Police as Supercitizens

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In 1816, the US state of Georgia's General Assembly passed the following law:

> If any person shall ... assault or beat any sheriff, coroner, constable or other officer, or person duly authorised, in serving or executing any process ... every person so offending, shall on conviction be fined in a sum not exceeding five hundred dollars, and also, be imprisoned in the common jail of the county, for any time not exceeding two years; provided any officer whatever that may or shall assault or beat any individual under color of his commission, without being compelled in self-defence to do so, shall on conviction, be fined in a sum not exceeding five hundred dollars, as the jury may recommend.

This statutory language makes clear one example of the special legal protections afforded to law enforcement officers under nineteenth century Georgia law. A civilian who assaults or beats an officer can be both fined and imprisoned for up to two years; an officer who assaults or beats a civilian is subject only to a possible fine.

Such special treatment of law enforcement officers continues into the present day. Modern Georgia law statutorily prohibits aggravated assault and continues to perpetuate the distinction—now more than two centuries old—between nonpolice and police with regard to punishment. Aggravated assault against nonpolice "shall be punished by imprisonment for not less than *one* nor more than 20 years." In contrast, aggravated assault against law enforcement officers (called peace officers in Georgia law) results in "imprisonment for not less than *five* nor more than 20 years."[1] Augmented punishments for assault against police are just one example of how local, state, and federal laws in the United States enshrine a system in which police are deemed more valuable members of society than other citizens. But the

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privileged form of citizenship that law enforcement officers enjoy is visible far beyond differential punishments for assault. And the law is certainly not the only area of US life where law enforcement officers expect, and receive, special treatment.

This article proposes the concept of law enforcement officers as supercitizens who enjoy special privileges of membership in US society not afforded to any other members. Various legal, social, and cultural protections for law enforcement officers create and perpetuate a system in which police occupy a special caste in US society. Police officers themselves recognize, embrace, and actively perpetuate the differentiation between categories of us (law enforcement) and them (civilians), jealously guarding their special treatment under law and in society generally. It is beyond the scope of our commentary to evaluate whether such supercitzenship is meritorious or desirable; we aim instead to detail the ways in which, good or bad, police supercitizenship exists as a core feature of the US experience.

In the first section of this commentary we establish the foundation of stratified and contingent citizenship as an idea. We highlight research showing that there is no single manifestation of citizenship, with uniform rights and responsibilities, that is universally enjoyed. Instead, it is well-established that some (like law enforcement officers and soldiers) enjoy supercitizenship, while others (African Americans and other non-whites, undocumented individuals, and women) suffer the consequences of infracitizenship. We conceive of citizenship as stratified and contingent, a spectrum of rights and benefits with law enforcement officers occupying the privileges of one extreme. In the second section, we propose a succinct conception of law enforcement officers in the United States as supercitizens, briefly describing the characteristics and consequences of such supercitizenship. In the third section, we present the myriad ways in which this supercitizenship manifests in modern society, ranging from legal protections (*de jure* supercitizenship) to social and cultural deference and insularity (*de facto* supercitizenship).

Stratified Citizenship in the United States

Legal historians and scholars have long contended that US citizenship and the rights, obligations, and privileges associated with it, are not decisive and stagnant categories. We find, in the historical ambiguity about rights and citizenship, a scholarly and legal ground primed for an investigation of supercitizenship. It is exactly due to the fact that the history is so ripe with examples of its opposite—a type of infracitizenship, in which formalized

citizens have fewer rights and obligations than the title bestows—that we can look for those moments and places where some citizens are bestowed with greater legal and social privileges.

In the United States, born and naturalized citizenship has been both given and taken away. Citizenship has been revoked from those who join another nation's military or for other reasons, like the famous anarchist Emma Goldman who lost the citizenship she acquired through marriage after her divorce. Even after the passage of the Fourteenth Amendment drastically expanded those eligible for birthright citizenship in the United States, some people who have called themselves citizens were not able, and still cannot, enjoy or oblige practices associated with the title. This category includes those historically and contemporaneously denied the right to vote: Black men and women in various parts of the South before 1965, white women before 1921, or people convicted of a crime. For these citizens, being denied the privileges that make national belonging manifest was tantamount to formal and legal exclusion. And yet, at other moments, foreign-born white immigrants were given unfettered access to both naturalization and the privileges enjoyed by native-born whites. Scholars looking to further our understanding of citizenship in the United States need to excavate the fluctuating relationship between formal citizenry and why, where, and for whom the associated practices of citizenship are not just denied but in some cases enhanced.

The dominant modern liberal conception of the term citizenship emphasizes rights, whereas the alternative civic republican model emphasizes duties (Heater 1999). We do not pretend in this short commentary to offer a comprehensive review of the complex history and evolution of the concept of citizenship. For that, we point readers in the direction of Derek Heater, who offers a number of in-depth studies of the history of citizenship over time.

We understand citizenship to be about the relationship between an individual and the state, and embrace Heater's view that "civic identity is enshrined in the *rights conveyed by the state* and the duties performed by the individual citizens" (Heater 2004, 2; emphasis added). In this essay, we focus on the first element of Heater's definition: citizenship as a bundle of rights conveyed by the state. Different tiers or strata of citizenship, then, imply the presence of different bundles of rights provided by the government to different groups. We call this element of citizenship *de jure* citizenship, meaning citizenship by law: the rights that governments convey to their citizens that are formally prescribed under law. For example, acquiring and using a

passport, in its current iteration, is an exercise of citizenship prescribed by law (Robertson 2010).

We push Heater's definition further by envisioning citizenship not just as *de jure*, which is necessarily top-down. Instead, we also examine *de facto* citizenship, reflecting our understanding that citizenship entails not only rights conveyed by the state but also social practices that constitute citizenship. As legal historian Martha Jones (2018, 11) has written, "For some, being a citizen was the gateway to rights … For others, exercising rights was evidence of citizenship" (see also Benton-Cohen 2018). Other scholars have noted the distinction between *de jure* and *de facto* forms of belonging in society. Donato and Hanson (2012), for example, wrote about the ways in which Mexican Americans were legally categorized as White in the Southwest, though the American public did not recognize that category and instead treated Mexican Americans as socially "colored" in their schools and communities.

It is not only the state that decides who enjoys the rights of citizenship, and the extent of those rights. It is the residents of a country themselves, in the way they treat one another and the claims they make against the state, who also build and maintain stratified citizenship. After all, the Fourteenth Amendment formally granted formerly enslaved people *de jure* citizenship, and the Fifteenth Amendment guaranteed the right to vote, a core benefit of such citizenship. Yet social practice was slow to change, meaning that formerly enslaved people and their descendants continued to be excluded from *de facto* citizenship in many parts of the United States. Stratified citizenship, then, can result both from state action—different benefits or rights written into law—and also from social practice.

Infracitizenship

Tiers of citizenship have existed under American law since the colonial period, with race and gender featuring prominently in the hierarchy of citizenship created by law and social practice. Before declaring independence from Great Britain, subjectship in the American colonies carried benefits—mostly the right to own property—but was limited to those meeting a number of qualifications; after independence, these limitations in citizenship endured. Colonial governments commonly restricted participation in government—and therefore the benefits of subjectship—based on gender, religiosity, and property ownership.

To be fair, colonial governments "increasingly obliterated the formal legal distinctions that still divided subjectship in English law," including differentiation between "natives, naturalized aliens, and denizens" (Kettner 1978/2014, 106). In *The Development of American Citizenship, 1608–1870*, Kettner (1978/2014, 107) writes of the importance of denization or naturalization in the colonies:

> Denization or naturalization was necessary if the foreigner was to gain security in his possession and enjoyment of real property. Moreover, subjectship was ordinarily the first (though not the only) step toward the acquisition of political rights.

Denization or naturalization in the colonies thus helped amplify the rights made available by the state, especially with regard to property ownership and participation in colonial government. But acquiring the rights to subjectship—and therefore the right to exercise political power in the colonies—was still highly restricted.

Gender and Infracitizenship

Under the law of coverture, British colonial women "passed by marriage from legal dependence on her father to reliance on a husband, losing her last name and gaining no civil rights" (Taylor 2016, 27). English jurist William Blackstone (1765, 442–45), famous for his *Commentaries on the Laws of England*, wrote that, "the very being or legal existence of the woman is suspended during the marriage … or consolidated into that of the husband." White women, while formalized citizens under the 1790 Naturalization Act, were denied many of the rights and obligations that serve as practiced evidence of citizenship. White women were not only barred from voting in most states until the ratification of the Nineteenth Amendment in 1920, but in the nineteenth century, the enduring law of coverture transferred a married woman's civic identity and right to property to her husband. "Coverture was theoretically incompatible with revolutionary ideology and with the newly developing liberal commercial society," wrote Linda Kerber (1998, 12) in her landmark *No Constitutional Right to Be Ladies*, "but patriot men carefully sustained it" (Zagarri 1998, 12).

Kerber (1998) further argued that shifting ideas about gender and women's role in American society were entwined with the fight for gendered equality in civic obligations like voting, jury duty, and combat military service. Kerber complicates our understanding of privilege and obligation by

distinguishing between voluntary civic duties and imposed state obligations. She asks whether it is equitable for a person to be excluded from dangerous civic tasks like being forcibly drafted or enlisted in the military. Is safety a marker of a privileged position in the spectrum of citizenry? Or does this exclusion, even with its benefits of bodily safety, come with an indication of second-class citizenship? Her answer is that in one way or another, the "basic obligations of citizenship have always been demanded of women; it is the *forms* and *objects* of that demand that have varied over time" (309). From mandated non-combat roles to serving as a large portion of both military combat units and police departments, it is precisely women's growing access to the work of state violence that has been celebrated as access to forms and objects of full, first-class citizenship. Just as Frederick Douglass and others invested in Black military involvement as a signifier of, and window to, belonging and rights, so too did the push to allow women and LGBT people in combat roles envision a more equitable dispersal of the rights and obligations of citizenship (Kerber 1998, 300–301, 305–9).

The ability of men and women to participate in the project of state violence has been considered one of the defining hurdles of first-class citizenship. But becoming an armed agent of the state is not just an entryway for previously second-class citizens like women, LGBT people, African Americans, and immigrants to gain access to first-class citizenship—it is also a window for previously first-class citizens to become supercitizens. The so-called military welfare state, which provides state healthcare and benefits to military members, veterans, and their families, came as part of a nineteenth and twentieth century effort to differentiate "the veteran from the civilian and elevating him as worthy of entitlement" (McElya 2016, 4).

Race and Infracitizenship

Both during the colonial period and after independence, colonies and states restricted political participation by people of African descent. Virginia, South Carolina, and Georgia, for example, limited citizenship to free white persons who met other qualifications (Kettner 1978/2014, 216). Noncitizens, including all Black residents in these states, lacked the ability to participate politically—to vote, to acquire, hold, or sell property, to rent homes or land, and even the right to sue (Kettner 1978/2014, 216).

After independence, the compromises bartered at the Constitutional Convention codified and perpetuated the status quo in most colonies: Black people, both enslaved and free, were excluded from the US body politic.

In his book, *The Anti-Federalist Papers and the Constitutional Convention Debates*, Ralph Ketcham (2003, xviii) elaborated upon severe restrictions for citizenship in the 1770s and 1780s:

> Property qualifications for voting and office-holding were common, and women were barred from doing either. Most extreme, black slaves were not regarded as part of the political community and hence were entirely denied participation and protections of rights ... the [Constitutional] Convention ignored these issues by accepting the guidelines already existing in state constitutions and in the Articles of Confederation.

Infracitizenship was enforced with violence. Enslaved people were not only denied the benefits of citizenship; their enslavement was secured and perpetuated by force, both before and after independence from Great Britain. A 1705 act in Virginia, for example, "made it legal for any person or persons whatsoever to kill or destroy [runaway] slaves" (Reichel 1988, 57). In South Carolina, the state militia was used as early as 1721 for the surveillance of slaves (Reichel 1988, 57). In fact, "the South Carolina militia essentially became a local anti-slave police force" (Simmons 1976, 127 cited in Reichel 1988, 57). A 1757 Georgia law established slave patrols "for the better keeping of Negroes and other Slaves in Order and prevention of any Cabals, Insurrections or other Irregularities amongst them" (Candler 1910, 225, cited in Reichel 1988, 56).

The US government and its counterparts at the state level continued to enforce tiered citizenship through legislation and constitutional interpretation, especially on the basis of race, both before and after the Civil War. The Constitution itself, in Article IV, provided security to slaveowners to reclaim escaped slaves; James Madison himself noted that the fugitive slave clause "was expressly inserted to enable owners of slaves to reclaim them" (Johnson 1921, 162). The Fugitive Slave Acts of 1793 and 1850 "provided for federal involvement in slave-catching in Northern states and (in 1850) established federal officers to assist in slave-catching and penalties for obstruction of such activity" (Sebok 1991).[2]

The infamous *Dred Scott* case declared that people of African descent, both enslaved and free, were "not included, and were not intended to be included, under the word 'citizens' in the Constitution."[3] Instead, they were "a subordinate and inferior class of beings who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority." The court suggested that this "class of persons who had been

imported as slaves [and] their descendants, whether they had become free or not" were "beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect."

Free Black men who applied for passports in the mid-nineteenth century, as a practice and assertion of their unrecognized citizenship, were often met with mixed results. While Secretary of State James Buchanan asserted in 1847 that "free negroes" were to be issued special certificates, rather than passports that may convey citizenship, there were some instances in which free men were issued passports regardless of formal citizen status, both an indicator of the shifting nature of the passport as a formal certification of citizenship as well as the dubious place of free men of African descent in the mid-nineteenth century (Robertson 2010, 131–33)

For formerly enslaved and free people of African descent, *de jure* citizenship was solidified after the passage of the Fourteenth Amendment's grand declaration that, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." But social practice continued to exclude African Americans from *de facto* citizenship for decades to come (Mohammad 2010). African Americans are still fighting for unfettered access to the rights and obligations associated with *de jure* citizenship.

Even before the adoption of the Fourteenth Amendment in 1868, which naturalized all people born in the United States and overturned the 1790 Naturalization Act, which restricted citizenship to free-born white people, or the passage of the Fifteenth Amendment formalizing the right to vote for all citizens, African Americans fought and were admitted into the US military. Many at the time, including Frederick Douglass, argued that military inclusion was a window to more rights in part because of its historical associations with national belonging and inclusion.

It is well-accepted and well-established, therefore, that stratified citizenship exists in the United States. Scholars, especially those in the feminist and critical race traditions, tend to focus on infracitizenship, when certain individuals and groups are afforded fewer benefits of both *de jure* and *de facto* citizenship. But, if American history is so rich with examples of those who have consistently received fewer benefits—and therefore "less citizenship"—from state and federal governments, it is also important to look at those who have consistently received more benefits, and therefore more citizenship—or supercitizenship.

US Police as Supercitizens

Origins of US Policing

Far from the slave patrols and policing that shaped the punitive state on and off the plantations of the Southern United States, the development of the institution of policing also took on a marginalizing, and often racializing, role in Europe in the eighteenth century. The new, so-called professional police were distinctive from earlier methods of subordination or the suppression of disorder in their constant and mundane exertion of state power. Cities marked political power over the countryside with the ever watchful French Gendarmerie; the English and Dutch created institutions to preserve order that often exacerbated or reinvigorated cultural distinctions between Protestants and Catholics living under the watchful gaze of the emerging state. Away from the domestic US context, the emergence of modern police departments is also inextricable from colonialism, and particularly English experimentation with institutions capable of pacifying Irish subjects in Ireland (Emsley 2021, 65–70, 98; Foucault 1977, 213).

The adoption of European-style urban policing in northern cities in the United States is not independent from the actions of state-sanctioned enforcement of racial infracitizenship as it related to chattel slavery and free people of African descent elsewhere in the country. In cities like New York, Boston, and Philadelphia, the enforcement of laws, the preservation of order, and the defense of racial, class, and gendered hierarchies were not seen as different tasks needing to be juggled but as the same mutually constituted task. Agents of the state cannot, after all, police crime as a static category of actions or omissions. Criminal activity is ephemeral and the taxonomies that define it vary wildly across time and place. Therefore, since police cannot patrol crime they have opted to surveil the people and groups they deem most likely or predisposed to committing crimes—and this form of surveillance has always been racialized. "Police Action," as historian Nikhil Pal Singh (2014, 1093) has written, "developed along the continuum of racial management that moved from biopolitical inclusion (an ever-graduating whiteness) to necro-political destruction of entire communities (genocide)." Since its founding, policing in the United States was both a way to dole out violence and differentiation in a way that was simultaneously state-sanctioned punishment for perceived threats to order as well as rigid enforcement of racial boundaries and infracitizenship.

The egalitarian public imagination of many in the United States belies the true history of US police and the laws they enforce. US state and federal laws, since the founding, have routinely and explicitly created racial, gender, and other hierarchies that must be enforced by state agents. These legal hierarchies create the *de jure* infracitizens discussed above. Both before the founding and since the ratification of the Constitution, law enforcement officers were tasked with enforcing the boundaries of political and social belonging created by both federal and state legislatures. Slave patrols pursued and brutally recaptured escaped slaves at the behest of the Constitution's fugitive slave clause and the subsequent Fugitive Slave Acts passed by Congress. After the Civil War, law enforcement officers continued to enforce the racial hierarchies perpetuated by Black Codes and Jim Crow laws. Even today, law enforcement officers are tasked with maintaining a racialized social order and suppressing dissent and protest, even when that protest challenges police killings of Black men such as George Floyd's murder and subsequent national unrest in 2020.

De jure infracitizenship requires enforcement. Without enforcement, beliefs in racial, gender, or class supremacy underlying the laws might fail to be enacted in social life. Social infracitizenship has never been sufficient in this country; the ironclad marriage between *de jure* and *de facto* infracitizenship is what has allowed systems of domination to recreate themselves for the last 400 years on the North American continent. It is law enforcement officers and the institution of policing more broadly that have served as necessary instruments in the service of social stratification based on white supremacy, gender, and class.

Police as Supercitizens

The existence of infracitizens—those who suffer from fewer rights, privileges, and protections under the law due to their race, gender, or class—implies the converse existence of supercitizens, whose job it is to ensure that social stratification continues. If we conceive of citizenship as a bundle of rights conveyed by governments (*de jure*) and by social practice (*de facto*), it is clear from the historical records that US police have long enjoyed supercitizenship. By this we mean that US law enforcement officers have long received additional rights and legal protections from local, state, and federal governments and preferential treatment in their social interactions more broadly, which are not afforded to other members of our society.

While we are the first to suggest the term supercitizens, we are not the first to identify law enforcement officers as holders of special bundles of rights and privileges that set them apart from others. For example, Judith Butler (2004) and Ben Brucato (2014) refer to the police as petty sovereigns who are responsible for performing sovereignty and carrying out state prerogatives; in the US context, these state prerogatives have often been race, gender, and class-based legal and social hierarchies. Another scholar, Tyler Wall (2016, 1132), uses the term "everyday executives" to describe what we call the supercitizenship of law enforcement officers: Wall affirms decades of policing research when he states that police enjoy "enormous amounts of legal latitude and political power." It is precisely this "legal latitude and political power" that we conceive of as cornerstones of law enforcement supercitizenship.

This section is not intended to be an exhaustive history of police as supercitizens. Such a feat would require writing a definitive history of police as legal, political, social, cultural, and economic actors from the eighteenth century to the current day. Instead, this mosaic-like accounting intends to establish the historic continuity between various exaggerated *de facto* and *de jure* privileges associated with police supercitizenship. Many of these privileges, whether legally codified or unwritten and socially expected, have roots as old as the institution of policing and are preserved and constantly relegitimized through the expenditure of political and cultural capital, threat, and political inertia.

Since the consolidation of night watchmen and other *ad hoc* systems of social control into professionalized police departments in the mid-nineteenth century, politicians and civilians have voiced concerns about the powers and privileges of the police. In the corrupt political landscape of nineteenth century US cities, the operators of political machines like New York's Tammany Hall traded police appointments and the steady paychecks they received for votes and political loyalty. Patrolmen were seen as desirable positions, not just because of their municipal salaries, but also because of their proximity to potential graft and impunity as an anticipated perk of the job. The entwined benefit of political influence and social status ensured police a certain, and expected, level of protection for bribery, extortion, and brutality (Czitrom 2016).

The earliest records of the International Association of Chiefs of Police (IACP) confirm the fact that officers have long understood this supercitizenship and expected it. A police chief from Tennessee spoke at a 1902 IACP convention about the benefits police ought to receive:

> If men properly appreciated the debt they owe to policemen, they would have free passes on the railroads, whose property they guard; every city would furnish them with a free library; no college would accept tuition fees from their children; every town would furnish them a free banquet once or twice a year; and happy homes would be provided for those worn out in the service and for their families, where necessary ... they would be handsomely interred at the public expense, grateful citizens would strew their graves with flowers, and monuments. (International Association of Chiefs of Police 1971, 66)

In 1894, the New York Senate launched a probe led by Senator Clarence Lexow into corruption, brutality, and abuse of power wielded by police in New York City. Over the course of a year, the committee interviewed hundreds of New Yorkers, business owners, police, commissioners, and politicians. Among the committee's shocking findings were that hundreds of officers who had been convicted of brutality, burglary, and other crimes, including felonies, rarely faced any repercussions or reprimands within the department, and almost always continued to serve on the force. This led the committee to conclude, "It appears, therefore, that the police formed a separate and highly privileged class, armed with the authority and the machinery for oppression and punishment, but practically free themselves from the operation of the criminal law" (Lexow 1895).

There was, simply put, no one to police the police. They were physically beyond the reach of the law because they were tasked with providing its scope. The investigation found that from the lowliest patrolman up to ward captains, police were free with impunity to brutalize, extort, and blackmail with little chance of reprimand or consequence. It took large-scale investigations like the Lexow committee to put into writing what many New Yorkers who testified already knew from their daily lives: that police made up a separate and untouchable class of supercitizens unbound by the written and unwritten laws that governed behavior in society.

Throughout the subsequent century, local, state, and federal reports gave lawmakers a glimpse into the lived realities of victims of police brutality and shed more light on the legal privileges and forms of impunity that set police apart from civilians. The report of the Wickersham Commission, established in 1929, served as a large-scale investigation into the failures of policing during Prohibition, when the sale of alcohol was strictly regulated and criminalized. The report found that police corruption and failure to discipline or intervene in police involvement in illegal activity was one of the

many central difficulties of law enforcement in the era (National Commission on Law Observance and Enforcement 1931, 78). Likewise, the report of the Kerner Commission, organized by the federal government following the urban uprisings and protests of the 1960s found that one of the main motivating factors for protests among Black Americans was the failure to discipline officers who brutalized with impunity (Report of the National Advisory Commission on Civil Disorder 1968, 160).

Commission reports comprise an archive of evidence of police supercitizenship. In addition to freedom from prosecution, which citizens and infracitizens do not enjoy, police also benefit from the unofficial social and institutional code of silence that forbids one officer from testifying against another. Reciprocal silence, as it is called by criminologists, becomes another plate in the armor that protects police from prosecution and reprimand.

One study on reciprocal silence among police found that when officers were asked about attitudes of police toward abuse of authority, 53 percent believed that it was not uncommon for officers to turn a blind eye to improper conduct, 61 percent did not think fellow police would report serious crimes involving abuse of authority committed by colleagues, and 25 percent believed that whistleblowing against a fellow officer would not be worth the repercussions and potential retribution (Alpert et al. 2015, Weisburd et al. 2001).

In addition to legal impunity for assault, graft, and other crimes that have often gone unpunished by departments, police also retain and exercise other formal and informal cultural privileges. Police have often used their supposedly integral role in ensuring public safety to ensure legal and cultural privileges, like an expectation of reverence and gratitude from the public. In exchange for contending with labor portrayed as hazardous, police and people within their social sphere have historically demanded not just official benefits and privileges from the state, but a certain amount of respect and sympathy from the general public.

A century before contemporary debates about respecting officers, an 1887 book entitled *Our Police*, written by a self-described policeman's wife and sold for the benefit of the Police Pension Fund, shows the longevity of the expectation for special social privileges. Describing the public as "cold, critical, and unsympathetic," the book's author depicts police as a put-upon subculture, derided and attacked by an ungrateful press and public (Kornmann 1887, 7).

The policeman's wife advocates for kinder treatment and more respect at the behest of the press and public, and by doing so, tries to make the

argument that police deserve more social privileges because they are, in fact, a class of infracitizens—a put-upon minority not given the presumption of innocence allotted to everyone else. "The public insists upon regarding policemen as something different from other men," she writes, and "what is pardoned or altogether overlooked in a mechanic becomes a heinous crime in a policeman" (Kornmann 1887, 67–68). The *quid pro quo* at the heart of the policeman's wife worldview is that police should be given the respect, leniency, and reverence they deserve by virtue of their dangerous vocation, and in return, police will continue to do this job. The agreement central to the prevailing power dynamics, namely unquestioned respect, reverence, and impunity for police officers in exchange for the protection they provide the public, is one that is easily broken if police no longer feel reverence or respect. In the following section, we catalog the myriad ways in which law enforcement officers in the twenty-first century continue to enjoy supercitizenship through a combination of evolved legal (*de jure*) protections and social (*de facto*) privileges as illustrated by these historical examples.

Manifestations of Supercitizenship in Modern Society

Supercitizenship among US law enforcement is enduring and expanding. In this section, we describe the modern manifestations of supercitizenship in the United States. We identify both core and peripheral benefits deriving from law (*de jure*) and social practice (*de facto*) that, acting together, result in supercitizenship.

De Jure Supercitizenship

Law enforcement officers in the United States currently enjoy a wide variety of *de jure* benefits not afforded to other citizens. To reiterate, *de jure* benefits are distinctions written into laws at the federal, state, or local level that treat law enforcement officers differently than other citizens.

Special Category of Victimhood for Law Enforcement Officers

Many state legal codes create a special category of victimhood for law enforcement officers. Just like the Georgia statute cited in the introduction, most states make it easier to be charged with, and provide harsher criminal penalties, for assaulting a police officer as compared to assaulting a civilian. States go about this in a number of different ways. Some states separate out law enforcement officer victims in a separate section within their assault statutes. For example, California Penal Code Section 241(a) provides

that "an assault is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding six months." But California Penal Code Section 241(c) provides that, "When an assault is committed against the person of a peace officer," the punishment carries double the maximum sentence (one year) and double the maximum fine ($2,000).[4]

Other states create entirely different laws for assault on a police officer. South Carolina, for example, has an entire chapter called "Offenses Against Public Justice," which is separate from the chapter on "Offenses Against the Person." South Carolina's law protects law enforcement officers by creating a special criminal penalty: those who "knowingly and wilfully assault, beat, or wound a law enforcement officer" face up to ten years in prison, whereas those who "unlawfully injure … another [civilian] person" face a mere thirty-day maximum imprisonment.

Qualified Immunity and Immunity from Criminal Prosecution

Law enforcement officers also enjoy legal protection from civil lawsuits. Congress originally adopted 42 U.S.C. §1983 in the wake of the Civil War in an attempt to make government employees and officials personally liable for money damages if they violate a person's federal constitutional rights. But the judicially-created doctrine of qualified immunity has evolved to erode the ability of plaintiffs to meaningfully challenge police wrongdoing. Qualified immunity prevents plaintiffs from recovering damages in civil lawsuits unless a government official violates so-called clearly established law (Baude 2018). The Supreme Court "dedicates an outsized portion of its docket to reviewing—and virtually always reversing—denials of qualified immunity in lower courts" (Schwartz 2014, 2018). And when damages are assessed in lawsuits stemming from alleged police misconduct, individual officers rarely pay their own settlements. Schwartz (2014) studied police settlements from 2006–2011 and found that governments—not officers—paid 99.98 percent of damages recovered in lawsuits alleging police misconduct. Thus, even when lawsuits against law enforcement officers succeed, it is taxpayers themselves rather than officers who are responsible for picking up the tab.

Beyond just qualified immunity, law enforcement officers enjoy broad judicial deference as expert witnesses, in proceedings questioning their searches or seizures, and in judicial analyses of the vagueness doctrine (which holds that a law is void if it is too vague for the average citizen to understand) (Lvovsky 2017). Law enforcement officers enjoy a monopoly

on the use of state violence that allows them to use force against civilians without repercussions (Bittner 1970). Though US police kill about 1,000 civilians each year, US jurisprudence has created legal standards that give police officers—not their victims—the benefit of the doubt in criminal proceedings. The chances that a killing of a civilian will result in a murder conviction are 1 in 2,000 (Leonhardt 2021).

Death Benefits under State and Federal Law

Ample federal, state, and nonprofit resources are made available to the families of deceased officers. The Public Safety Officers Benefits Act (PSOB) provides a one-time death benefit of around $370,000 to survivors of federal, state, or local public safety officers who died as a "direct and proximate result of a personal (traumatic) injury sustained in the line of duty." With certain fatal, line of duty heart attacks and strokes also covered, the act provides a disability benefit to eligible public safety officers who have been permanently and totally disabled as the direct result of a catastrophic personal injury sustained in the line of duty.[5]

If survivors receive PSOB benefits, they also become eligible for federal funds for educational assistance through the Public Safety Officers Educational Assistance (PSOEA) program. PSOEA support is provided in the form of monthly assistance during full-time higher education attendance; the monthly payment is currently $1,265 (Szymendera 2022, 2).

Concerns of Police Survivors (C.O.P.S.), a nonprofit that offers programs for survivors of officers killed in the line of duty, publishes state-by-state guides for survivors' benefits.[6] These vary, but the most common benefits are a one-time cash payment (beyond what is available through the federal PSOB program), as well as workers' compensation, free in-state tuition (and sometimes scholarships to meet non-tuition costs of attending college), and free funeral and cremation services. Other less common benefits for survivors include property tax credits and exemptions (in South Carolina and Georgia) and equine therapy for the children of officers disabled or killed in the line of duty (California). This does not include informal local fundraising efforts after an officer is killed. For example, Adam Jobbers-Millers was shot and killed in 2018. His community in Fort Myers, Florida, "continued to rally behind his death in the form of monetary donations, fundraisers, events and mementos for his family or fellow officers so that he will never be forgotten," raising more than $175,000 (Patel 2019).

De Facto Supercitizenship

In addition to *de jure* supercitizenship, or those elevated and exaggerated rights and privileges enshrined by law, police also enjoy *de facto* supercitizenship, or unofficial, often unwritten, perks and privileges solidified by cultural and social expectations and practices. These benefits are often imparted by the greater public, not just on the officers themselves, but on a larger sphere of social and familial relations who reap the benefits of what we call ancillary rights: benefits that one earns through kinship with the police or through participation in the ongoing political process of legitimizing the role of police in society and police supercitizenship.

Bumper Stickers and "Get Out of Jail Free" Cards

What are examples of *de jure* supercizenship and the *ancillary* rights that police bestow upon family, friends, and supporters? One phenomenon, that of the "get out of jail free" card, extends legal protections and impunity from officers to friends, family, and associates. These courtesy cards are often not an official departmental designation, but are often issued by police unions or foundations to give out to family and friends in hopes that, when presented to another officer, it might get the bearer out of minor infractions like traffic tickets. In 2018, New York City Police Department officers protested when the Patrolmen's Benevolent Association, the largest labor union in the NYPD, threatened to cut the number of cards given to officers from 30 to 20 (Lockie 2018).

As early as the 1950s, police administrators and academics focusing on police administration warned about the corrupting influence of courtesy cards and placed them along other age-old perks of the job like mooching free or discounted goods from commercial businesses, which may also influence the operations of police (Kooken & Ayers 1954, Stoddard 1968). The distribution of these cards, or in some cases stickers visible in back windows or on bumpers of cars, creates a larger network of people who reap ancillary benefits based on the supercitizenship of officers. Propolice bumper stickers, either those that convey friendship or donations to police unions or foundations, or those that convey nothing more than political affirmations of the project of policing (e.g. Blue Lives Matter or Back the Blue), are one way that police are able to parlay their exaggerated rights into support and ancillary benefits for people within political, social, and kinship networks. By being lenient or exercising their discretion in favor of

someone displaying solidarity with or proximity to police, police in their capacity as supercitzens are able to bestow exaggerated rights onto others.

Mooching

Mooching, or receiving or soliciting free or discounted goods from commercial businesses, is functionally as old as the profession itself. In most departments, the Code of Ethics or Patrol Guide explicitly prohibits receiving "any reward, gratuity, gift or other compensation for any service performed as a result of or in conjunction with their duties as public servants" (NYPD Patrol Guide, Section 203–16). One 2012 report from the *New York Times* found that at one Brooklyn fast food establishment frequented by law enforcement, police often received a 50 percent discount while in uniform as a courtesy from the store manager without officers having to ask for it (Goldstein 2012). While one officer in that 2012 report claimed that this practice, ubiquitous in New York for decades, was on the decline, many law enforcement advocates were furious in the summer of 2020 when nationwide protests against police violence caused many brands to suspend formal police discounts. A Minneapolis pizza restaurant, for example, announced in the wake of the police murder of George Floyd that they would be suspending their regular practice of giving discounts to police. On Facebook, the company wrote:

> In the coming weeks, we will take the time to further reevaluate our relationship with the police. We will be looking at existing contracts, regulations, and security stipulations in our operating agreements as well as discussing what our options are. Note, we are not refusing service to the police; however, if an officer asks for the discount, we will let them know the discount has been suspended. The discount was a privilege we extended to them, it is not a right. (Cited in Kirov 2020)

The assertion that this *de facto* benefit was a privilege that could be revoked, rather than a right, led many people politically aligned with police to call for a boycott of the company (Goldstein 2012).

Police Animals

Ancillary rights bestowed by police extend beyond just people with proximity to the social and political sphere of policing and to animals that contribute to the policing project. For example, 18 US Code §1368 provides exaggerated punishment for "harming animals used in law enforcement," specifically a dog or horse. Thus, the *de facto* and *de jure* protections of supercitizenship

are not just confined to the officers themselves but extend to those humans and nonhumans with which they associate.

Supercitizenship as Mutually Reinforcing

De jure and *de facto* forms of supercitizenship are not mutually exclusive, but are mutually reinforcing. For example, consider the budgeting process for law enforcement agencies. Agencies receive their budgets from legislatures; these budgets then represent *de jure* entitlements. Law enforcement agencies, and by extension the officers that work for them, continue to receive disproportionate amounts of scarce public budgets. Even as crime rates drop, police budgets continue to rise. Across 150 of the nation's largest cities, the average share of public expenditures devoted to the police has steadily increased, averaging just under 8 percent; the same cities devote only 5 percent of spending to housing and 3 percent to parks. Yet the process resulting in such *de jure* benefits and job protections is certainly not insulated from society at large; *de facto* supercitizenship helps ensure law enforcement officers are treated deferentially by the legislatures that control their budgets.

The Jealous Guarding and Perpetuation of Privilege

Law enforcement officers in the United States expect to receive respect and special treatment from the rest of society, ostensibly in exchange for the risks they take on behalf of the rest of us. They conceive of themselves as so separate—so special—that they have come to conceive of themselves as belonging to a distinct and superior caste: blue lives whose identity is permanent and unwavering, not just during work hours.

This belief is not new. The country's first national organization for police leaders, the International Association of Chiefs of Police, keeps records of its meetings dating back to the twentieth century. In one meeting in 1902, a Tennessee police chief lamented the fact that the public does not value officers' sacrifices:

> But how little is this arm of the civil service appreciated? How little do the bulk of the people realize that they owe their peace, security, and prosperity to the many of the billy? Like the pestilence, he "walketh in darkness," but unlike the pestilence, he brings quiet and safety to the homes of the people. The average family of the city lies down and sleeps in security, fearless of the burglar, the robber, the incendiary, the murderer, because the policeman is on his ceaseless rounds. The policeman in the various wards of the sleeping city are the eyes that

> never sleep, that glare into every alley and into every nook and corner, where vice may be doing its dirty work. (International Association of Chiefs of Police 1971, 65)

This belief among law enforcement officers in their entitlement to special treatment has persisted over time. Beyond free goods and the ability to bestow some unofficial ancillary rights, the expectations and enforced benefits of policing, including respect and gratitude from the public, continue into the contemporary moment. In the last several years, in the wake of the Movement for Black Lives and the protest movement it gave rise to, police have been vocal in their willingness to cease doing their jobs to combat demonization in the public sphere. Police, unable to strike under labor laws that govern public sector unions, organize slowdowns in enforcement, sick outs (called the Blue Flu), and other tactics showing their opposition to vocal public resentment of police. In several instances, members of the New York City Police Department physically turned their backs to New York City's mayor, Bill de Blasio, at an event. In 2014, after the death of two officers, members of the NYPD blamed de Blasio for encouraging anti-police sentiment in the city by calling for police reform and an end to the controversial stop and frisk program. Despite de Blasio's lack of action in altering the police department during his tenure as mayor, his willingness to even question police and the role and effectiveness of the department drew ire and a punitive reaction from the department (Altman 2014). The mayor had seemingly broken the cardinal *quid pro quo* of modern policing. He questioned the unwavering reverence and impunity of supercitizens, and as a result police felt it was within their power to withhold their labor.

Scholars have long documented the ways in which infracitizenship is perpetuated over time, largely through familial ties. For example, Black Americans, immigrants, people with ambiguous ethnicity, or mixed-race people could inherit, or not, infracitizenship from the legal system through a contingent mix of "skin color, facial features, national origin, language, culture, ancestry, the speculations of scientists, popular opinion, or some combination of all these factors" (López 2006, 2, 173). Blood quantum laws also determined that anyone with at least one drop of blood of a specific race, meaning one ancestor of that race, was enough to impart diminished rights onto that person.

While policing is a profession, not an inherited set of contingent characteristics to be scrutinized by courts in order to determine rights and privileges, it is important to note that historically, as well as in our con-

temporary moment, there are strong cultural associations between policing and multigenerational involvement in law enforcement. As New York City police officer Arthur Carey wrote in his 1930 memoirs, "Family tradition always has insisted that I was born a policeman ... I say that deep down my father's desire to make me a policeman was ruled by the Irish blood in his veins, even when I lay in my cradle" (Carey 1930, 1–2). Although written almost a century ago, the intergenerational pull toward becoming a police officer has only continued and police spouses, through reproductive, caregiving, and domestic labor, continue to enable policing and reap ancillary benefits from their police kin.

Most scholars and many lay people understand law enforcement to be a profession or occupation, not an inherited set of contingent and perceived characteristics like race. But given the increasing tendency of law enforcement officers in the United States to think about themselves as a separate caste of blue lives, we believe it is time to dedicate more research to the ways in which the benefits of supercitizenship extend through kinship networks and intergenerationally, similar to the ways in which the disadvantages of infracitizenship are intergenerational.

Conclusion

There is no universal experience of citizenship in the United States. Instead, citizenship is stratified and contingent. Both by law (*de jure*) and social practice (*de facto*), some members of society suffer from infracitizenship while others enjoy supercitizenship. In this commentary we have proposed the concept of law enforcement officers as supercitizens. As supercitizens, law enforcement officers enjoy a myriad of benefits, protections, and privileges that give them special status both under law and in social practice. Our legal system provides enhanced penalties for individuals who assault or kill police officers while simultaneously protecting officers from any wrongdoing of their own. Officers enjoy qualified immunity from civil lawsuits and, in practice, criminal immunity from the vast majority of cases in which they use lethal force against members of the public. Socially, too, officers enjoy supercitizenship. This comes in the form of social deference, discounts, and blue lives matter and thin blue line stickers. But it is not only the officers themselves who benefit from such supercitizenship. Others, too, see the benefits of aligning themselves with such preferred members of society, hoping to receive the ancillary benefits of supercitizenship that come with backing the blue.

While our term is new, the experience of super and infracitizenship is not. But what is ironic is that law enforcement officers as a class continue to enjoy the benefits of supercitizenship, while simultaneously laying claim to the status of the persecuted. The social amplification of the view of policing as an overwhelmingly dangerous profession leads officers to demand and receive a form of supercitizenship that is not grounded in empirical data on the dangers of policing.

NOTES

1. Georgia Code §16–5–21 (emphasis added).
2. Act of February 12, 1793, 1 Stat. 302 (1793) [hereinafter 1793 Act] (providing for removal of alleged slaves "upon proof to the satisfaction of such [federal] judge or [state] magistrates"); Act of September 18, 1850, 9 Stat. 462 (1850) [hereinafter 1850 Act] (expanding federal involvement in capture of fugitive slaves, including providing for appointment of special federal commissioners to hear fugitive rendition proceedings and issue certificates of removal, and also establishing penalties for interfering with capture of runaways.
3. *Dred Scott v. Sandford*, 60 US 393 (1856).
4. Police officers are not the only special victims under assault laws, which also include categories like "firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, code enforcement officer, animal control officer, or search and rescue member engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility." See California Penal Code 241.
5. See the Public Safety Officers' Benefits Program guidelines at *Benefits.gov*.
6. Concerns of Police Survivors (C.O.P.S.), n.d. "Survivor Benefits." At *https://www.concernsofpolicesurvivors.org/survivorbenefits*.

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