

"A liberal culture within the police force is something worth fighting for"

July 9 2020, by Benno Stieber



The legal expert Prof. Dr. Ralf Poscher is director at the Max Planck Institute

for the Study of Crime, Security and Law in Freiburg. Credit: Michael Bamberger/MPI for the Study of Crime, Security and Law in Freiburg

The police forces currently find themselves in the focus of public debate. This was triggered partly by the attacks on police officers in Stuttgart by rioting youths. For another part, police violence against blacks in the U.S. has also brought up the issue of racism in police work in Germany. Ralf Poscher, Director at the Max Planck Institute for the Study of Crime, Security and Law is investigating legal aspects of police work. In this interview he talks about the different police cultures in the U.S. and Germany, about violence and de-escalation and possibilities to prevent discrimination.

In the United States, two black men have been killed by policemen within a short period of time, apparently for no reason. This has sparked massive protests. In Stuttgart, too, riots against police officers occurred last week. Are the two incidents at all comparable?

Ralf Poscher: No, not from my point of view. We are talking about apparently haphazard violence against the police with regard to the events in Stuttgart, whereas what happened in the U.S. were protests against questionable police actions. The latter are a completely legitimate form of political confrontation as long as they take place peacefully. The police needs to be able to put up with that. On either side, the situation in the U.S. is very different from what it is here in Germany. On the one hand, the extent to which the police but also the population carry weapons is much higher. Police officers there must always expect that firearms will be used. Yet above all, US police officers go through an

extremely short period of training, which is why many things are handled in a far less professional manner.

Nonetheless, also in Germany, the police resort to violence again and again.

Yes. Take the G-7 summit in Hamburg, for example. The plan was to arrest the principal aggressors early on, but it didn't work out. Still, even then, no one was left lying dead in the street.

Where do you see the essential differences in police law?

In the U.S., complaints against the police are almost impossible. Often only individual police officers may be held accountable, usually in the form of claims for damages; the hurdles are high. This is, however, understandable, since the protection of an employee's private life from consequences of their professional activities is also generally very high in the professional domain. What is special about the U.S., however, is that the so-called "Qualified Immunity" is added. It is not enough for a US court to establish that the police used [excessive force](#); there also needs to be a precedent in which it was ruled that comparable violence was clearly against the law. In this context, the courts tend to narrow down the comparability of cases very strictly, so that a precedent is seldom found. This also results in hardly any new precedents being added to the list. This is why the police in the U.S. are rarely held accountable, even in cases where it is obvious that excessive violence was used.

And in Germany, how is the situation here?

It is totally different. The police can easily be sued for interventions

through administrative courts. Any unlawful behaviour can be challenged in this way. This gives us here a much tighter legal control over the police. It is because we distinguish more clearly between the personal responsibility of the police officer and the responsibilities of the authority.

And yet, isn't it the case that many complaints remain without noticeable consequences?

In fact, there were even criminal convictions following the kettling of demonstrators in Hamburg in 1986 and the excesses of violence during the Stuttgart 21 protests. Whenever detention or physical injury is involved while on duty, a great deal is at stake for officers. Even if the trials may not take place until many years later.

Is this obligation of the police to the law a special feature of the Federal Republic of Germany?

No, it is older. Its foundations were laid as far back as the 19th century under the German Empire. At that time the bourgeoisie agreed on a kind of compromise with the monarchy: Citizens renounced democracy but were given the rule of law. This protection of the rule of law was most notably developed in the field of police law. With its Kreuzberg ruling in 1882, the Prussian Higher Administrative Court made a decisive point when it ruled that the role of the police was only to avert danger. Everything else required a special legal basis. What is more, through its case law the court developed the systematic building blocks for the law governing the prevention of danger. As early as in the Weimar Republic, the Prussian police administration law emerged from this, which defined limits to the competencies of the police. Under National Socialism, however, the rules, especially the general provisions pertaining to the police, were then reinterpreted in a National Socialist sense by some of

the same lawyers. Nonetheless, the model of the Prussian police administration law has remained the basis of our police law to this day. In the GDR it was in effect until the end of the 1960s, in the Saarland even until 1989.

Some police operations, however, have also made history for their militarist character: for example, during the 1967 demonstration against the visit of the Shah, when Benno Ohnesorg was shot dead; during the protests against the west runway at Frankfurt Airport and against the nuclear reprocessing plant in Wackersdorf in the 1980s. Today, the police in general appears to rely increasingly on de-escalation strategies. Is this due also to police law?

This can only be partly considered a legal development. In the 1950s, police law increasingly came under the influence of constitutional law in the Federal Republic of Germany. In imperial times, the police had, for example, tended to regard a political assembly as a disturbance to public order. In contrast, it follows from the German Basic Law that it is the task of the police to protect assemblies and only to intervene when danger is imminent. Equally important, however, is a change of culture, which took place with the resignation of an older generation within the police force, who had served already under National Socialism. Since then, de-escalation concepts have increasingly gained widespread acceptance.

So this trend actually originated within the police?

To some degree. It has been heavily disputed for a long time. I know of

the story of Bonn's former Chief of Police. In the early 1990s, he made many enemies in politics and justice because he refused to seize the black bloc (a group of radical protesters dressed in black, editor's note) from within the very centre of a demonstration. He knew: If we are going to intervene now, there will be riots. At that time, the Senior Public Prosecutor threatened him with a charge of obstruction of justice in office. Implementing new strategies was always met with fierce disputes within the authorities. By today, however, those new strategies have become widespread through training in the police force.

You would say that de-escalation is a well-established strategy in the police force?

I believe so. I witnessed how the operation in the Stuttgart Schlossgarten was discussed at the police university. Everyone there said at the time: "So, what went wrong during this operation? This was just like in the 1960s." Nowadays, de-escalation is widely accepted, certainly among the management of the police.

Nevertheless, there have been violent assaults also in the German police, including the death of Oury Jalloh in police custody. Can we really trust that the culture among the police will make such apparent excesses of violence impossible in the future?

The positive developments I have been describing are only partial achievements, which unfortunately do not apply to every area of an organization of such size. De-escalation as a principle must, I believe, be fought for again and again, with each new generation of police officers. There are always opposing tendencies, though. The strategy paper of the North Rhine-Westphalian Minister of the Interior, for example, states

that the police must become "more robust" again. This might be misunderstood by some officials as an encouragement to resort to violence more easily again in the future. These are mistaken incentives, requiring an ongoing struggle for a liberal culture.

Racial profiling is a major point of criticism when it comes to police work, i.e. monitoring people on the grounds of their skin colour, which police officers tend to justify on the basis of their experience.

In this context, for example, we must think more carefully about legal hurdles. We know that crime statistics tend to be distorted by taking a closer look at certain groups of the population than at others. What legal consequences can be drawn from such phenomena? These are topics we are currently investigating in more detail in the "Zu Recht" project in cooperation with the Mercator Foundation.

What approaches are you considering in your projects?

We are at present in the process of evaluating the intercultural training of the police force and of investigating whether instructions given by older colleagues may be more influential in the reality of day-to-day service. With regard to service law, we are investigating what kind of people actually make it into police service and whether it may be possible to adjust criteria of aptitude so that more people with a migrant background will be given better chances.

What other questions are you investigating?

Another study is looking at experiences of discrimination vis-à-vis the

police, connected with situations where someone does not feel understood and cannot make themselves understood through German. Field trials of of the police with translation apps are being evalutated.

Are you receiving support from the police in these investigations?

Yes, and I am not taking this for granted. For example, a high level of interest in these questions is shown by the German Police University, which is collaborating with us on the project. Having academically oriented institutions for the education and training of the police is hugely different to the U.S., where police training sometimes only lasts a few weeks. In Germany thehe profession of police officers has by now become almost fully based on academic standards. In many of the German federal states you can only become a [police](#) officer after completing at least a study programme at a university of applied sciences. Whether this makes sense in every case is another question. But it illustrates the importance attached to education and training, which is, of course, also reflected in the tactical, communicative, psychological and legal skills of [police officers](#).

Provided by Max Planck Society

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