Statistics occupational estimates and FBI UCR police employee surveys. The number of individuals employed in the private security industry is conservatively estimated based on Bureau of Labor Statistics estimates, and projections from a study commissioned by the Department of Homeland Security on the number of security guards.

average the BLS, USEC and ETA calculations to estimate the size of the private police force. I used previous calculations to estimate the rough breakdown of internalized and third party officers.

Figure 1: Estimated Size of Private and Public Police Forces, United States<sup>53</sup>



Indeed, the American private police force today appears to be a large and formidable agent of social control, likely surpassing the number of sworn public police officers and comparing favorably to the total number of public police personnel.

## 2. Trends in Private Police Employment

Over the last several decades, two important trends emerge in private policing. First, while the number of private police has increased substantially between 1980 and 2000, private police forces have remained relatively stable over the last decade. Between 1980 and 2000 the number of private police exploded by nearly 80%.<sup>54</sup> But since 2000, the number of private police has remained relatively stable at around 1,000,000 private officers.<sup>55</sup> The stagnation in private police size may simply be a reflection of economic contraction in private industry. Conversely, the stabilization may be a result of the national decline in crime that has occurred over the last twenty years. Regardless of why private police forces have stabilized, we can safely conclude that private police forces are no longer rapidly expanding in size.

Second, and more interestingly, the ratio of internalized to third-party private police has changed significantly over the decades. Earlier empirical work suggests that internalized officers previously outnumbered third-party

<sup>53</sup> *Occupational Employment and Wages, May 2011*, *supra* note 40; UNITED STATES ECONOMIC CENSUS BUREAU, *supra* note 44; *Details Report for: 33-9032.00-Security Guards*, *supra* note 45; FBI UCR, *supra* note 51.

<sup>54</sup> STROM ET AL., *supra* note 41, at 4-4.

<sup>55</sup> *Id.*

officers by a ratio of 6:1 in 1960.<sup>56</sup> By 1970, this ratio fell to 3.5:1.<sup>57</sup> And by 1975, internalized forces only outpaced third-party officers by 1.5:1.<sup>58</sup> In 1982, third-party officers finally surpassed internalized police by a margin of about 1.5:1, and this ratio has remained relatively stable ever since.<sup>59</sup> Some previous literature has hypothesized that organizations are increasingly internalizing legal enforcement through the use of private security.<sup>60</sup> Broadly speaking, this hypothesis is accurate, as the total size of the private police force in the United States has expanded by about 80% since 1980.<sup>61</sup> Organizations previously internalized legal enforcement through the hiring of private police officers as internally employed private police; today, organizations have shifted towards third-party private police contractors. This data supports theories of broad organizational externalization during the late twentieth century, rather than previously predicted internalization.<sup>62</sup>

In sum, the size of the private police force in the United States appears both large and stable. But how do private and public police differ? In the next section, I borrow from the sociology of organizations literature on institutional logics in arguing that social institutions frame the way that public and private police interact with the public. Any effective regulation ought to take into account these implicit differences in public and private police behavior.

### C. *The Institutional Logic Implicit in the Privatization of Force*

Following the view of the famous sociologist Max Weber, many scholars traditionally view the state as the holder of a rightful monopoly of force.<sup>63</sup> Consequently, these scholars viewed policing as an inherently state-centric enterprise. The state defined “what sort of security was needed and

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<sup>56</sup> Clifford D. Shearing & Philip C. Stenning, *Private Security: Implications for Social Control*, 30 SOC. PROBS. 493, 495 (1983) (citing JAMES S. KAKALIK & SORREL WILDHORN, PRIVATE POLICING IN THE UNITED STATES 43 (1977)).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* (citing PREDICASTS, INC., PRIVATE SECURITY SYSTEMS, 26 (1976)).

<sup>59</sup> *See infra* Part II.B.1.

<sup>60</sup> *See* Edelman & Suchman, *supra* note 5, at 958.

<sup>61</sup> Edelman & Suchman predicted that large organizations were increasingly hiring private police in an effort to “internalize” elements of the criminal justice system. *See id.* By showing that the overall size of the private police force has indeed grown over the last three decades, I believe this demonstrates some support for this internalization hypothesis. *See* STROM ET AL., *supra* note 41, at 4-4.

<sup>62</sup> *See generally* GLENN CARROLL & MICHAEL HANNAN, THE DEMOGRAPHY OF CORPORATIONS AND INDUSTRIES (2000); *see also* W. Richard Scott, *Reflection on a Half-Century of Organizational Theory*, 30 ANN. REV. SOCIOLOGY 1, 11 (2004).

<sup>63</sup> *See* MAX WEBER, ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETATIVE SOCIOLOGY (1968).

provided the means to achieve it.”<sup>64</sup> Over the last several decades, though, privatization has radically restructured American policing.<sup>65</sup> The government no longer monopolizes the legitimate exercise of security and policing. Instead the state shares these social control duties with a bevy of separate, yet functionally similar groups like neighborhood street patrols, community watch groups, and private policing organizations.<sup>66</sup> Private police, in particular, engage in many of the same socially coercive behaviors as public law enforcement. Indeed, public and private police both practice a form of policing—loosely defined as the preservation of order, protection of property, and safeguarding of individuals.<sup>67</sup> But the purposes and logics underlying public and private policing differ remarkably.

In order to explore the different purposes and motivations underlying public and private police, I borrow from the sociology of organizations literature on institutional logics.<sup>68</sup> Institutional logic theory states that in order to understand organizational or individual behavior, scholars must understand the institutional context that regularizes and legitimizes behavioral trends. If private and public police operate under different institutional logics, we may expect that organizational actors within the two fields interact differently with the public. Understanding these differences in institutional logics is vital to making effective regulatory recommendations. As I conclude, the institution of capitalism primarily shapes the behavior of organizations and actors in the field of private policing. The institution of capitalism emphasizes logics like profit maximization, wealth accumulation, and client service. Conversely, public policing organizations have become institutionalized organizations.<sup>69</sup> The institution of public policing stresses logics like justice, community ordering, safety, transparency, and accountability. The institution of public policing is also tightly linked with the institution of democracy.<sup>70</sup> I hypothesize that public

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<sup>64</sup> DAVID H. BAYLEY & CLIFFORD D. SHEARING, NATIONAL INSTITUTE OF JUSTICE RESEARCH REPORT, *THE NEW STRUCTURE OF POLICING* 5 (July 2001).

<sup>65</sup> See, e.g., Edelman & Suchman, *supra* note 5, at 958.

<sup>66</sup> Bayley & Shearing, *supra* note 64, at 14.

<sup>67</sup> I define policing similarly to Clifford Shearing. See Clifford D. Shearing, *The Relation Between Public and Private Policing*, 15 *MODERN POLICING* 399 (1992).

<sup>68</sup> See PATRICIA H. THORNTON & WILLIAM OCASIO, *THE SAGE HANDBOOK OF ORGANIZATIONAL INSTITUTIONALISM: INSTITUTIONAL LOGICS* (2008), available at <http://patriciathornton.com/wp-content/uploads/2012/02/9781412931236-Ch03.pdf> (providing a brief explanation of the literature on institutional logics).

<sup>69</sup> See John P. Crank, *Watchman and Community: Myth and Institutionalization in Policing*, 28 *LAW & SOC'Y REV.* 325, 326 (1994); see also John P. Crank, *Institutional Theory of Police: A Review of the State of the Art*, 26 *POLICING* 186, 204 (2003).

<sup>70</sup> See David A. Sklansky, *Private Police and Democracy*, 43 *AM. CRIM. L. REV.* 89, 90–91 (2006) (stating that, although public police have been somewhat insulated from the influence of democracy, “[i]f we want police departments that are less insulated from politics, we can get them. We had them, after all, before the 1950s”).

and private police engage in different behaviors, at least in part, because these contradictory institutional logics shape the behavior of actors in the respective organizational fields.<sup>71</sup>

### 1. Sociology of Organizations, Institutions, and Institutional Logics

I begin this section with a brief summary of the organizational theory on institutional logics. The term *institution* appears frequently in the organizational literature and describes macro-level social structures of meaning and organization.<sup>72</sup> Examples of institutions include marriage, religion, capitalism, law, police, business, and family. These culturally constructed mechanisms of social ordering often facilitate cooperation and establish guidelines for individual and organizational behavior.<sup>73</sup> The literature on institutional logics emerged out of the new institutionalism subsection of organizational theory. Early theorists conceived of organizations as rational, bureaucratic systems that created structures and procedures to maximize efficiency.<sup>74</sup> During the mid-to-late twentieth century, scholars began to deemphasize rationality and began to stress the influence of cultural institutions on organizational structures and behavior.<sup>75</sup> Paul DiMaggio and Walter Powell, for instance, demonstrated that mindless imitation, influenced by cultural rationalization, led to organizations developing incredibly similar structures across organizational fields in a phenomenon called isomorphism.<sup>76</sup> This new strand of organizational theory, also called the “new institutionalism,” differed from previous scholarship on organizations by rejecting rationality as the primary predictor of organizational structure, and focused instead on cultural legitimacy.<sup>77</sup> In 1985, Roger Friedland and Robert Alford introduced the concept of institutional logics to describe “the contradictory practices and

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<sup>71</sup> Other writers have hinted at this concept. *See, e.g., id.* at 90–91 (stating that “whatever their day-to-day practices, public law enforcement agencies at least understand their *charge* as protecting everyone within their jurisdiction”). No writers, though, have fully articulated the differences in institutional logics between public and private police and how this difference can influence organizational behavior.

<sup>72</sup> *See* Robert C. Atchley, *Retirement as a Social Institution*, 8 ANNUAL REV. SOC. 263, 264 (1982).

<sup>73</sup> *See id.*

<sup>74</sup> *See generally* Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147 (1983).

<sup>75</sup> Thornton & Ocasio, *supra* note 68, at 100.

<sup>76</sup> *See* DiMaggio & Powell, *supra* note 74, at 149.

<sup>77</sup> Thornton & Ocasio, *supra* note 68, at 100 (citing Pamela S. Tolbert & Lynne G. Zucker, *Institutional Sources of Change in the Formal Structure of Organizations: The Diffusion of Civil Service Reform, 1880-1935*, 28 ADMIN. SCI. Q. 22 (1983)).

beliefs inherent in the institutions of modern western societies.”<sup>78</sup> By this, Friedland and Alford meant that institutions like capitalism, state bureaucracy, religion, and political democracy influence individuals to act in different and sometimes contradictory ways.<sup>79</sup> Friedland and Alford expanded this notion of institutional logics further in 1991 when they wrote that each social institution has a unique and central logic that guides “organizing principles and provides social actors with vocabularies” and “identity.”<sup>80</sup> While various scholars have attempted to clarify and redefine the notion of institutional logics, “all presuppose a core meta-theory: to understand individual and organizational behavior, it must be located in a social and institutional context, and this institutional context both regularizes behavior and provides opportunity for agency and change.”<sup>81</sup> These institutional logics “focus attention on issues and solutions through a variety of mechanisms, including determining their appropriateness and legitimacy, rewarding certain forms of . . . behavior . . . shaping the availability of alternatives, and selectively focusing attention on environmental and organizational determinants of change.”<sup>82</sup> Thus, for the purposes of this Article, I use the theoretical notion of institutional logics to better understand how social institutions may broadly affect the individual and organizational behavior of public and private police. “Logics provide the rules of the game that shape the cognition” of private and public police.<sup>83</sup>

In the two subsections that follow, I investigate the various socially constructed institutions that influence the behavior of public and private police organizations. I then assess the central logics of these social institutions to understand and predict patterns of organizational behavior. Indeed, we should reasonably expect that public and private police interact with the public differently, at least in part because of how conflicting social institutional logics frame their decision-making.

## 2. The Institutions of Public Police, Democracy, and the State

Three separate social institutions greatly affect public police: the institution of public policing, democracy, and the state. While the institution of

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<sup>78</sup> *Id.* at 100–01.

<sup>79</sup> *Id.* at 101.

<sup>80</sup> *Id.* (citing Roger Friedland & Robert R. Alford, *Bringing Society Back In: Symbols, Practices, and Institutional Contradictions*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* 232 (Walter W. Powell & Paul J. DiMaggio eds., 1991)).

<sup>81</sup> *Id.* at 101.

<sup>82</sup> *Id.* at 144.

<sup>83</sup> Patricia H. Thornton & William Ocasio, *Institutional Logics and the Historical Contingency of Power in Organizations: Executive Succession in the Higher Education Publishing Industry, 1958-1990*, 105 *AM. J. SOCIOLOGY* 801, 806 (1999) (quoting WALTER W. POWELL & PAUL J. DIMAGGIO, *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* (1991)).

public policing predictably emphasizes central logics of justice, community ordering, and safety, the public policing institution also stresses logics of public accountability and transparency. These latter logics are also consistent with the socially constructed view of public police as agents of governmental institutions like democracy and the state. As a result, regulators may expect that police behavior will often reflect adherence to these institutional logics.

Over the last several decades, public police departments have evolved into institutionalized organizations. The phrase “institutionalized organization” refers to an organization that has become so common and established within society as to convey a central meaning or convention.<sup>84</sup> By saying public police departments have become institutionalized, I mean to say that the phrase “public police department” represents not just a description of an organizational arrangement, but a complex and socially constructed set of values, expectations, and customs. Institutionalized organizations differ from traditional organizations in the sense that traditional organizations turn inward and focus on profit maximization and efficient production while institutionalized organizations must focus outwardly to acknowledge influential constituencies within a broader society.<sup>85</sup> A private corporation is a traditional organization dedicated to profit maximization and efficiency. Public police departments, by contrast, “must display, in their organizational behavior and design, that they care about constituents’ concerns across this panoply of groups and the way in which these issues are important to them.”<sup>86</sup> The implicit focus on pleasing community and social constituencies, common amongst institutionalized organizations, suggests a close link to other institutions like democracy and logics like accountability. According to John Crank, public policing organizations, as institutionalized organizations, share three common characteristics.<sup>87</sup>

First, police respond to the need for community accountability by creating elaborate procedures.<sup>88</sup> For instance, departments normally have “elaborate hiring policies,”<sup>89</sup> reprimand procedures for misconduct, and explicit standards regarding community interaction.<sup>90</sup> Second, to maintain the appearance of accountability while also efficiently achieving imprecise goals of

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<sup>84</sup> See Crank, *supra* note 69, at 187 (citing John Meyer and Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AMER. J. OF SOC. 340 (1977)).

<sup>85</sup> *Id.* at 186 (citing John Meyer and Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AMER. J. OF SOC. 340 (1977)).

<sup>86</sup> *Id.* at 187.

<sup>87</sup> *Id.* at 187–88.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> See generally SAMUEL WALKER, NATIONAL INSTITUTE OF JUSTICE, POLICE ACCOUNTABILITY: CURRENT ISSUES AND RESEARCH NEEDS (2006), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/218583.pdf>.

community ordering, public police loosely couple formal procedures with actual behavior.<sup>91</sup> Although official departmental policy may mandate specific arrest policies to maximize the logic of safety, public police organizations also allocate significant leeway to front-line bureaucrats<sup>92</sup> like patrol officers that make highly discretionary decisions. Third, “a logic of good faith” pervades institutionalized organizations like public police.<sup>93</sup> As Crank concluded, “[o]rganizational members believe in the essential rightness of what they do” and in the context of public police organizations, “this belief can be an obstacle . . . to critically evaluat[ing] ongoing organizational practices” since many supervisors “uncritically accept” the belief that “corruption is the result of a few bad police officers who slipped through [the] background screening” rather than endemic of a wider organizational problem.<sup>94</sup>

Various scholars have reiterated Crank’s belief that public police have evolved into a formidable and articulable social institution, influenced by various logics such as justice,<sup>95</sup> retribution,<sup>96</sup> community service,<sup>97</sup> impartiality,<sup>98</sup> and public ordering.<sup>99</sup> The institution of the state and the institution of democracy similarly influence public police departments—the central logic of the state is the “rationalization and regulation of human activity by legal and bureaucratic hierarchies” while the central logic of democracy is “participation and the extension of popular control over human activity.”<sup>100</sup> As agents of a democratic state, the public predictably associates public police with these institutions and demands a certain level of transparency, formal hierarchy, accountability, and public participation.

### 3. Private Police and the Institution of Capitalism

While public police are understood as state actors, private police are differently situated and differently conceived within society. The institution of capitalism primarily influences and motivates private police. Logics like profit

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<sup>91</sup> Crank, *supra* note 69, at 188.

<sup>92</sup> See generally MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: DILEMMAS OF PUBLIC SERVICE (2d ed. 1980); MICHAEL MUSHENO & STEVEN MAYNARD-MOODY, COPS, TEACHERS, COUNSELORS: STORIES FROM THE FRONT LINES OF PUBLIC SERVICE 10–11 (2003).

<sup>93</sup> Crank, *supra* note 69, at 188.

<sup>94</sup> *Id.*

<sup>95</sup> Bayley & Shearing, *supra* note 4, at 592.

<sup>96</sup> *Id.* (stating that a purpose of public police is that of catching and punishing criminals).

<sup>97</sup> See Crank, *supra* note 69, at 189.

<sup>98</sup> *Id.* at 193 (citing Robin Engel, Jennifer M. Calnon & Thomas J. Bernard, *Theory and Racial Profiling: Shortcomings and Future Directions in Research*, 19 JUST. Q. 249 (2002)).

<sup>99</sup> *Id.* at 189.

<sup>100</sup> Friedland & Alford, *supra* note 80, at 248.



maximization, wealth accumulation, and client service drive the institution of capitalism. As agents of private organizations, we should expect private police behavior to embody these implicitly capitalistic logics.

Private police emerged primarily from the needs of large corporations and organizations for the protection of physical property, intellectual property, and sensitive corporate information.<sup>101</sup> While undoubtedly private police are hired to ensure some type of “crime prevention and detection,”<sup>102</sup> the scope of their employment only requires the protection of a single client’s property. The role of private policing in organizations has expanded to include the reduction of waste, accidents, errors, and unethical practices.<sup>103</sup> And in recent years, the largest association of private security personnel in the United States, the American Society for Industrial Security, has expanded the definition of *private security* to include any safeguarding of organizational assets through investigations, information, risk assessment, and disaster planning.<sup>104</sup> While both for-profit and non-profit organizations employ private police,<sup>105</sup> the narrow role of the private police officer remains the protection of private interests in order to maximize profit, enhance efficiency, or facilitate a secure private business environment. All of this reflects a deep commitment to the institution of capitalism.

According to Friedland and Alford, the driving logic of capitalism is the accumulation and commodification of human activity.<sup>106</sup> We could similarly add to this list the logics of profit maximization and client service. Because private police are not conceptualized as official agents of the governmental institutions, like democracy or the state, we may hypothesize that logics of community accountability and transparency are less salient within the industrial field.

Other scholars have recognized similar discrepancies between the logics of public and private police. As Bayley and Shearing have theorized, “the major purpose of private security is the [reduction of] the risk of crime by taking preventative actions; the major purpose of the public police is to deter crime by catching and punishing criminals.”<sup>107</sup> The duo has also claimed that private police “emphasize the logic of [private property] security, while public

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<sup>101</sup> STROM ET AL., *supra* note 41, at 2-1.

<sup>102</sup> *Id.* at 2-2 (citing KAKALIK & WILDHORN, *supra* note 9).

<sup>103</sup> *Id.* (citing NORMAN K. BOTTOM & JOHN KOSTANOSKI, SECURITY AND LOSS CONTROL (1983)).

<sup>104</sup> *Id.* at 2-3 (citing AM. SOC’Y FOR INDUS. SEC., INTERNATIONAL GLOSSARY OF SECURITY TERMS 30 (2010), available at <http://www.asisonline.org/library/glossary/p.pdf>).

<sup>105</sup> *Id.* at 2-2 (citing GION GREEN, INTRODUCTION TO SECURITY (3d ed. 1981)).

<sup>106</sup> Friedland & Alford, *supra* note 80, at 248.

<sup>107</sup> Bayley & Shearing, *supra* note 4, at 592.

police “emphasize the logic of justice.”<sup>108</sup> Therefore, we should reasonably expect that public and private police interact with the public differently. While the logics of public service, accountability, and impartiality will, at least in part, influence the actions of public police, private police forces will likely feel no comparable institutional pressure. This presents a cogent theoretical argument that private police may necessitate more thorough regulation to prevent misconduct than public police.

*D. Private Police as Coercive Agents of Social Control*

Despite the difference in underlying logic and purpose, private police share two commonalities with public police. To begin with, private police attempt to maintain legitimacy by mirroring public police in their appearance. Empirical evidence demonstrates that private police frequently wear uniforms, badges, and insignia that resemble public police in an effort to appear legitimate.<sup>109</sup> In addition, private police regularly engage in many of the same coercive policing tactics as public police: arrest, search, surveillance and interrogation. As Joh has observed, “Many . . . privately paid police behave like public law enforcement officers: detaining individuals, conducting searches, investigating crimes, and maintaining order.”<sup>110</sup> Even so, the courts have been especially reluctant to regulate private policing under the questionable belief that public police have uniquely coercive abilities and tendencies that merit oversight. The law has facilitated the transformation of the private police into a coercive agent of social control. State statutes have transformed over the last twenty-five years to formally recognize and protect a private police officer’s ability to engage in coercive behavior. The courts have permitted private police to exercise significant discretion in the exercise of these powers. And neither the courts nor state legislatures have acted to regulate misconduct by private police.

1. Power of Arrest

State statutes have evolved over the last twenty-five years to codify and expand the arrest power of private police. The limited empirical evidence available on private police suggests it is not uncommon for private police to arrest suspected criminals. Internalized private police, though, arrest significantly more criminal suspects than third-party private police. Ultimately, the statutory right to detain and arrest suspected criminal offenders affords private police with a particularly coercive tool of social control comparable to public police.

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<sup>108</sup> *Id.*

<sup>109</sup> CUNNINGHAM ET AL., *supra* note 50, at 25.

<sup>110</sup> Joh, *supra* note 12, at 50.

Generally speaking, “unless deputized, commissioned, or provided by ordinance or state statute, private security personnel possess no greater legal powers than any private citizen.”<sup>111</sup> Yet few realize that even without statutory authorization, the common law permits private citizens to arrest suspected felons,<sup>112</sup> and permits private citizens to arrest persons for any misdemeanor involving a breach of the peace committed in the private citizen’s presence.<sup>113</sup> Over the last twenty-five years, states have increasingly moved to codify the common law citizen’s arrest doctrine.<sup>114</sup> In 1976, thirty-two states had codified some common law right to citizen’s arrest.<sup>115</sup> By 2011, all fifty states had codified at least some right to citizen’s arrest.<sup>116</sup> These statutes vary to some degree from state-to-state. Some statutes only grant private individuals the right to arrest another person if she has “probable cause to believe the arrested person committed the crime.”<sup>117</sup> Other statutes more loosely permit a private citizen to arrest in situations where she has merely “reasonable grounds to believe that an offense other than an ordinance violation is being committed.”<sup>118</sup> As Fred Inbau and others have concluded, phrases like “reasonable grounds” broadly suggest that private police can arrest suspected criminals so long as disinterested, impartial observer would view the arrest as reasonable.<sup>119</sup> After executing a citizen’s arrest, a private police officer must

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<sup>111</sup> CHARLES P. NEMETH, *PRIVATE SECURITY AND THE LAW* 73 (2005) (quoting THOMAS A. CRITCHLEY, *A HISTORY OF POLICE IN ENGLAND AND WALES* 3 (1966)).

<sup>112</sup> *United States v. Coplton*, 185 F.2d 629, 634 (2d Cir. 1950) (stating that, “[a]t common law a private person . . . had the power to arrest without warrant for a felony . . . actually committed in the past, if he had reasonable ground to suppose it had been committed by the person whom he arrested”).

<sup>113</sup> PERKINS & BOYCE, *CRIMINAL LAW AND PROCEDURE: CASES AND MATERIALS* 897 (5th ed. 1977).

<sup>114</sup> *See, e.g.*, CAL. PENAL CODE § 837 (1872); CAL. PENAL CODE § 847 (2004); TEX. CODE ANN. § 14.01 (1967); S.C. CODE ANN. § 17-13-10 (1962); N.Y. STATS. ANN. §§ 140.30 (1970), 140.35 (1980), 14.40 (1987).

<sup>115</sup> PRIVATE SECURITY ADVISORY COUNCIL, UNITED STATES DEPARTMENT OF JUSTICE, *SCOPE OF PRIVATE SECURITY PERSONNEL* app. C2 (1976).

<sup>116</sup> FRED E. INBAU, BERNARD J. FARBER & DAVID W. ARNOLD, *PROTECTIVE SECURITY LAW* 244–324 (1996). I define codification of a citizen’s right to arrest broadly as any state statute that permits a private citizen to detain another private citizen in an arrest-like manner for law enforcement purposes and on the basis of suspicion of criminal wrongdoing. In 1976, one of the thirty-two state statutes codifying the citizen’s arrest doctrine only applied to merchant’s and merchant’s employees (like security guards). In 2011, nine of the fifty state statutes codifying the doctrine only mentioned the merchant context.

<sup>117</sup> OR. REV. STAT. § 133.220(3) (1981); OR. REV. STAT. § 133.225 (1973).

<sup>118</sup> 725 ILL. COMP. STAT. § 5/107-3 (West 1964).

<sup>119</sup> INBAU, FARBER & ARNOLD, *supra* note 116, at 24.

deliver the arrestee to the police for judicial processing.<sup>120</sup> Some state statutes, though, permit the private police officer to deliver the suspected offender directly to the nearest judge or magistrate.<sup>121</sup> And private police are allowed to use reasonable force in executing a citizen's arrest—often defined as the level of force the private citizen believes is reasonably necessary to prevent death or bodily harm to herself or another, and commensurate with the threat.<sup>122</sup>

On the whole, the proliferation of state statutes codifying the citizen's arrest doctrine represent a growing legislative recognition of the increasing importance of private police as agents of social coercion. The ability to arrest "is a special competence and preferred tool of the public police."<sup>123</sup> Previous conceptions of private police often disregard the expansive common law and statutory tradition of citizen's arrest, noting that private police have "no greater enforcement powers than property owners and ordinary citizens."<sup>124</sup> Technically this is correct—state statutes permit any private citizen to carry out a citizen's arrest. But while the average citizen has never carried out a citizen's arrest, empirical evidence demonstrates that private police exercise this statutory right more frequently.<sup>125</sup> Interestingly, though, internalized security personnel are significantly more likely to exercise their right to arrest than third-party security. Survey data indicates that about 56% of internalized security officers have exercised force to arrest a suspected criminal, compared to only four percent of third-party security officers.<sup>126</sup> This incongruity makes sense—interview data indicates that third-party security guards devote little time to crime prevention, while internalized security spend considerable resources investigating criminal wrongdoing, interviewing suspects, and collecting evidence.<sup>127</sup> This may also explain why internalized security guards are considerably more likely to carry a firearm.<sup>128</sup> In sum, private police, particularly internalized officers, arrest criminal suspects with some frequency. And over the last twenty-five years, state legislatures have moved to recognize and codify the legitimacy of this practice.

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<sup>120</sup> See, e.g., ALA. CODE. § 15-10-7 (1940); CAL. PEN. CODE § 847 (2004); IDAHO CODE ANN. §§ 19-604–14 (1919); MICH. STATS. ANN. § 28.873; N.Y. CRIM. PROC. § 140.40 (McKinney 1987); OKLA. STAT. ANN. tit. 22, §§ 202–05 (West 1910); OREG. REV. STAT. § 133.225 (1973); TENN. CODE. ANN. § 40-7-113 (West 2005).

<sup>121</sup> 725 ILL. COMP. STAT. § 5/109-1 (West 2012).

<sup>122</sup> See, e.g., 725 ILL. COMP. STAT. § 5/7-6(a) (West 2012).

<sup>123</sup> Bayley & Shearing, *supra* note 4, at 592.

<sup>124</sup> *Id.*

<sup>125</sup> STROM ET AL., *supra* note 41, at 5–9 fig.23 (citing CUNNINGHAM ET AL., *supra* note 36).

<sup>126</sup> *Id.*

<sup>127</sup> CUNNINGHAM & TAYLOR, *supra* note 50, at 34.

<sup>128</sup> *Id.* at 34–35.

## 2. Powers of Search and Seizure

Like traditional law enforcement, private police carry out various types of searches in an effort to protect property and prevent criminal activity. Private police exercise this search power both proactively and reactively. Proactively, private police can execute preemptive stop-and-frisks of suspicious individuals.<sup>129</sup> This privilege to execute stop-and-frisk searches is reasonably comparable to the *Terry* stop procedure utilized by public law enforcement. In *Terry v. Ohio*, the Supreme Court permitted a public law enforcement officer to carry out a limited stop-and-frisk, or *Terry* stop, of a suspected criminal based on reasonable suspicion that the suspect was about to commit a crime.<sup>130</sup> Reasonable suspicion is a lower evidentiary standard than probable cause and merely requires law enforcement to demonstrate a particularized suspicion of criminal wrongdoing based on “specific and articulable facts” combined with “rational inferences.”<sup>131</sup> *Terry* stops, unlike arrests, are limited in time and scope and only permit law enforcement officers to detain an individual for a short period of questioning and a minimally invasive search.<sup>132</sup> The law in many states permits private police to complete limited, investigative stops of individuals on private property, which are similar to *Terry* stops.<sup>133</sup> Private police may stop individuals on private property to make reasonable inquiries. And the officer may even conduct “a carefully limited search” of the suspect for weapons.<sup>134</sup> Private police can also proactively require as a condition of employment that employees consent to routine searches of their person or property. While an employee does not necessarily forfeit her right to privacy, “even while on the employer’s premises,” employers frequently require employees grant the employer a reasonable search privilege.<sup>135</sup>

While private police lack the ability to search a person’s home or personal property subject to an arrest warrant, private police forces can, and do, conduct reactive searches with some frequency. For example, private police may reactively search an individual incident to arrest for stolen contraband and weapons.<sup>136</sup> This happens most frequently when a private police officer arrests an employee or customer on suspicion of theft. Empirical evidence further

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<sup>129</sup> See INBAU, FARBER & ARNOLD, *supra* note 116, at 48.

<sup>130</sup> *Terry v. Ohio*, 392 U.S. 1, 30 (1968).

<sup>131</sup> *Id.* at 21.

<sup>132</sup> *Id.* at 26, 30.

<sup>133</sup> INBAU, FARBER & ARNOLD, *supra* note 116, at 48.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 45.

<sup>136</sup> See *id.* at 44–45 (citing *United States v. Viale*, 312 F.2d 595 (2d Cir. 1963); *People v. Santiago*, 278 N.Y.S.2d 260 (N.Y. App. Div. 1967); *Patrick v. State*, 301 S.W.2d 138 (Tex. Crim. App. 1957)).

shows that internalized security guards conduct searches more frequently than third-party officers; 37% of internalized officers and 6% of third-party officers report carrying out lawful searches.<sup>137</sup> It is also worth reemphasizing that private police use searches for a different purpose than public police. While private police stop and search individuals to advance corporate goals, public police do so in furtherance of values like community ordering and justice.

### 3. Powers of Investigation and Interrogation

Private police, particularly internalized forces, interrogate criminal suspects in a manner similar to traditional law enforcement. Indeed, previous national surveys have found that “[p]rivate security personnel frequently conduct investigations of internal and external theft problems, employee misconduct, embezzlement, and fraud.”<sup>138</sup> When serving in investigative capacities, private police commonly question suspects, interview witnesses, and prepare reports for litigation.<sup>139</sup> Further, the law facilitates private police interrogations. While traditional police must read criminal suspects *Miranda* warnings before beginning interrogation,<sup>140</sup> private police have no comparable regulation. Thus, private police wield a formidable power to interrogate and obtain incriminating statements from criminal suspects.

Private police commonly interrogate individuals in two contexts. First, private police detain and interrogate suspected criminals, particularly those suspected of shoplifting or theft. Most courts have held that a merchant may detain and question on her premises a suspected shoplifter.<sup>141</sup> Practically, courts have interpreted this so-called shopkeepers privilege to mean that a private police officer may detain a suspected thief for a reasonable amount of time, provided the detention is “solely for reasonably investigative purposes and is carried out only on the premises of the detaining party.”<sup>142</sup> All but one state has further codified this right of limited detainment by private police.<sup>143</sup> Like in the context of arrest, these state statutes permit a private police officer to detain a suspected criminal based on “reasonable grounds” or “probable cause.”<sup>144</sup> But citizen’s arrest statutes simply permit private police to arrest a suspected criminal and mandate that the private police immediately transfer the suspect to

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<sup>137</sup> STROM ET AL., *supra* note 41, at 5–9 fig.23 (citing CUNNINGHAM ET AL., *supra* note 36).

<sup>138</sup> PRIVATE SECURITY ADVISORY COUNCIL, U.S. DEP’T OF JUSTICE, SCOPE OF LEGAL AUTHORITY OF PRIVATE SECURITY PERSONNEL 17 (1976).

<sup>139</sup> CUNNINGHAM ET AL., *supra* note 50, at 34.

<sup>140</sup> *Miranda v. Arizona*, 340 U.S. 436 (1966).

<sup>141</sup> INBAU, FARBER & ARNOLD, *supra* note 116, at 57.

<sup>142</sup> *Id.* (citing RESTATEMENT (SECOND) OF TORTS § 120A (1965)).

<sup>143</sup> *Id.* at 58; *see also id.* at 244–324.

<sup>144</sup> *See, e.g.,* COLO. REV. STAT. ANN. § 18-4-407 (West 2012).

state custody. The codified shopkeeper's privilege permits a limited detainment for the explicit purpose of interrogation.<sup>145</sup> Surveys suggest that internalized private police detain suspects far more often than third-party private police; 47% of internalized officers reported using force to temporarily detain a suspect, compared to only 12% of third-party forces.<sup>146</sup> Thus, much like in the context of arrest, internalized officers appear to exercise more discretion and authority than third-party officers.

Second, private police interrogate proprietary employees of suspected wrongdoing. Almost half of all internalized security guards engage in investigative activities, "with employee theft the most frequently reported type of investigation."<sup>147</sup> Interrogations of proprietary employees, though, often occur through consensual workplace questioning rather than forced detainments. Of course, a proprietary employee hoping to keep her job in an organization may have no option except to consent to interrogation.

Regardless of the context of the private police interrogation, any incriminating information obtained by a private police officer is normally admissible in future criminal prosecutions.<sup>148</sup> Public police must read criminal suspects *Miranda* warnings before commencing any custodial questioning likely to elicit incriminating statements.<sup>149</sup> If a public police officer fails to read *Miranda* warnings to a criminal suspect before an interrogation, any incriminating statements made therein are inadmissible at trial.<sup>150</sup> The judiciary designed this regulation to protect a suspect's Fifth Amendment privilege against self-incrimination in the face of psychologically coercive interrogation techniques.<sup>151</sup> By contrast, the *Miranda* doctrine does not apply to private police interrogations, as private police are not state actors.<sup>152</sup> Statutory authorization of private police detainments does not transform private police into state actors covered by *Miranda*.<sup>153</sup> As a result, private police have significant authority to interrogate suspect wrongdoers. Private police have statutory authorization to detain and question suspected thieves, and private

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<sup>145</sup> See, e.g., S.D. CODIFIED LAWS § 22-30A-19.2 (2012); TENN. CODE ANN. § 40-7-116 (2012).

<sup>146</sup> STROM ET AL., *supra* note 41, at 5–9 fig.23 (citing CUNNINGHAM ET AL., *supra* note 36).

<sup>147</sup> CUNNINGHAM ET AL., *supra* note 50, at 34.

<sup>148</sup> See *infra* Part 2.D.5.

<sup>149</sup> *Miranda v. Arizona*, 384 U.S. 436, 478–79 (1966).

<sup>150</sup> *Id.* at 479.

<sup>151</sup> *Id.* at 467.

<sup>152</sup> *United States v. Antonelli*, 434 F.2d 335, 337 (2d Cir. 1970) (holding that "the Fifth Amendment privilege against self-incrimination does not require the giving of constitutional warnings by private citizens or security personnel employed thereby who take a suspect into custody"); *In re Deborah C.*, 635 P.2d 446, 448–49 (Cal. 1981); *People v. Ray*, 65 N.Y.2d 282, 268–69 (N.Y. 1985).

<sup>153</sup> See, e.g., *State v. Bolan*, 271 N.E.2d 839, 842 (Ohio 1971).

police have coercive power to force employees to consent to interrogation. Without the burden of *Miranda* warnings, private police can further control questioning and transform interrogations into a mechanism of social control. But institutional logics and purposes like justice or impartiality frame public police interrogation methods, while private police interrogate for the purpose of private property protection and capitalistic profit maximization.

#### 4. Community Surveillance

Much has been written on public law enforcement surveillance capabilities.<sup>154</sup> Public law enforcement increasingly utilizes technologies like automatic license plate recognition (“ALPR”), surveillance cameras, and facial recognition software as highly efficient tools of community surveillance.<sup>155</sup> These technological trends evidence a long-standing and expanding role of law enforcement as community patrolmen. Private police, though, have just begun taking on similar surveillance capabilities. For example, private lending institutions increasingly surveil the community from private property near public thoroughfares utilizing ALPR devices to create surveillance records to assist in the collection of collateral from debtors.<sup>156</sup> These companies then share this surveillance data with private surveillance aggregators, like the National Vehicle Location Service (“NVLS”), that combine the information into a national database to assist private policing organizations locate debtors.<sup>157</sup>

An example may illustrate this emerging and complex iteration of private policing surveillance. A private person may take out a loan from a private financial organization, using her automobile as collateral. If the private person defaults on the terms of the loan, the financial organization may then be legally entitled to take possession of the automobile. Unfortunately, it may be nearly impossible for the financial organization to locate the automobile, as the debtor might have left town in anticipation of the default. To address this very type of problem, private police in financial organizations have installed community surveillance technologies like ALPR to keep track of public movements of persons and automobiles in their individual communities.<sup>158</sup> Data aggregators like the NVLS then amass this type of micro-surveillance from private police all around the country.<sup>159</sup> The result is a thorough, national database of public movements. Because the courts afford individuals very

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<sup>154</sup> See, e.g., Stephen Rushin, *The Judicial Response to Mass Police Surveillance*, 2011 U. ILL. J.L. TECH. & POL’Y 281 (2011).

<sup>155</sup> *Id.* at 285–89.

<sup>156</sup> *Id.* at 293.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*



limited privacy in their movements in public, private police organizations can aggregate this surveillance information without fear of legal consequences.<sup>160</sup> Indeed, the judicial and legislative branches have done virtually nothing to regulate this type of broad community surveillance.<sup>161</sup>

Aggregative surveillance companies like the NVLS represent the expansion of private policing into an arena previously occupied exclusively by public police: widespread community surveillance. By working cooperatively, private police have taken on functionally similar roles as community patrolmen. But unlike public police, whose behaviors are framed and shaped by institutions like democracy and logics like accountability, private police engage in surveillance to further capitalistic motives of profit maximization.

#### 5. Misconduct, The State Action Doctrine, and Judicial Inaction

Generally, courts exclude evidence obtained by public police in violation of the Fourth Amendment under the belief that evidentiary exclusion is the only possible remedy to deter police misconduct.<sup>162</sup> But despite the fact that public and private police take on many of the same roles, the courts have not excluded evidence unlawfully obtained by private police under the belief that this evidence was obtained without the requisite state action. As Skalansky has noted, “Perhaps the most basic and invariable principle of criminal procedure is that constitutional restrictions on policing—the limitations of the Fourth, Fifth, and Sixth Amendments [and] the prophylactic rules of evidentiary exclusions . . . apply only to investigative action attributable to the government.”<sup>163</sup> At its core, the exclusionary rule is intended to be a protection against public police misconduct.<sup>164</sup> So as long as a private police officer acts without the approval or assistance of a public police officer, courts have found “no reason” for excluding evidence unlawfully obtained by virtually all forms of private law enforcement.<sup>165</sup> This is commonly called the state action requirement for the exclusionary rule.

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<sup>160</sup> See generally *id.* (explaining that individuals typically have no reasonable expectation to privacy in their public movements).

<sup>161</sup> *Id.*

<sup>162</sup> *Mapp v. Ohio*, 367 U.S. 643, 669 (1961); *Weeks v. United States*, 232 U.S. 383, 391–92 (1914); *Boyd v. United States*, 116 U.S. 616, 630 (1886).

<sup>163</sup> Skalansky, *supra* note 1, at 1230–31.

<sup>164</sup> *United States v. Leon*, 468 U.S. 897, 916 (1984) (noting that “the exclusionary rule is designed to [specifically] deter police misconduct,” not misconduct by other actors such as judges or magistrates).

<sup>165</sup> *Burdeau v. McDowell*, 256 U.S. 465, 476 (1921); see also *United States v. Shahid*, 117 F.3d 322, 328 (7th Cir. 1997) (applying state action requirement to mall security guards); *United States v. Harless*, 464 F.2d 953, 956–57 (9th Cir. 1972).

This distinction was first recognized in *Burdeau v. McDowell* where the Supreme Court held that the Fourth Amendment protection against unreasonable search and seizure only applies when the search is conducted by a state official under the color of law.<sup>166</sup> There, McDowell's employer suspected him of "unlawful and fraudulent conduct," and the employer searched his personal office without a warrant.<sup>167</sup> McDowell claimed that the actions of his employer qualified as an unreasonable search and seizure and thus violated the Fourth Amendment.<sup>168</sup> The Court quickly rejected McDowell's argument, noting that the Fourth Amendment "was intended as a restraint upon the activities of sovereign authority, and was not intended to be a limitation upon other than government agencies."<sup>169</sup>

Only in cases where the government endows private police with governmental powers or functions will the courts utilize evidentiary exclusion as a remedy for misconduct.<sup>170</sup> But mere licensing of private police officers does not normally qualify as an endowment of governmental power or authority.<sup>171</sup> In *United States v. Lima*, the District of Columbia Court of Appeals held that a District of Columbia ("D.C.") licensing regulation for private security officers did not transform licensed private security officers into state officials.<sup>172</sup> The statute at issue in *Lima* codified the common law right of private security officers to execute a citizen's arrest during their course of employment.<sup>173</sup> But the court found this grant of power insufficient to transform private police into public police for purposes of Fourth Amendment exclusion. As the court noted, Congress almost certainly never intended the statute to grant state authority to private security guards as evidenced by the fact that the D.C. licensing requirement prohibited private security guards from wearing uniforms or badges that resembled public police.<sup>174</sup> State licensing requirements, or other statutory regulations, do not convert private police into government agents.

The *Lima* decision can be contrasted with *United States v. Becerra-Garcia*,<sup>175</sup> a decision by the United States Court of Appeals for the Ninth

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<sup>166</sup> *Burdeau*, 256 U.S. at 475 (applying state action requirement to hotel security guards); *United States v. Francoeur*, 547 F.2d 891, 894 (5th Cir. 1977) (applying state action requirement to Disney World security guards).

<sup>167</sup> *Burdeau*, 256 U.S. at 473.

<sup>168</sup> *Id.* at 470–71.

<sup>169</sup> *Id.* at 475.

<sup>170</sup> *See Evans v. Newton*, 382 U.S. 296, 299 (1966).

<sup>171</sup> *United States v. Lima*, 424 A.2d 113, 119 (D.C. Cir. 1980).

<sup>172</sup> *Id.* at 119.

<sup>173</sup> *Id.* at 120.

<sup>174</sup> *Id.* at 119–20.

<sup>175</sup> *United States v. Becerra-Garcia*, 397 F.3d 1167, 1172 (9th Cir. 2005).

Circuit. There, the Indian Civil Rights Act authorized private tribal rangers to patrol a Native American reservation and report suspicious activity to the United States Border Patrol or to local tribal police officers.<sup>176</sup> The court concluded that a tribal ranger who made investigatory stops under the Act to enforce criminal trespass laws qualified as a state agent covered by the Fourth Amendment exclusionary rule.<sup>177</sup> The test, according to the court, is whether “the government knew of and acquiesced in the officer’s activities, and the party performed a seizure intended to assist law enforcement and did not act to further his own ends.”<sup>178</sup> Indeed, when the government requests a private party execute a search, this qualifies as governmental action regulated by the Fourth Amendment. Courts have also found sufficient instigation in cases where police hire a private engineer to install eavesdropping equipment.<sup>179</sup> But the court has been reluctant to view many private police officers as state agents without explicit and undeniable coordination with government actors.

To summarize, the unlawful searches by private security officers do not qualify as unreasonable under the Fourth Amendment; any evidence obtained from these unlawful searches by private security officers is not subject to the exclusionary rule and thus is admissible at trial. Virtually every state court has simply adopted the national standard established in *Burdeau*. This has serious implications for the efficacy of private police regulation. If, as I theorize, institutional logics, like community accountability, influence private police less than public police, we may expect private police to more frequently engage in unlawful misconduct. The law, though, does not provide an adequate remedy comparable to evidentiary exclusion to deter this bad behavior by private police.

In sum, the law has facilitated the transformation of private police into socially coercive actors comparable to public police. States have codified the right of private police to arrest suspected wrongdoers. The law permits private police to carry out quintessential law enforcement tasks like detainment, investigations, interrogations, and surveillance. And the courts are unwilling to exclude evidence obtained unlawfully through misconduct by private police. So how does the law regulate private police? The next Part explores, categorizes, and codes the current statutory regulation of private police.

### III. STATE REGULATION OF PRIVATE POLICE

Most states have at least some law on the books mandating the licensing of some private police personnel. Previous efforts to examine these state-level regulations of private police have focused on the general substance

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<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *People v. Tarantino*, 290 P.2d 505, 509 (Cal. 1955).

of training requirements. In 1998, for instance, Jeff Maahs and Craig Hemmens explored whether states require licensed security guards to meet age and educational requirements, complete training courses, or pass criminal background checks.<sup>180</sup> Maahs and Hemmens noted that in 1998, approximately 82% of states regulate security guards in some manner.<sup>181</sup> This was significantly improvement over a 1982 study that found only 66% of states mandated some regulation of private security guards.<sup>182</sup> When read in tandem, these types of studies paint a modestly optimistic view of emerging state-level regulation of private security—although not perfect, states increasingly regulate and license security guards.

Unfortunately, these studies ignore a pivotal fact: the vast majority of state regulations explicitly distinguish between third-party private policing agencies that contract with private companies, and internalized policing forces that work within a single organization. While the majority of states regulate third-party private police agencies, internalized officers are often exempt from regulation under state statutes. In order to more precisely assess how the law currently views private police, I collected and categorized state statutes regulating security guards from all fifty states. Because state statutory definitions of security guards represent over 95% of the entire private policing industry, as defined in Part II.A., this provides a reasonably comprehensive measure of the current regulatory status of private police as a whole. I coded these statutes according to their applicability to both unarmed third-party private police and unarmed internalized officers. I coded a statute as regulating security guards if the statute requires licensing, registration, or training for individual security guards or security guard employers.

Next, to understand the depth of security guard training requirements, I also coded the state statutes according to several other features: (1) the number of mandatory training hours, (2) whether the statute required liability insurance or bonding, (3) whether the statute required a background check, (4) whether the statute limited security guard's display of visual signs of authority, like badges or insignia, and (5) whether the statute mandated firearms training for armed guards. I only coded the states according to publically available statutory and administrative code. Some statutes gave considerable regulatory discretion to state-level administrative agencies. In these cases, I merely coded the statutes and administrative codes according to my best interpretation of the statute's plain language. While previous scholarship has coded statutory regulation of private police, no recent scholarly study has comprehensively

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<sup>180</sup> Jeff Maahs & Craig Hemmens, *Train in Vain: A Statutory Analysis of Security Guard Training Requirements*, 22 INT'L J. COMP. & APPLIED CRIM. JUST. 91 (1998).

<sup>181</sup> *Id.* at 99.

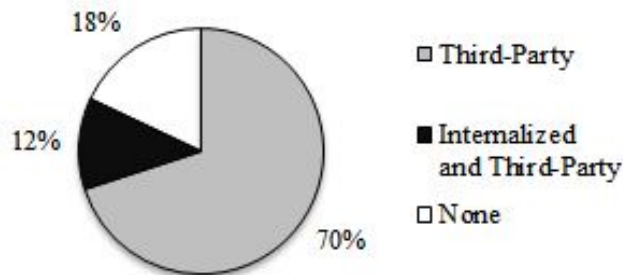
<sup>182</sup> C. Buikema & F. Horvath, *Security Regulation: A State-by-State Update*, 28 SEC. MGMT. 39 (1984).

assessed the applicability of state statutes to both internalized and third-party security guards.

A. *Differential Treatment of Internalized and Third-Party Officers*

While most states require some type of licensing, regulation or training of third-party security guards or contractors, very few regulate internalized security guards. Most states statutes explicitly exempt internalized private security guards.<sup>183</sup> And nine states have no state-level statute regulating security guards: Colorado, Idaho, Kansas, Kentucky, Mississippi, Missouri, Nebraska, South Dakota, and Wyoming. Some of these states, like Colorado and Missouri, nonetheless permit cities or counties to create their own jurisdictional regulations. Figure 2 shows the breakdown of state statutes by the type of private police regulated.

Figure 2: Percentage of States Regulating Third-Party and Internalized Private Police Forces<sup>184</sup>



Two striking patterns emerge from the data. First, the total number of states regulating private police in some manner has not changed since Maahs and Hemmens 1998 study—thirteen years later, nine states still have no state statutory regulation of private police. Second, states that regulate private police consistently take steps to exclude internalized officers from their regulatory purview. This important point has gone virtually unnoticed in contemporary scholarship on private policing. Of the forty-one states that regulate security guards in some manner, thirty-five of them, or about 85%, exempt internalized officers from state licensing, registration, and training requirements.<sup>185</sup> As discussed earlier, after decades of organizational externalization, third-party private police today outnumber internally employed officers by about a three-

<sup>183</sup> See, e.g., MINN. STAT. ANN. § 326.32 (West 2012) (stating that the term “security guard” regulated in the statute does not include plain clothed proprietary security guards).

<sup>184</sup> See appendix for a full list of statutes.

<sup>185</sup> *Id.*

to-two margin. This means that the law's differential regulation of third-party and internalized officers likely has less significance today than it would have four or five decades ago. Nonetheless, the law's differential treatment *does* mean that a substantial cadre of private police engage in coercive behaviors that mimic public law enforcement without any kind of state-mandated regulation. In fact, by using this statutory coding scheme and the BLS data,<sup>186</sup> I can estimate that the state laws fail to regulate approximately 40,747 third-party officers and 281,563 internalized officers—a total unregulated private police force of 322,310 officers.<sup>187</sup> That means there are more unregulated private police in the United States than there are public police employees in California, Texas and New York *combined*.<sup>188</sup> The remaining 684,570 security guards are subject to at least some minimal state regulation. Nonetheless, this regulation, as shown in Parts II.B and III, is far less than that required for public law enforcement. Figure 3 visually aggregates the public and private police forces in the United States and groups these forces according to the level of state-mandated regulation. For the purposes of Figure 3, I classify the state regulation of public law enforcement as “high regulation” and the state regulation of private law enforcement as “low regulation.”

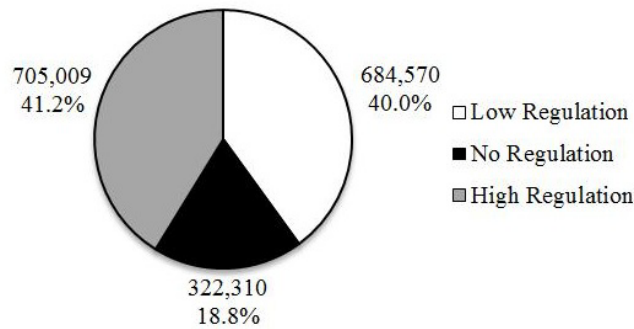
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<sup>186</sup> *Occupational Employment and Wages, May 2011, supra* note 40.

<sup>187</sup> I calculated these estimates through reference to the BLS private police force estimates by state. *See id.* I presumed that in each state, approximately 60 percent of the private police officers were third-party officers, with the remaining being internalized within organizations. After coding for whether the state regulated third-party or internalized officers, I added together the total estimated number of officers unregulated by state licensing or training requirements. These calculations should not be taken as exact measurements but rather as educated estimates that allow the reader to understand the magnitude of the unregulated private police force in the United States. It is worth noting that the estimate total number of private police is higher in Figure 3 than in 1. Figure 1 estimates the total number of private police by averaging the three different government estimates. Figure 3 only uses BLS data, since the BLS data includes convenient state-by-state breakdowns of private police officer populations.

<sup>188</sup> *Crime in the United States, Table 77, Full-Time Law Enforcement Employees*, FEDERAL BUREAU OF INVESTIGATIONS, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl77.xls> (last visited Oct. 22, 2012).

Figure 3: American Public and Private Police Force Breakdown by Relative Level of State Regulation<sup>189</sup>



This finding is particularly perplexing because previous empirical work has found that internalized private police engage in more coercive behavior than third-party private police. Cunningham and colleagues conducted one of the only qualitative interviews of both internalized and third-party private police. Their findings revealed that internalized private police utilized force far more often than third-party private police. I have reproduced the results of their survey of 188 total private police officers below in Table 1.

Table 1: Comparative Use of Force by Internalized and Third-Party Private Police Officers<sup>190</sup>

	Force in Self-Defense	Evict Trespasser	Deal with Vandalism	Prevent Assault	Execute Search	Detain Suspect	Arrest Suspect
Internalized Officers	54%	39%	18%	39%	37%	47%	56%
Third-Party Officers	13%	15%	10%	8%	6%	12%	4%

These findings have several important implications. To begin with, this finding should lead us to reassess our cautious optimism about the coverage of state private police regulations. Previous assessments of the state-level regulation of private police were understandably optimistic—these analyses

<sup>189</sup> FBI UCR, *supra* note 51; *Occupational Employment and Wages, May 2011*, *supra* note 40; See also state statutes in Appendix.

<sup>190</sup> Strom et al, *supra* note 41 at 5–9 (citing William Cunningham et al., Private security and police in America: The Hallcrest Report I (1985)).

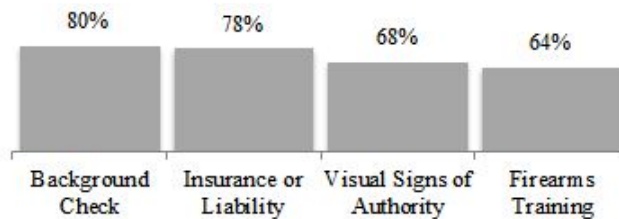
failed to recognize the exception in most state statutes for internally employed security officers. As a result, previous studies simply concluded that private police roamed unregulated in only a handful of states—many of which were sparsely populated. But many very populous states, like Texas<sup>191</sup> and Florida,<sup>192</sup> exempt internalized private police from regulation.

Additionally, this finding also raises a deeper, causal question. Why have states consistently exempted internally employed private police officers from state regulation? The available empirical evidence demonstrates that these internalized officers are more likely to engage in coercive behaviors, execute arrests, and detain or interrogate suspected wrongdoers during an investigation.<sup>193</sup> As detailed in Part IV, I believe this regulatory trend reflects the actual, underlying purpose of state-level private police regulations: the facilitation of predictable business transactions between large organizations and third-party security contractors.

#### B. *Depth of Training and Licensing Requirements*

Almost all state statutes regulating private police mandate a criminal background check for managers of third-party contractors or security personnel, and virtually all of these states require liability insurance to protect purchasers of security services from civil claims. A smaller proportion of states have additional laws limiting visual signs of authority displayed by private police and mandating firearms training for armed officers. Figure 4 illustrates the proportion of states statutes claiming to regulate these various aspects of private policing.

Figure 4: *Depth of State Training and Licensing Requirements*<sup>194</sup>



Why are states more likely to mandate liability insurance than regulate visual signs of authority? The number of states requiring liability insurance in

<sup>191</sup> TEX. OCC. CODE ANN. § 1702.134 (West 2011); 34 TEX. ADMIN. CODE § 3.333 (2011).

<sup>192</sup> FLA. STAT. ANN. §§ 493.6102 (West 2012).

<sup>193</sup> STROM ET AL., *supra* note 41, at 5–9 fig.23 (citing CUNNINGHAM ET AL., *supra* note 36).

<sup>194</sup> See appendix for full list of state statutes.



particular has skyrocketed over the last several decades. Thirty-five years ago, only eleven states mandated some type of liability insurance.<sup>195</sup> Today, thirty-nine states require third-party contractors of security services to obtain liability insurance to protect organizations purchasing their services, an increase of 254%.

States also increasingly require security guards to undergo several hours of training before licensing. Alaska,<sup>196</sup> California,<sup>197</sup> and Florida<sup>198</sup> lead the pack by requiring private officers to undergo a full forty hours of training before licensing. Many other states, including Georgia,<sup>199</sup> Illinois,<sup>200</sup> Oklahoma,<sup>201</sup> and Texas,<sup>202</sup> require between twenty and thirty hours of training. The average state statute mandates a little over eight hours of training before employment as a security guard or private police officer. This is a modest improvement over earlier calculations.<sup>203</sup> Organizations purchasing security services can now be increasingly confident that third-party contractors employ personnel with at least *some* training.

Nonetheless, the relatively minimal training requirements for private police are particularly startling given the profound professionalization and regulation of public police in the last several decades. The Supreme Court has openly recognized that in recent years “[t]here have been ‘wide ranging reforms in the education, training, and supervision of police officers’” resulting in “increase[ed] professionalism of police forces, including a new emphasis on internal police discipline.”<sup>204</sup> Departments are increasingly establishing civilian review boards,<sup>205</sup> and empirical studies demonstrate that the exclusionary rule<sup>206</sup> has motivated law enforcement officers to learn the law and persuaded departments to punish officers that violate a suspect’s constitutional

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<sup>195</sup> CUNNINGHAM ET AL., *supra* note 50, at 66.

<sup>196</sup> ALASKA ADMIN. CODE tit. 13, § 60.110 (2012).

<sup>197</sup> CAL. BUS. & PROF. CODE § 7583.6 (West 2012).

<sup>198</sup> FLA. STAT. ANN. § 493.6303 (West 2012).

<sup>199</sup> GA. COMP. R. & REGS. 509-3-.02 (2012).

<sup>200</sup> 225 ILL. COMP. STAT. § 447/25-20 (2012).

<sup>201</sup> OKLA. STAT. ANN. tit. 59, § 1750.3 (West 2012).

<sup>202</sup> TEX. OCC. CODE ANN. § 1702.1675 (West 2012).

<sup>203</sup> *See* Maahs & Hemmens, *supra* note 180.

<sup>204</sup> *Hudson v. Michigan*, 547 U.S. 586, 598–99 (2006) (quoting SAMUEL WALKER, *TAMING THE SYSTEM: THE CONTROL OF DISCRETION IN CRIMINAL JUSTICE, 1950–1990* 51 (1993)).

<sup>205</sup> *See, e.g.*, Samuel Walker & Betsey Write, *Civilian Review of the Police: A National Survey*, (POLICE EXECUTIVE RES. F.) (1994).

<sup>206</sup> *See* *Mapp v. Ohio*, 367 U.S. 643, 669 (1961); *Weeks v. United States*, 232 U.S. 383, 391–92 (1914); *Boyd v. United States*, 116 U.S. 616, 630 (1886) (all establishing that evidence obtained by a state actor through the violation of the constitution is inadmissible at trial).

protections.<sup>207</sup> Police departments have also increasingly joined together in professional accreditation associations like the Commission on Accreditation for Law Enforcement Associations (“CALEA”) that inspect departments to ensure compliance with accepted professional standards.<sup>208</sup> This network of professional association and cooperative evaluation has resulted in the isomorphic expansion of similar procedural protections and training requirements in law enforcement departments across the country.<sup>209</sup> But judges and legal scholars alike have concluded that this rapid professionalization and explosion of isomorphically diffused organizational policies may never have happened without initial regulation.<sup>210</sup> Private police are not comparably regulated, based on my coding.

Overall, my coding demonstrates three distinct trends in state-level statutes. First, most state statutes exempt internally employed private police officers from training, registration, or licensing. Second, while statutes generally require third-party security firms to check the criminal record of employees and obtain liability insurance to protect their clients, these statutes less frequently regulate visual signs of authority or firearm training. And third, although more states require private police complete more training hours today than in previous decades, officers are still chronically undertrained compared to public police. Almost no state mandates accountability in the form of exclusion of evidence obtained unlawfully by private police. States require private police to complete few training hours before licensing, and private police appear notably less professionalized than their public counterparts.

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<sup>207</sup> See, e.g., William C. Heffernan & Richard W. Lovely, *Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law*, 24 U. MICH. J.L. REFORM 311, 330–31 (1991); Myron W. Orfield, Jr., *Comment, The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016, 1017 (1987).

<sup>208</sup> *The Commission: About Us*, COMMISSION ON ACCREDITATION FOR LAW ENFORCEMENT AGENCIES (CALEA), <http://www.calea.org/content/commission>, last accessed (last visited Oct. 17, 2012) (explaining the purpose and structure of CALEA).

<sup>209</sup> Terry Gingerich & Gregory Russell, *Accreditation and Community Policing: Are They Neutral, Hostile, or Synergistic? An Empirical Test Among Street Cops and Management Cops*, 2 JUST. POL’Y J. 3 (1996).

<sup>210</sup> See generally SAMUEL WALKER, *TAMING THE SYSTEM: THE CONTROL OF DISCRETION IN CRIMINAL JUSTICE, 1950–1990* (1993) (arguing that the Supreme Court’s institutional of the exclusionary rule in *Mapp v. Ohio* stimulated improvements in police professionalization); Samuel Walker, *Thanks for Nothing, Nino*, L.A. TIMES, June 25, 2006; cf. *Hudson v. Michigan* 547 U.S. 568, 598–99 (Scalia arguing that police professionalization demonstrates that the exclusionary rule is no longer necessary and thus may be obsolete in the near future).

#### IV. TRENDS IN PRIVATE POLICE REGULATION AND THE PATH MOVING FORWARD

Empirical evidence demonstrates that private police, particularly internalized officers, engage in many of the same behaviors of public law enforcement. And these private officers are motivated by capitalist institutional logics like profit maximization, increasing the theoretical likelihood of misconduct. But state statutes consistently fail to regulate internalized officers. I argue that when viewed in their totality, state statutes demonstrate a unifying belief that licensing procedures ought to facilitate predictable transactions for security services. This belief has pervaded the construction of private police regulations resulting in regulations that inadequately consider important regulatory values like accountability. I utilize Laura Dickerson's work, *Privatization and Accountability*,<sup>211</sup> in arguing that the law inadequately provides for private police accountability in the form of redress for misconduct and managerial oversight. Private police regulations must sufficiently provide for organizational accountability comparable to public law enforcement.

##### A. *Licensing Procedures as Facilitation of Organizational Transactions*

The statutory framework regulating private police consistently exempts internalized private police officers from licensing and registration requirements. Even states that do comprehensively regulate both third-party and internalized officers, only outline minimal training requirements. One of the most common licensing requirements, in fact, is that third-party security contractors must obtain civil liability insurance to protect organizations purchasing security services. No state mandates regularized or on-site inspections of private police departments. I argue that, when viewed in their totality, state-level regulations of private police merely facilitate predictable transactions between third-party security contractors and large organizations.

This general statutory framework reflects a taken-for-granted belief regarding the proper role of and threat posed by the government. Because private police developed out of a pragmatic need to protect private property and a belief that the private industry was better suited to fit this client-focused role, the law views private policing as outside the purview of legitimate governmental regulation. Private policing only needs to be regulated to the extent that the regulation protects large organizations as buyers and consumers of security services. This view is consistent with a western belief that the government intervention into private business ought to be limited and that the government itself is "the greatest threat to individual liberty."<sup>212</sup> This

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<sup>211</sup> See Dickerson, *supra* note 2, at 102.

<sup>212</sup> Shearing & Stenning, *supra* note 56, at 497.

conclusion is also consistent with the historical literature on organizational regulation in the United States.<sup>213</sup>

According to sociologists Marc Schneiberg and Tim Bartley, twentieth century scholarship identified three common theoretical explanations for economic and social regulation of organizations. First, some scholars have argued that business regulations emerged in response to demands from pluralist interest groups.<sup>214</sup> In many cases, scholars have noted instances where legal regulation was forced on organizations over their opposition in order to appease other interest groups.<sup>215</sup> A second potential reason for the emergence of regulations is the need to foster capitalism and enterprise creation.<sup>216</sup> For instance, regulations can “fix [the] rules of competition”<sup>217</sup> and ensure commercially predictable transactions that encourage future dealing. Third, regulation sometimes emerged after controversy or crises changes the institutional environment.<sup>218</sup> These crises resulted in increased public scrutiny, manifested in the form of “investigations, hearings, court cases, and the population press” and allow “outsiders and policy entrepreneurs to gain access to policymaking, frame industry practices . . . and put corporations on the defensive.”<sup>219</sup>

The evolving regulations of private police appear to fall squarely into the second category—that is to say that these regulations foster capitalism and enterprise creation. Both private police interest groups and corporate interest groups have historically pushed for the state, as opposed to local licensing of third-party security guards.<sup>220</sup> This preference for state-level licensing presumably reflects a desire on the part of security contractors for broadly applicable and predictable state standards that moderate the market and avoid a race-to-the-bottom. Once more, the proliferating requirement that third-party

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<sup>213</sup> Marc Schneiberg & Tim Bartley, *Organizations, Regulation and Economic Behavior: Regulatory Dynamics and Forms from the Nineteenth to Twenty-First Century*, 4 ANN. REV. L. & SOC. SCI. 31, 33 (2008).

<sup>214</sup> *Id.* (citing GERALD BERK, *ALTERNATIVE TRACKS: THE CONSTRUCTION OF AMERICAN INDUSTRIAL ORDER, 1865-1917* (1994); FRANK DOBBIN, *FORGING INDUSTRIAL POLICY: THE UNITED STATES, BRITAIN, AND FRANCE IN THE RAILWAY AGE* (1994); Mark T. Kanazawa & Roger G. Noll, *The Origins of State Railroad Regulation: The Illinois Constitution of 1870*, in CLAUDIA GOLDIN, GARGY D. LIBECAP, *THE REGULATED ECONOMY*, 13–54 (1994)).

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at 34–35 (citing BERK, *supra* note 214; Frank Dobbin & Timothy J. Dowd, *The Market that Antitrust Built: Public Policy, Private Coercion, and Railroad Acquisitions, 1825 to 1922*, 65 AM. SOC. REV. 631 (2000); COLLEEN A. DUNLAVY, *POLITICS AND INDUSTRIALIZATION: EARLY RAILROADS IN THE UNITED STATES AND PRUSSIA* (1994)).

<sup>217</sup> *Id.* at 34.

<sup>218</sup> *Id.* at 35.

<sup>219</sup> *Id.*

<sup>220</sup> CUNNINGHAM ET AL., *supra* note 50, at 66.

contractors carry liability insurance reflects a salient social concern for protecting organizations from liability.

This statutory focus on capitalistic market facilitation, as opposed to public rights protection, has important theoretical implications. The general legislative distaste for extensive private police regulation suggests a growing social tolerance for a dual justice system in the United States. This reiterates the pluralistic nature of the law. As Shearing and Stenning have previously posited, private policing is distinguishable from public policing in that private police draw on corporate, not state power.<sup>221</sup> This does not mean that private police are without power, though. Private police investigations can lead to the termination of employees, restriction of access to private property, or the selective use of state power to initiate lawsuits and press changes.<sup>222</sup> Private police operate both as adjuncts to the public criminal justice system and as powerful agents of a separate, corporate system of justice. Because private police can control and deny access to “recreational and shopping facilities, housing, employment, and credit,” private officers can indeed implement sanctions for wrongdoing and exact a form of private justice somewhat comparable to the public justice system.<sup>223</sup> Legislatures across the country have accepted and enabled this dualistic arrangement.

#### B. *The Path to Future Regulation of Private Police*

The risk of private police misconduct is theoretically and empirically salient. Given the inadequacies of the current state-level statutory framework, I make several normative recommendations for future private police policies. Regulators must purposively design future private police policies to protect the public from private police misconduct. In doing so, future regulations must ensure that privatized police are accountable to the public. Regulations must also be sensitive to the unique institutional logics motivating private police behavior—namely capitalistic focus on profit maximization—in order to adequately protect the public. Finally, regulations must be specific enough to avoid organizational mediation. In order to accomplish these goals, I make three normative recommendations for future private police policies.

First, future regulations must regulate both third-party and internalized private police officers. The empirical evidence strongly suggests that internalized officers are actually *more* likely to engage in socially coercive behaviors than third-party officers.<sup>224</sup> Internalized officers are more likely to use physical force in self-defense, evict a trespasser, conduct a search, and

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<sup>221</sup> Shearing & Stenning, *supra* note 56, at 501.

<sup>222</sup> *Id.* at 502.

<sup>223</sup> *Id.*

<sup>224</sup> STROM ET AL., *supra* note 41, at 5–9 fig.23 (citing CUNNINGHAM ET AL., *supra* note 36); *see also supra* Part II.C.

detain or arrest a suspect.<sup>225</sup> No doubt, the licensing of third-party contractors serves an important purpose. These third-party licensing requirements ensure that large organizations can hire necessary security services that will be reasonably well trained and minimally insured. This facilitates business transactions. But these regulations also serve a separate purpose, albeit secondary purpose: the protection of the community. By mandating that most third-party security guards undergo hours of training, a handful of educational courses, and criminal background checks, most licensing requirements certainly improve the interactions between third-party security guards and the general public. But as it currently stands, the overwhelming majority of states do not adequately train or educate internalized officers. These internalized officers interact with employees and customers regularly, just like third-party officers. By mandating criminal background checks, comparable training hours, and educational courses, states can ensure that all private police personnel are minimally competent to interact with the public.

Second, future regulations ought to avoid mere capitalistic goals of market stabilization and instead should address broader concerns like unlawful searches, arrests, surveillance, and interrogation. In doing so, regulations must demonstrate a commitment to accountability through providing forums for redress and managerial oversight. As traditional government functions like prison operation and public safety have been outsourced to private companies, scholars have worried that privatization weakens organizational and individual accountability.<sup>226</sup> Privatization of government functions has also raised concerns that these private organizations may not properly supervise workers or volunteers offering services.<sup>227</sup> As Dickerson observes, the era of privatization raises various distinguishable accountability concerns: after-the-fact accountability for redress, managerial oversight, and democratic accountability.<sup>228</sup> By after-the-fact accountability for redress, Dickerson means that organizations must be subject to an authoritative penalty if the organization fails “to comply with a particular rule or standard.”<sup>229</sup> Conversely, managerial oversight is a forward-looking regulation that involves constant monitoring and re-evaluation.<sup>230</sup> Finally, democratic accountability refers to transparency regulations that permit the polity to respond to governmental or privatized actions.<sup>231</sup> Current regulation and licensing requirements for private police are devoid of all three of these accountability measures.

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<sup>225</sup> *Id.*

<sup>226</sup> Dickerson, *supra* note 2, at 102–03.

<sup>227</sup> *Id.* at 103.

<sup>228</sup> *Id.* at 102–03, 109.

<sup>229</sup> *Id.* at 103.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.* at 109–10.

Currently, tort liability is the primary mechanism for after-the-fact redress for private police misconduct.<sup>232</sup> Tort law allows individuals to bring civil claims against private police for unlawful arrest, imprisonment, assault, or battery. This gives individuals limited avenues for redress as states have increasingly added statutory sections that protect private police from liability.<sup>233</sup> Civil liability is also expensive. High entrance barriers functionally limit the effectiveness of civil liability as a consistent tool for rights rectification. Moreover, individuals with valid tort claims may rationally choose not to bring claims against private police officers, as the damage caused by the private police action may have been minimal, making substantial recovery unlikely. And large organizations, be they third-party security contractors or proprietary corporations, commonly employ private police. Thus, there is a cogent argument to be made that these powerful, repeat players in the legal system would find it advantageous to litigate and settle claims arising out of aggressive private policing tactics so long as the perceived value added by the aggressive policing outweighed the cost paid in litigation fees.<sup>234</sup>

Thus, some scholars have argued that a more realistic method of ensuring private police accountability through redress for misconduct would be extending the exclusionary rule to include licensed, private police officers.<sup>235</sup> Often, proponents of this course of action argue that, at minimum, courts ought to extend the exclusionary rule to the private police when officers investigate or prepare a criminal case for trial.<sup>236</sup> But remember, private police appear to be motivated by the institution of capitalism and logics like wealth accumulation. Even if courts recognized private police as state actors, thereby mandating the exclusion any unlawfully obtained by private police, would that necessarily change private officers' behavior? Unfortunately, most private police may still violate constitutional norms in obtaining evidence of criminal wrongdoing, even if the courts were to extend the state action doctrine and exclusionary rule. The exclusionary rule assumes that when a police officer's misconduct results in the exclusion of evidence, supervisors within that department will implement training and policies that prevent misconduct in the future. This conclusion assumes that police are democratically accountable and motivated by a desire to successfully prosecute wrongdoers. But as I discussed in Part II.C., the institution of capitalism and the logics of wealth accumulation, profit maximization, and client service drive private police action. Scholars have also

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<sup>232</sup> Sklansky, *supra* note 1, at 1183 (noting that the "main legal limits on the private police are tort," and the criminal law).

<sup>233</sup> INBAU, FARBER & ARNOLD, *supra* note 116, at 173-74; *see also supra* Part II.C.

<sup>234</sup> *See generally* Marc Galanter, *Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change*, 9 *LAW & SOC'Y* 95, 101 (1974).

<sup>235</sup> *See, e.g.,* Enion, *supra* note 33, at 519.

<sup>236</sup> *See, e.g.,* Steven Euller, *Private Security and the Exclusionary Rule*, 15 *HARV. C.R.-C.L. L. REV.* 649, 651 (1980).

documented that private police already regularly engage in a sort of private criminal justice—punishing perceived wrongdoers outside of the traditional criminal justice system.<sup>237</sup> While extending the exclusionary rule to private police may deter some misconduct, it will not necessarily serve as a consistent and effective deterrent. Private police will continue to violate constitutional norms on searches, seizures, interrogations, and arrests so long as such actions will protect assets without exposing their private employers to significant civil liability. For most private police, the successful prosecution of a wrongdoer is probably of low priority.

But there are other ways that regulators can legislatively ensure private police accountability and redress for misconduct. To more thoroughly deter private police wrongdoing, states could provide citizens with a specific right of action against private police for wrongful use of force. States could permit aggrieved citizens to exercise this right of action in a cheap forum for redress, such as an administrative hearing. An administrative hearing option would be preferable to simple judicial remedy as it costs citizens substantially less to mobilize their legal claims against private police officers. States could also mandate minimum, punitive damages for constitutional violations by private police.

State legislatures would likely need to provide any private police accountability in the form of managerial oversight and democratic accountability. States could mandate that private police organizations keep thorough records of arrests, searches, and interrogations. These sorts of reporting requirements would also serve democratic accountability purposes by establishing a government record of coercive actions taken by private police. In order to enhance managerial oversight, states could also mandate continued in-service training for high-ranking officials within private policing organizations. Conversely, states could require independent regulatory agencies to regularly visit private police organizations and monitor internal policies. Extensive, hands-on managerial oversight of private police is problematic, though, because private police are characteristic front-line bureaucrats who necessarily wield significant discretion.<sup>238</sup>

Third, policymakers must regulate private police in a manner that is specific and precise as to avoid organizational mediation. When regulations are vague or ambiguous, organizations commonly mediate the implementation and impact of the law. Lauren Edelman has shown how equal employment and

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<sup>237</sup> See generally Simmons, *supra* note 32, at 911 (noting that “[p]rivate criminal law, for example, has grown into an immense industry operating completely outside of the public criminal justice system”).

<sup>238</sup> See generally LIPSKY, *supra* note 92 (describing how police and other public service workers with extensive contact with the public wield considerable discretion, thereby acting as front-line policymakers); MUSHENO & MAYNARD-MOODY, *supra* note 92 (detailing how police and other social service officers ascribe identities to members of the public and use these identities to justify their actions).



affirmative action laws typically establish broad regulatory goals without offering explicit procedural rules.<sup>239</sup> As a result, these broad regulatory mandates leave ample room for organizations to construct the meaning of legal compliance and “thus mediate the impact of law on society.”<sup>240</sup> Therefore, any regulation of private police must be precise enough to avoid organizational mediation. In doing so, regulations ought to consider the differential logics motivating the behavior of public and private police. We should expect private security to mediate any regulation in a manner that maximizes profit. This concern seems particularly significant in the context of state regulations of visual signs of authority. Many states bar private police from wearing a badge or insignia that is deceptively similar to public law enforcement.<sup>241</sup> While some states mandate regulatory agencies approve all visual signs of authority, others merely posit that signs of authority must be distinguishable.<sup>242</sup> Such ambiguity opens the door for organizational mediation and construction of the law.

#### V. CONCLUSION

The pluralization of American policing has resulted in a formidable, alternative force of law enforcers wielding enormous discretion and routinely engaging in socially coercive behavior. These private police officers represent a necessary, but potentially dangerous, form of social control. State regulations of private police have addressed one potential concern related to private policing by ensuring predictable transactions between large organizations and third-party security contractors. No doubt, this type of regulation is important and necessary. But the law continues to draw a deceptive dichotomy between private and public police based solely upon the fact that public police exercise the “official” authority of the state. State laws inadequately regulate private police—particularly internalized officers who are largely unburdened by any legal requirements. This has to change. And any future regulation of private policing must carefully consider the unique institutional logics motivating private policing organizations. An understanding of organizational theory can improve future private police regulation and facilitate a thoughtful shift in the law’s treatment of private policing.

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<sup>239</sup> Lauren Edelman, *Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law*, 97 AM. J. SOC. 1531, 1533 (1992).

<sup>240</sup> *Id.* at 1532.

<sup>241</sup> See *supra* Part III.B.

<sup>242</sup> See *supra* Part III.B.

## APPENDIX

States	Code Section	Regulates Third-Party Security Guards?	Regulates Internalized Security Guards?
Alabama	<i>See</i> ALA. CODE § 34-27C-4 (2009).	Yes	No
Alaska	<i>See</i> ALASKA STAT. ANN. § 18.65.400–18.65.490 (1976); ALASKA ADMIN. CODE tit. 13, §§ 60.000–60.900 (2012).	Yes	No
Arizona	<i>See</i> ARIZ. REV. STAT. ANN. § 32-2601 – 32-2642 (2002).	Yes	No
Arkansas	<i>See</i> ARK. ADMIN. CODE 055.00.1-3 (2012).	Yes	No
California	<i>See</i> CAL. BUS. & PROF. CODE §§ 7580–7588.5 (West 1994).	Yes	Yes
Colorado	No Regulations	No	No
Connecticut	<i>See</i> CONN. GEN. STAT. ANN. §§ 29-161g–161aa (West 2011).	Yes	No
Delaware	<i>See</i> DEL. CODE ANN. tit. 24, §§ 1301–1341 (West 1974).	Yes	No
Florida	<i>See</i> FLA. STAT. ANN. §§ 493.6100–493.6406 (2001).	Yes	No
Georgia	<i>See</i> GA. CODE ANN., §§ 43-38-1–43-38-17 (Lexis 2005).	Yes	No
Hawaii	<i>See</i> HAW. REV. STAT. §§ 463-1–463-17 (West 2010).	Yes	No
Idaho	No Regulations	No	No
Illinois	<i>See</i> 225 ILL. COMP. STAT. §§ 447/25-5–447/25-30 (2007).	Yes	No

States	Code Section	Regulates Third-Party Security Guards?	Regulates Internalized Security Guards?
Indiana	<i>See</i> IND. CODE ANN. §§ 25-30-1.3-1–25-30-1.3-24 (West 2007).	Yes	No
Iowa	<i>See</i> IOWA CODE ANN. §§ 80A.1–80A.18 (West 1998).	Yes	No
Kansas	No Regulations	No	No
Kentucky	No Regulations	No	No
Louisiana	<i>See</i> LA. REV. STAT. ANN. §§ 37:3270–37:3298 (2007).	Yes	No
Maine	<i>See</i> ME. REV. STAT. tit. 32, §§ 9401–9418 (1981).	Yes	No
Maryland	<i>See</i> MD. CODE ANN., BUS. OCC. & PROF. §§ 19-401–411 (West 1996).	Yes	No
Massachusetts	<i>See</i> MASS. GEN. LAWS ANN. ch. 147, §§ 22–26 (1981).	Yes	No
Michigan	<i>See</i> MICH. COMP. LAWS ANN. §§ 338.1051–338.1092 (West 2001).	Yes	No
Minnesota	<i>See</i> MINN. STAT. ANN. §§ 326.32–326.3386 (West 2004).	Yes	No
Mississippi	No Regulations	No	No
Missouri	No Regulations	No	No
Montana	<i>See</i> MONT. CODE ANN. §§ 37-60-101 to -411 (2011).	Yes	No
Nebraska	No Regulations	No	No
Nevada	<i>See</i> NEV. REV. STAT. ANN. §§ 648.005–210 (West 2011).	Yes	No
New Hampshire	<i>See</i> N.H. REV. STAT. ANN. §§ 106-F:1 to :16 (2012).	Yes	No

States	Code Section	Regulates Third-Party Security Guards?	Regulates Internalized Security Guards?
New Jersey	<i>See</i> N.J. STAT. ANN. §§ 45:19A-1 to -12 (West 2012); N.J. ADMIN. CODE 13:55A-4.1 (West 2012).	Yes	No
New Mexico	<i>See</i> N.M. STAT. ANN. §§ 61-27B-1 to -26 (West 2012).	Yes	No
New York	<i>See</i> N.Y. GEN. BUS. LAW §§ 89-E to -w (McKinney 2012).	Yes	Yes
North Carolina	<i>See</i> N.C. GEN. STAT. ANN. §§ 74C-1 to -24 (West 2011).	Yes	No
North Dakota	<i>See</i> N.D. CENT. CODE §§ 43-30-01 to -40-16 (2005); N.D. ADMIN. CODE 93-02-01.1-01 to -03-06 (2011).	Yes	No
Ohio	<i>See</i> OHIO REV. CODE ANN. §§ 4749.01-.99 (West 2012).	Yes	No
Oklahoma	<i>See</i> OKLA. STAT. ANN. tit. 59, §§ 1750.1-.24 (West 2012).	Yes	No
Oregon	<i>See</i> OR. REV. STAT. ANN. §§ 181.870-.889 (West 2005); OR. ADMIN. R. 259-060-0005 to -6000 (2012).	Yes	Yes
Pennsylvania	<i>See</i> 22 PA. CONS. STAT. §§ 11-30 (2012).	Yes	No
Rhode Island	<i>See</i> R.I. GEN. LAWS §§ 5-5.1-1 to -24 (2012).	Yes	No
South Carolina	<i>See</i> S.C. CODE ANN. §§ 40-18-20 to -50 (2012).	Yes	Yes
South Dakota	No Regulations	No	No

States	Code Section	Regulates Third-Party Security Guards?	Regulates Internalized Security Guards?
Tennessee	<i>See</i> TENN. CODE ANN. §§ 62-35-101 to -142 (West 2012).	Yes	Yes
Texas	<i>See</i> TEX. OCC. CODE ANN. §§ 1702.101–.134 (West 20011); 34 TEX. ADMIN. CODE § 3.333 (2011).	Yes	No
Utah	<i>See</i> UTAH CODE ANN. §§ 58-63-301 to -310 (West 2008); UTAH ADMIN. CODE r. R156-63a (2012).	Yes	Yes
Vermont	<i>See</i> VT. STAT. ANN. tit. 26, §§ 3171–3180 (2010); 20-4 VT. CODE R. § 1500 (2012).	Yes	No
Virginia	<i>See</i> VA. CODE ANN. §§ 9.1-138 to -150 (West 2012).	Yes	No
Washington	<i>See</i> WASH. REV. CODE ANN. §§ 18.170.010–.902 (West 2004); WASH. ADMIN. CODE 308-18-030 to -320 (2011).	Yes	No
West Virginia	<i>See</i> W. VA. CODE ANN. §§ 30-18-1 to -13 (West 2012).	Yes	No
Wisconsin	<i>See</i> WIS. STAT. ANN. § 440.26 (West 2012).	Yes	No
Wyoming	No Regulations	No	No