Writing the World of Policing

The Difference Ethnography Makes

EDITED BY DIDIER FASSIN

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Detention: Police Discretion Revisited (Portugal)

SUSANA DURÃO

> From time to time, the police, for the purpose of conveying a kind of satisfaction to society faced by the occurrence of so many crimes, arrest a *fadista* [a *fado* singer]. What we have to ask is: Why not arrest all the *fadistas*?
>
> —Ramalho Ortigão and Eça de Queiroz, *As Farpas* (1878)

Why do some police officers obtain more power and freedom than others? Why are they authorized to deploy certain idiosyncratic and sometimes adventurous styles of performing their duties not only on the streets, but also bureaucratically? How do they "force" law enforcement while simultaneously knowing and even taking into consideration specific legal and administrative limitations? And just what do they achieve by it all?

In this chapter, I will debate these questions on the basis of ethnographic notes written after one of the longest shifts I have ever participated in at a neighborhood police station located in West Lisbon. During a twelve-month period of in-depth fieldwork at the station, and having already engaged in Portuguese policing issues for over a decade, I followed two of the five groups of approximately twelve officers as they went about their six-hour shifts (which rotated every four days). For two months, I frequently had the opportunity to participate in the routines of two officers who occasionally during their regular shifts were assigned by the station's captain to carry out "undercover police operations," as they were called in 2004.

This text explores and analyzes the details of one specific detention: a young man accused of dealing small amounts of hashish by these two plainclothes officers. The two first conduct an improvised street investigation and then go through the bureaucratic process of charging the man.

The chosen example illustrates the human and professional investment of officers who aspire to achieve a successful arrest by any means—even if it involves the disproportionate and apparently unjustifiable use of police force and results in a legally questionable case, facts that both the officers and I are well aware of. As such, this text examines the maneuvres of what I term an *improbable detention* and the intricate material conditions and meanings of this kind of adventurous and to a certain extent simultaneously controlled police style of action. The detention also reflects the career expectations, personal recognition, and promotion ambitions within the wider context of the Portuguese urban national police force, the *Polícia de Segurança Pública* (PSP).

This episode (and others of its kind) leads us to the theoretical question of police discretion and the limits of the police mandate in democratic states—a classical debate in the social sciences and critical criminology.[1] My aim is to go beyond the a priori normative social thinking that frames the idea of discretion—often delimited as positive or negative, justifiable or unjustifiable, legitimate or illegitimate—and to consider, in police terms, whether it is proportionate or disproportionate.[2] The idea is to rethink police discretion in light of ethnographically grounded anthropology. I contend that the social theory of policing will benefit from an anthropological definition of discretion that takes into account the logics and emotions displayed by certain people in the course of everyday political expressions of enforcement. As such, we must recognize that police discretion may frequently appear to be in tension with the application of official policies and the freedom of the police may at times seem at odds with the oversight of the institution but, in practice, these contradictions actually represent two sides of the same coin, as first considered by Didier Fassin. I seek here to argue that the anthropological analysis of a small-scale event with the complex usage of tactical improvisations led me to question discretion from an anthropological standpoint and therefore challenge the persuasive construction of critical social theories that defend the state and the police as violence (as expressed by Walter Benjamin) *or* the state and the police as law (as described by Edward P. Thompson).

In the first part of this text, I demonstrate how the detention of a youth by the police was conducted by a duo of officers, Duarte and Cruz, and was even imagined and desired before it took place. I narrate how despite the officers' mixed feelings of adventure, enthusiasm, jitters, and anger when it becomes apparent that the youth's detention is not justified (for lack of sufficient material evidence as required by the law or for failure to catch the youth in the act), they continue working to *make* a case. They deliberately

force the detention not only because they are in charge of the situation and can improvise but also because they feel empowered and never suspect that they might have no freedom or superior and administrative support to do so. In the second section of this text, I analyze this kind of officer discretion and frame it within the wider context of police station organization and the changing Portuguese preventive politics for policing over recent decades. Finally, I return to the theoretical issue of policing powers and strive to point out how I believe anthropology, through inductive ethnographic approaches, can contribute to a better understanding of discretion through underlying connected dimensions often forgotten by scholars such as human desire, ambition, and emotion. A description of the long shift follows.

An Improbable Detention

At the station, one detainee cries with his head between his hands. He is seated on one of the uncomfortable metallic chairs in a row in the atrium of the station, which had recently been painted in blue and white, police colors. One police officer stands guard. A young man has entered the web of the criminal justice system. Luis is in his late twenties, white like the majority of residents in this area, and unemployed. He was detained during the work shift of the two officers in charge of his case, Duarte and Cruz. His detention was neither a planned action such as the result of a stop and search operation nor a case of *in flagrante delicto*. The youth was suddenly surprised in the streets by a uniformed officer who took him to the station after an improvised sequence of undercover observations led by Duarte and Cruz, both of whom were in plainclothes that day. The pair reached the conclusion that the youth was dealing small amounts of hashish and decided to exaggerate their report to transform it into an offense for the judge. However, they would still have to face a very real problem: in the course of events, it became impossible to find any material evidence proving their "theory," and without any warrant, they could not reveal in writing all the informal improvisation and discretionary tactics that led them to make the arrest. I spent the entire day, from around 6:30 a.m. to 4:00 p.m., with these two officers moving around the neighbourhood, allegedly trying to find out information and build a case. We returned to the station with Luis, who, in the eyes of the officers, was a true *mitra*.[3]

It was while I was observing Luis as he sat handcuffed in the atrium around 2:00 p.m. that I heard that his own father had tried to talk to Duarte, seeking to make a deal with the officer, who nevertheless decided to proceed with the report. Inside the station, it becomes obvious to me

that not all officers agree with the situation. I hear some of Duarte's colleagues referring to him as an "old-timer," implying that he is inflexible and wants to enforce the law at any cost. In the meantime, in a busy atmosphere of changing shifts, I see two other officers hovering close to the detainee, trying to reassure him that "this is a simple process." Suddenly, I recognize one senior officer known by many for being a reasonable and understanding cop talking discreetly with Duarte. I cannot hear their conversation, but I learn afterward that he was trying to convince Duarte to let the youth go and drop the case, arguing that there was no solid basis for reporting it to the judge. An instant later, visibly disturbed, Duarte passes by me. Standing by my side he whispers in my ear: "Here, there's an impressive lack of professionalism; we (referring to him, his partner Cruz, and possibly the station captain) cannot count on them (their peers)," after which he disappears into an office presumably to write up a report. The captain never leaves his room; throughout the entire situation, he never interferes. At one point, I look over to the front of the station, through the glass of the doorway, and see some young women from the detainee's neighborhood gathered; others remain seated on the sidewalk, agitated, wanting to be heard by the police. The officer standing guard at the entrance allows an adolescent mother carrying her baby in to fill up a water bottle. Viewing the scene, I hear one of the officers beginning the afternoon shift, and certainly unaware of all the facts, comment with contempt: "Perhaps they all live from drugs." From the point of view of the youth, his relatives, and his friends, this arrest represents a factor of institutional intimidation.

How did this ambiguous and nonconsensual detention first occur? I will narrate the sequence of events conducted by Duarte and Cruz and explain all their efforts and commitment to making the arrest and the report happen while tracing the improvised set of choices and the anxious rhythm of the entire shift.

Before going into detail, it is important to bear in mind that the station is located in an area of Lisbon characterized by the police as a mix of a wealthy middle class and a poor unemployed population renowned for its networks of families, generations of which have made a living selling drugs on the streets since the 1980s. As I detailed on another occasion, most of the routine of patrol work is divided between protecting the inhabitants of the middle-class neighborhood from trouble and identifying and following the moves of residents, especially youths, in the poorest areas.[4]

For some weeks, I had shadowed and participated in the routines of Duarte and Cruz as they patrolled the streets. These two were the first to welcome me after two months spent struggling in a markedly masculine

environment. Out of sixty police officers, there were only three women, a number that reflects the low percentage of female representation in the police force as a whole. Recognizing their curiosity in me, I decided to start doing the rounds in their group where I would extend my interpersonal relationships. Duarte and Cruz both considered themselves as the best prepared and most able to engage in police work at the station. The station's captain apparently shared their opinion. Unlike all the other station officers, they occasionally went about their duties in plainclothes. Aware of their ambition to go beyond the "nothing to report" attitude, as it is termed in these circles, the captain decided to give them this chance. Duarte and Cruz would be assigned to apply their "police intuition," as they call it, walking the streets looking for relevant information, signs of criminal or illicit activities, and eventually doing "some good," that is, handling a true and reported occurrence with an explicit preference for making arrests.

In fact, the captain revealed his displeasure at the lack of interest and motivation in the majority of "his men" on the streets. Nevertheless, he also wanted to "make his mark on the station and the police institution," he once confessed to me. I remember one day how he approached me and some officers as we were about to leave on car patrol and said loudly so as to be clearly heard: "My hope is that the presence of Susana here makes you eventually produce results, that you guys feel ashamed about doing nothing." And there I was with Duarte and Cruz willing to "do true police work," as they stated. Furthermore, in order to understand the extent of this motivation, we must take a step back and reconsider the sequence of events that day building up to the contested detention.

That particular morning, Duarte, Cruz, and I left the station at 7:00 a.m., had some coffee, and took up position on a corner not far from the station "observing concrete points" where we might witness evidence of drug dealing. "Plainclothes detectives are in the area," Duarte suddenly announces after receiving a call from a friend at the Criminal Investigation Division. "We'd better be going; they don't want us here in their way." The plan changes, but Duarte sees a youth getting into his old, rundown car. Showing him his badge, the officer joins him while signaling for us to get in. This is a type of improvisation that most captains would not dare dream of, I remember thinking. The nervous youth is told to take us to another spot in the neighborhood, which is also known for drug dealing. After passing by in the car several times, observing movements, both officers agree that their interest is focused on one particular café. The driver is dismissed, and we stand briefly on one corner. In a flash, Cruz and I see Duarte going to talk to a woman standing at the doorway of a building, the rear of which faces

the café entrance. Duarte comes back and explains to us: he has managed to get access to the fourth floor apartment (another moment of absolute improvisation: getting inside without a warrant). While we make our way up the stairs, Cruz confides, hopeful and excited: "We go about with our hands out begging. The informants are our eyes. However, today we really got lucky!" Inside, Duarte presents us both as police and something amazing happens, according to these two: it turns out that the big back window looks out right over the café they are eager to observe. For more than half an hour, they stand at the window, just watching. "That one is certainly a dealer," I hear them comment. They are speaking about Luis, I learn later. They also invite me to watch: "See?" But all I see is the indiscriminate movement of men standing outside or entering the café. Eventually, looking at his watch and seeing that the end of the shift is approaching—it is almost 1:00 p.m.—Duarte decides it is time to go. Before this, he explains to the woman that they will look for her again. Sensing her fear, Duarte improvises again, saying, "They are a bunch of layabouts." Cruz seconds the assertion, applying a moral tone: "And if they come here to sell, someday they'll be robbing in the area." She admits they are both right, manifesting indignation but also the fear that her husband and daughter might find out about this arrangement of theirs. Duarte leaves behind a gym instructor's card, improvising once more, trying to cover their police tracks, and promises to come back.

Having seen nothing, I assume that the shift is about to end as we leave the building, but Duarte suddenly challenges Cruz to go and arrest the youth, the one they are convinced they saw dealing. This will turn out to be the crucial moment of improvisation. I see them rapidly discussing that the best approach is to call for back-up from whoever is on patrol car duty (since they do not want to be seen in plainclothes by the locals and thus saving themselves for future undercover services). By phone, Duarte informs Caetano, a timid rookie who is on duty, and describes the suspect as a white "dude" in a beige jacket, aged twenty. I hear him specifically warning Caetano about a crack in the wall where the drugs seem to be hidden. After no more than fifteen minutes of anxious waiting, the call gets returned, but with bad news: they have the suspect at the station, but no drugs, that is, no criminal evidence. Duarte is extremely disappointed. We make a fast-paced return to the station.

Back at the station, the atmosphere is busy due to the shift change. After booking the suspect and searching him, Duarte and Cruz concur: the detainee has money on him (over €100), but only a small quantity of hashish (no more than a gram, below the legally stipulated five-gram limit for ten

days of consumption) and no previous criminal record. At first, Cruz hesitates; however, Duarte is determined to proceed. Cruz is vexed and cannot accept that their colleagues were unable to find the drugs. Suddenly, without thinking, as if driven by impulse, Cruz returns to the "crime scene" in a police car accompanied by me. When we arrive at the café, he searches the minuscule hole in the wall and finds nothing more the glares of the area's male residents. I see that Cruz is practically beside himself with rage. In his impatience, he risks both exposing himself and revealing the hideout used. Stoop-shouldered, he decides to return, silently, to the precinct.

Both Duarte and Cruz try to find a quiet spot and a computer where they can concentrate, avoiding the constraints and protests of others at the station. The process of writing up their report ends up taking around three hours and nevertheless becomes renowned as one of the swiftest arrests ever made. The text goes through three different versions as well as a thorough review by the captain (inside his office, so it was impossible for me to see his reactions). Even though Cruz deals only with the simpler forms, he ends up signing the arrest report, which, I learn afterward, will guarantee him some prestige and the kind of recognition Duarte has already attained. Never read his rights (in violation of the law), Luis ends up being transported to the metropolitan police command where he will spend the afternoon and the night in a jail cell prior to appearing in court the following morning. It is noteworthy that the officers draft the report based on two main improvised arguments. Firstly, they try to prove that Luis is a known hashish dealer in the area, identified by the frequent and regular work of police who patrol the neighborhood (even though he has no criminal record). Secondly, they try to argue that the money (€100) is evidence of his illegal drug selling activity, as no unemployed person would carry around such an amount in his pocket.

Nearly 4:00 p.m., Duarte, Cruz, and I have lunch at a local restaurant where, in one of the back rooms, the tired officers recover the privacy of common citizenship. Duarte shares his plans for the next shifts: he wants to go into the cafés in an attempt to identify the traffickers themselves and maybe also return to the woman's home to observe. Cruz expresses how he wants to learn more with the help of Duarte, whom he considers almost a detective. But the planned stakeout never actually takes place, and the story of these plainclothes officers comes to an end here. Soon others will fill their shoes. Not that both are not already accustomed to these discontinuities in station work. In the next few days, Cruz will join a group training in the new information technology system that the police force is implementing. Alone, Duarte starts wearing the dark blue uniform and

joins car patrol activities. However, within a week, Duarte is summoned to the Criminal Investigation Division, the career move he was waiting for. Years later, I learn that Cruz received public praise published in the service orders (written by that same captain) and was duly commended for his "dedication." While considered one of the station's best officers, he still awaits his turn for promotion to the Criminal Division, a dream that never comes true for most officers.

Some weeks later, I try to track down what happened to Luis, but nobody at the station seems to care much. When asking Duarte for his opinion, he agrees that he supposes the detainee must have been released by the judge immediately after appearing in court. Without evidence or a sustained investigation, the case was unlikely to proceed. He eventually admits, "After all, that was an improbable arrest, but at least we take that kind of opportunity to learn and to train true police work."

Contextualizing Discretion

Would the improbable and ambiguous detention of the youth have ever occurred if I had not been there? Did my presence influence the course of events? The same doubts plagued me before. Once I was with Duarte as he tried to find a dealer and decided to enter an apparently abandoned building. Gun in hand, he said that I should stand behind him; he would protect me if anything went wrong. Knowing from experience the relative lack of risk to police life in the area, and the sheer unusualness of officers drawing their guns, I asked myself: Is this real or is this to impress me? These are difficult questions to answer. All participant observation in policing deals with a high degree of performativity that, at times, attempts to hide the intrinsic ambiguity of this work.[5] Moreover, when we are watching the watchers, we are certainly also being watched and guessed by them all the time.[6] I think that to a certain extent, my presence and my curiosity about their street work did stimulate something in Duarte and Cruz. In fact, I learned about "cop work" with the help of this pair, and they may perhaps have been eager to share their unusual tactical know-how with me and to prove, through action, their sarcastic dismissal of the intrinsic boring vein to patrol work—surely an aspect deserving more theoretical attention.[7]

Despite these ambiguities, it still remains intriguing to encounter the dexterity required to conceive of a detention a priori, as described, and transform into a crime report what had first been a police desire. Accordingly, we may also consider the social politics of discretion. On the one hand, by this episode, I wish to demonstrate that proactive practices are a

timeless resource encapsulated into the tactical repertoires of captains and officers (not dependent on consensus or mere individual motivations). On the other hand, I argue that discretionary styles are deeply embedded in singular historical and sociological arrangements.[8] In fact, the tension between the possibility to improvise and moderate or more open criticism of it, as I narrated previously, is connected to the wider context of policing in Portugal during the three decades of democracy through to the first decade of the twenty-first century.

During the period of my fieldwork, encountering a neighborhood station's officers working in plainclothes was not so common. The very allocation of some selective officers to do such work would be locally and carefully administered by the captain, occurring without the full knowledge of superiors even though everybody knew about such occasional practices inside the force. The main reason for keeping these activities relatively discreet was that the police stations had become deeply identified with a new philosophy emerging in the late nineties—proximity policing. Although in practice a minority of patrol work—focused on domestic violence victims, schools (mostly public), retail commerce, and the preventive safety of the elderly—the station proximity teams began to prove so popular in Portugal that they got confounded with the main work of the stations, its legitimate essence. This produced a popular and political idea that stations should be in fact citizen/client oriented, consigning to invisibility the majority of the anonymous work on urban safety.[9]

While the idea of proximity policing was gaining public support, behind the scenes, the professionalization of criminal investigation within the force (as well as within *Guarda Nacional Republicana*) was gaining ground, creating an entirely new division (with their own stations) that consolidated new competences hitherto the exclusive domain of the judiciary police. Along with other forms of reorganization, the founding of a new specialized division also served to consolidate and monopolize policing investigation by removing it from the stations whose performance levels had been deemed amateur. Moreover, under the new law for the organization of criminal investigation, station captains could not openly encourage their constables to go out in plainclothes. This new trend of policing professionalization was also fed by a legal and regulatory process led by the *Inspeção Geral da Administração Interna* (the ombudsman) that was intensely active in those years before it subsequently lost substantial governmental support. New forms of external accountability of the police institution—governed by the spirit of subordination of the Portuguese Constitution to the Convention on Human Rights, which was internation-

ally required as a prerequisite for Portugal to join the European Union in 1986—certainly contributed if not to inhibiting street police discretion then at least to enveloping it in a blanket of cautious local acts. Every effort was thus made to spare the national administration of the police force and clearly then the central governments of any bad propaganda that might affect the public image of an ideal of democratic policing close to the people. Since the late eighties, a new public image of the urban police aimed to erase from public opinion and common sense their association with violent police practices and militarism, themselves both associated with the security forces throughout one of the longest dictatorial periods of history, from 1926 to 1974.[10]

While participating in these police station routines, I was able to confirm how some of the old discretionary dynamics remained intact even if they were now reconfigured within a professional discourse deployed by some professionals on specific occasions, as I detail in the ethnographic description. One of the most decisive facets explaining the resilience of these historical practices comes with the endurance of the old station service regulations, a manual dating to 1961 (adapting the original from 1940). Certainly these old regulations, applied as an organizational guide, could not compete with the modern penal laws and codes enacted in the intervening period, but they still had an important impact on some aspects of station management and policing, in particular in allocating zero restrictions to station captains in how they managed their subordinates. Nonetheless, even though the urban force was becoming progressively and entirely civil, according to the old regulation the police remained classified as a "military organism that prevents and represses criminality."[11] In sum, this regulation empowered the discretion of commanders based on a text that praises a dictatorial and military ethos dispensing with citizen control and accountability. Through interviewing many retired officers and senior police station chiefs, I learned about the long existence of this same style of proactive teams, the so called *saltos* (jumps) that, following the democratic changes in 1974–75, would be renamed the station's *furões* (ferrets). I heard many accounts as to the way certain senior officers would wear plainclothes and apply their discretion to gain favors, confessions, or detentions within a universe of generalized suspicion in which anyone might be a snitch and inform the regime's political police. In those days, as the cited regulation stipulates, the urban police had to send secret reports of a "political and social nature" to the national police command.

Coincidently, with the investment in criminal investigation and policing professionalization, stations also fell under the influence of a new wave

of management, policing planning, and reporting of results—with the annual open crime statistics report one of the most mediatized. Even though Portugal still officially remained one of the safest countries in Europe, all governmental plans proved sensitive to the transnational issue of security and therefore insisted on the issue in their respective political agenda.[12] During my fieldwork, I was able to grasp how, on several occasions throughout any month, the station's captains would experience pressure and thus foster environments propitious to police occurrences and reports "happening." It was neither clear nor openly revealed just what pressured the captains and officers to engage in such activities. During my fieldwork at the stations, I realized that the practice of large-scale regulatory and traffic control operations, with some involving all the units in Lisbon's metropolitan command, was beginning to become a constant station activity. This was perceived in general terms by local captains as an incentive to engage in proactive tactics. Accordingly, the concept of the so-called "stop operations" became common in several other domains of law enforcement, especially the small but collective anti–drug dealing operations and raids, many launched by station personnel with the help of the anticrime squads that were then gaining increasing professional autonomy in the urban force in a process similar to, but on a smaller scale than, that described by Didier Fassin.[13] It is noteworthy that at the station level, crime statistics were not seen as a policy for reducing or preventing crime. "That was the case before when captains worked with situational maps," as I was told. Officers do however often disagree. For the more optimistic, these statistics constituted a tool that forced officers to be proactive (whatever that means), while for the more critical, the pejoratively termed "stats" instead became a way to reduce the visibility of officers who considered their role to involve regulating social life through establishing local relations and tempered interactions with the citizens. At the aforementioned station, the principal captain belonged to the first group while his lieutenant, a woman, belonged to the second.

However, the pressure that commanders specifically felt to produce more results also had other sources. A new generation of high ranking and well-trained police arrived at the stations over the course of the 1990s; they were deemed elite specialists in police sciences and internal affairs. The command activities previously held by officers from the chief career level (an intermediate status) were progressively replaced by the "academic cops," as they were labelled. Most had never served on the police force and arrived at the stations with little or no actual experience of street work. During my fieldwork, I observed how they had to (and still have to) prove

they were up to doing the job. The performance of these new hierarchical superiors fell under the scrutiny of the senior officers who had preceded them, many of whom had qualified through serving in the armed forces. On the other hand, the results presented by the new captains were immediately translated into an internal negotiation over the human and material resources that remained very unevenly distributed across the 300-plus urban stations for Portugal's relatively small conurbations. This was certainly a time for competition among captains and among stations, even though they were not always able to motivate their own officers. Internally, each precinct's reputation became defined by their respective statistics—particularly when announced by the local captains at the monthly metropolitan command meetings. I tried, but never did get permission, to participate in these, the top meetings of the force.

As such, everyone at the station had to deal with this pressure for results, frequently a synonym for the production of extra occurrences—and the usage of discretionary methods—despite flouting the internal dynamics of the force (the separation between proximity policing and specialist criminal investigation operations). Ironically and sometimes bitterly, many officers referred to the situation as "the politics of the numbers" and not as a proper policing policy. However, constables like Duarte and Cruz, along with some others, also grasped the present moment as an opportunity and a means to imagine how they might gain better control over their jobs and careers. As becomes clear from the final part of the long shift description the "station ferrets" police in plainclothes may use detentions as a means of proving and consolidating their know-how through improvisational street-crime investigation. Thus, discretion here is seen as containing a clearly pedagogic angle. The officers who turned in what were considered "good service" standards (such as detention reports) more frequently gained greater opportunities from the outset to stand out in a professional career that otherwise had very poor prospects of any specialization. Specialized patrols therefore tended to be perceived as a form of promotion.[14]

Undertaking work in an improvised criminal domain represents a point of departure from the anonymity of patrol work, especially whenever officers gain the trust and confidence of their superiors. This is one way in which more ambitious officers set about defining their places within the networks of formal and informal knowledge built up within the large national police force context and, as Duarte once encapsulated it, is "a sea of opportunities for those who know how to exploit them." The benefits may emerge immediately in terms of police station duties. Whoever produces more arrests to a greater or lesser extent becomes more authorized—by

both their superiors and their colleagues—to withdraw from other tasks and duties normally falling to any officer. Captains are well aware that while younger constables should have "fire in their bellies," few of them are able to withstand the ardors of patrol work and the resultant bureaucratic paperwork. As such, those who stand out in such tasks tend to get rewarded while also recalling the contrast with the boredom and randomness of foot patrols.

The proactive detention that I have described is a good illustration of how discretion works qualitatively. Only ethnographically may we encapsulate the process and the dynamics of that described by the officers themselves as the politics of numbers. A proactive detention at the local station level may constitute an end in itself and not necessarily lead to a legal arrest, as Duarte does end up admitting. This thus explains why forcing law enforcement is not perceived as an illegitimate step to those participating in such actions, but rather something that is done cautiously, discreetly, and contextualized within the macropolitics that prevail throughout the entire urban police force. Those officers participating in these processes never perceive this as resulting from an order but instead as a personal opportunity to carefully implement "true police work" tactics. Thus, occurrences and reports also constitute the means by which captains and officers can achieve singular gains.

There is certainly no originality in positing how arrests may represent one of the more central features of discretion. In his in-depth ethnography of Baltimore police, Peter Moskos dissects what he calls a US police culture of detention based on the politics of the war on drugs, the police position within the criminal justice system, and the cult of guns among both police and dealers. From the point of view of Baltimore street officers, the arrest constitutes a *message* against criminals and drugs.[15] Comparatively, I would choose not to follow the steps taken by Moskos to analyse the Portuguese context and would also like to adopt a different theoretical angle. First of all, some reflection on the empirical findings: in the United States, paid court appearances provide a fundamental motivation for arrests—"court is like our heroin," some officers said to Moskos—contrary to what happens in Portugal, where going to court is seen as part of the police *mission*, non-paid extra work, frequently occurring when off duty, and rarely compensated for by the captain. In addition, as I tried to illustrate, processing an arrest in a Portuguese station is both difficult and hard to justify, and thus proving only relatively occasional. Commonly, officers do not detain individuals for minor charges that will eventually be considered too fickle by the attorneys and judges. When I did fieldwork, loitering, prostitution, and

the possession of soft drugs for personal usage were not deemed felonies per se and, to the police, were relatively indifferent indiscretions.

Furthermore, in Portugal, detentions do not merely form the "arrest quota" of each officer, a policy measuring the aggressiveness of individual officers (as Moskos reveals); they become a factor in the performance of both stations and their captains—a kind of bonus. Likewise, what seems a small ingredient changes the entire equation: from an "arrest-based philosophy" (in the US) to a "keep-to-the-minimum-arrest philosophy" (in Portugal). In the situation I described previously, the problem was not about how many arrests each officer should make but about not having registered a single detention in a month's work at the station. Duarte and Cruz were striving to come up with the only possible arrest, through improvisation. Thus, from a theoretical point of view, policing productivity, or the so-called "politics of stats," does not amount to one single reality and may indeed take on plural logics, motivations, and consequences in different places around the globe. High-arrest officers—those Moskos calls "urban cowboys"—are a rarity in local neighborhood Portuguese stations. One of the main causes stems from the improbability of justifiable arrests occurring. Importantly, discretion proves not a question of good or bad policing, legal or illegal, and serves to complement individual benefit with more collective gains—which finally implies shifting from individual-based analysis toward an anthropological politics perspective.

Rethinking Discretion

Having considered what motivates, enables, and authorizes police discretion to become cooperatively and creatively applied, we now need to revisit how the police, as a state institution and in its relationship with the law, have been critically interpreted before proposing a new theoretical way to position discretion.

The French sociologist Dominique Monjardet has warned that there are no grounds for imagining police work in perfect harmony, as institution tends to operate through a triple determination: the state police represent an instrument of power (receiving orders) and render a public bureaucratic service (required by all) while also constituting a profession (with its own corresponding interests). As such, the author determines how policing is set in motion from different and simultaneously combined sources: by the "call" from the senior officer, by the "orders," or by the "initiatives" of the agents themselves.[16] I have written elsewhere on how these different dispositions to policing activity are incorporated into practices that result in

different street-political impacts, developing dissimilar police-citizen relations in space and time in accordance with the different service and tasks related to the knowledge displayed by officers.[17] One problem remains, however. The detention of the youth narrated in this text certainly does not stem from an emergency call but also does not prove strictly dependent on either some mere order or the initiative of Duarte and Cruz. Rather, it represents a combination and articulation of both the latter factors and ultimately of police government and policing autonomy. Perhaps counterintuitively, a fruitful combination of discretion and applying policies proves precisely a high degree of police tactical improvisation, which, after all, makes up an intrinsic characteristic of police work.

Therefore, as Didier Fassin suggests, there is in practice no contradiction between the two opposite theses of insularity and manipulation that account for the relationship between the police and the state. Inspired by the analysis of Jean Brodeur, the author explores the tension revealed by the two major and opposite theories on this matter, the Weberian and the Marxist, and shows how that tension gets dynamically revealed in policing praxis. The Weberian *doxa* advocates how police officers engage in police actions perceived within an insular framework. In other words, they represent part of a *state within a state*. Weber simultaneously details the historical and political processes leading to law enforcement becoming the favored tool for managing social problems and bringing about a singular level of governmental manipulation of the police. In Marxist versions, officers are portrayed as the *armed wing of the state*, or those employed to reproduce the existing social orders. Some authors have demonstrated how unproductive maintaining this dichotomy proves.[18] Furthermore, in Fassin's case, inductive ethnographic approaches to French anticrime squads prove essential to demonstrating that articulation: "Officers choose to do what they are ordered to do not by fortuitous chance but because of the *predictable convergence* between their expectations and government objectives."[19] In the situation I have described, and on many other occasions observed in Portuguese stations, there is always an element of this predictable convergence: applying discretion represents one course of action for officers and local captains to be taken into consideration by chiefs and other branches of the force; through cooperating with the agenda of their superiors, the officers as well as the captains hope to gain something in return.

Accordingly, a more structural and critical theoretical condition for understanding the police use of force and violence needs revisiting. Among several debates, I opt here to focus on the arguments of two different sophisticated and critical theories—E. P. Thompson and Walter Benjamin.

Following Thompson's views, the rule of law has long established its own ways to control violence in general and policing activity in particular, at least in democratic societies. However, in drawing upon Benjamin's conceptions, as several anthropologists have recently done in several contexts, the police may be seen as the exact means and the end of institutionalized violence: the state *as* violence.[20]

It is worth detailing these arguments. In one of his later texts, the 1975 *Whigs and Hunters*, the already well-known Thompson argued for a liberal and legalistic version of Marxism incorporating a minimal historical conception of the "Rule of Law." In that short essay, he distinguishes between states whose rulers had unfettered discretion from states whose rulers were constrained by legal rules. Rule of law is "little (or nothing) more than a rule of equal application of the legal rules, which limits ruling power."[21] Deeply criticized by some of his fellow Marxists, Thompson further insisted, in the 1980 "The State of the Nation," that the rule of law is an "unqualified good," a necessary condition not only to ensure just legal rules but also at least in some way to control its opposite: unbridled power. In sum, law matters and situates itself beyond legal injustice and the mere instrumentalization conducted by the ruling powers.

Countering any natural and positive perspective of law, Walter Benjamin had written several decades earlier about the law and state *as violence*. From his historical-philosophical view, Benjamin condemns to ignominy the authority of modern institutions such as the police where he finds that the separation between law-making and law-preserving violence has been suspended. Ultimately, his position stands opposite to Thompson's view when he states that "the assertion that the ends of police violence are always identical or even connected to those of general law is entirely untrue. Rather the *law* of the police really marks the point at which the state, whether from impotence or because of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain."[22] In this view, the benevolence of the law completely vanishes, and violence becomes the greedy desire of the state to dominate. It is a perspective reminiscent of Derrida's claim that the contemporary police do not merely represent a force of the law, but rather "*the force of law*," representing the original violence of state law.[23] According to Benjamin, military and police institutions not only *preserve* but *make* the law on the use of violence for legal ends and consolidate the authority to decide on those ends within wide limits. Coincidently, I refer to how Benjamin reduces those wide limits to the "right of decree" and not to the rule of law. From his perspective, power, more than any gain

in property, is that guaranteed by all laws on making violence. Likewise, Benjamin finds his home in the radical Marxism that Thompson tries to temper several decades later.

Benjamin's radical position was certainly attuned to the times of conflict he experienced as a German Jew living between the two world wars. To some authors, such as Joseph Masco, a critique of capitalist progress itself proves implicit to Benjamin's dark thinking, emphasizing the very idea of policing as a means of protecting the class system from any ongoing revolution—the police being the counter-revolutionary force par excellence. For Benjamin, the immanent fear of revolution always speaks louder and determines that "law and order" is guaranteed by force to the detriment of citizen protection. Nevertheless, as Masco firmly underlines, for Benjamin a "transition from law making to law preserving is embedded in everyday life, which produces an unending negotiation between citizens and the state over the terms of order."[24] That argument would seem a suitable starting point for Foucault's theories, which conceive of policing beyond the police as extended micropractices sometimes visible by their absence.[25]

It is the persistence of a dual and absolutist condition of thinking about *all* policing (as previously analyzed by Fassin) that is at stake: whether by choosing between police government and insularity power or by defending the rule of law against the state as violence. Inductive ethnographic descriptions such as the one I recount in this text allow for the analysis of mixed forms of action that can be simultaneously conceived of as more or less controlled and accountable discretion, or at least not illegal (from the perspective of police officers and judges), and as the explicit effects of the contemporary government of injustice (from the perspective of the detainees, their relatives, and their friends). This means that the presence of *more eyes and different eyes* in the action returns different meanings to whatever happens.[26]

In this case, officers in no way receive simple authorization to take justice into their own hands and on their own initiatives. I expect the reader may apprehend the ways in which proaction works according to certain limits, that enable the improvisation to be witnessed and accompanied by police outsiders like myself and justified (in a semi-judicial tone) by the legal and bureaucratic apparatus. In sum, officers do not confound law making with law preserving in any given moment of the course of events. Nevertheless, those improvisations are not entirely submitted to the rules that frame legal and ethical police conduct. Instead, they are able to play with a repertoire of authorized and known underhanded tactics that are

simultaneously historically and sociologically contextualized and certainly neither entirely unpredictable nor fully predictable. Importantly, we are thus clearly not in the domain of "police fictions" or "ghostly and spectral police power," or at least any of those described for other contexts by Jean and John Comaroff.[27]

This finally helps one understand why in the aforementioned episode the forced detention of one (or any) youth considered a drug dealer may even be imagined and desired before actually happening, which in the end conforms to a policy. When Duarte and Cruz tell me they "really" want to work, they are imagining how determined they are to arrive at the station with an arrest, and their arrest—Luis—is viewed indifferently (not necessarily by all officers) as but one small dealer among many others. To sum up, within the contemporary dynamics of the Portuguese officers working at police stations, their shared desires and emotions play an important role in the dynamics of law enforcement and tactical repertoires.[28] The ethnographic *momentum* reveals how emotions are not merely a product of a situated action after the fact; officers are constantly in (e)motion. This makes improvisation more desirable at least to those who reject standing idly by and cannot imagine work without being provoked by the streets. In this situation, the "police results" are produced by officers who feel satisfaction but also frustration when playing out an adventurous style within certain limits and framed institutional conventions.

Conclusion

This text examines the details and mismatches of an improbable and forced detention made by two officers with the consent of their captain, all three of whom act in the interstices of the freedoms and constraints that exist within the contemporary environment of Portuguese police stations. This proves a fine example of how a *predictable convergence* between macro and micro, administrative powers and local pressures operates through specific and selected policing practices as well as desires. There is no denying that European and US governments have sought to instrumentalize the police, their statistics, and their actions in recent decades, but as Fassin points out, "correspondingly, the police are becoming more insular, by taking responsibility for what is imposed on them. The more officers operate in an insular fashion (through the use of their discretionary powers), the more they reinforce the logic of instrumentality (placing themselves in the service of power)."[29] As such, policing improvisations are not merely the result of

organizational and individual *ilôtage*. Nor are they a product of a moral discipline imposed by any power or any clear governmental agenda.

It is worth noting that the actions described are based on historical legacies and repertoires that are constantly recreated through action. This transpires in the irony displayed by the famous late nineteenth-century chroniclers of Lisbon city life, Eça de Queiroz and Ramalho Ortigão, who comment on the random arrests of *fado* singers by a police force pressured to present "results." Ever since the 1980s and through to the first decade of the twenty-first century, police attention has very much been focused on a population somehow related to small-scale street drug dealing, often legally and financially insignificant in scale. This phenomenon has simultaneously been accompanied by a new cycle of governmental and police attention more specifically directed at the undocumented and racialized poor and migrant neighborhoods generically identified with crime.[30] As such, the simple discretionary detention is an illustrative moment of what may be seen as a complex and never complete process of the period of democratization of the country and its urban police force.

Finally, we must not overlook the imagined future ahead of those motivated officers and captains who take responsibility for what is imposed on them. Aiming for advantages in the era of "stats" and the politics of numbers, they reveal that they are attuned to the new policing projects, the imagined future. This case exemplifies the awe that some police officers experience with respect to the rising importance that has been placed on the professionalization of criminal investigation, a new branch of the force. This also conveys how, governed by their own desires and emotions, some officers intuitively grasp the macro governmental and organizational politics occurring without necessarily being aware of what is happening and without actually being trained to do so. In sum, in anthropological terms, discretion must be viewed not only in terms of power and violence, as in fact it is, but also in terms of desire and ambition, with its feet in the past and its eyes on the future.

Notes

1. As argued by Herman Goldstein in his classic paper "Police Discretion: The Ideal versus the Real" (1973), discretion is the positive exercise that portrays police officers as something other than automatons, whose personal judgment is essential to determining whether or not to invoke criminal process. Some other authors portray discretion as something police officers may have and with which they negotiate their often violent actions on the margins of the law even if the structure of the

argument does not differ greatly (cf. Manning 1978). Discretion is usually described as a singular and independent police power.

2. "Proportion" is a term expressed in professional police writings and training manuals. The ideals of a moral action that deploys the exact use of force demanded by each situation was a regular claim made by the more academic and legalistic captains during my fieldwork.
3. "*Mitra*" has many meanings, but mainly serves two. First, it is a noun that identifies someone who has a lifestyle somehow related to illegal or criminal activities: officers say, "The drug dealer is a true *mitra*." Second, it is used as an adjective, a means of depreciating someone; they say, "The dealer is such a *mitra*." This second sense more probably corresponds to the way Van Maanen describes the "asshole" deployed in North American police contexts (cf. Van Maanen 1978a). *Mitra* is a noun born in the past and from the period of the authoritarian Estado Novo (1933–1974) regime. It was originally an establishment for confining street populations such as beggars and homeless persons. The word survived the democratic transition, which marked the end of the institution, and since the 1980s, it has become part of the inner informal lexicon identifying street dealers and other kinds of petty criminals. See more in an article on this issue (Durão, Gonçalves, and Cordeiro 2005).
4. See Durão 2010. Note that this process has been described in a more detailed way for the policing in the Paris banlieues by Fassin (2013).
5. According to Peter Manning (1978), modern police organizations have an impossible mandate to manage: "what has happened as a result of their inability to accomplish their self-proclaimed mandate is that the police has resorted to the manipulation of *appearances*."
6. I am here referring to the famous text by John Van Maanen, "On Watching the Watchers" (1978b).
7. Cf. chapter 12 by Didier Fassin in this volume.
8. Proaction, by definition, differs from police prevention or from police reaction. Proactive strategies are means of discovering crime as it happens. This is the argument put forth by Donald Black (1978).
9. That confusion between police stations and proximity policing, as representing the most modern policing techniques, in the sense of democratic and moderate, has been in the political crosshairs of left-wing governments but has proven its resilience over time. The Ministry of Internal Affairs, responsible for the first generation of the project (since 1995), established the ambiguity that would only be reinforced one decade later in the project's second generation, which was instituted by police leaders (since 2007). The ministry defined proximity as "A policing orientation strongly focused on knowledge and inclusion in community life, adopted [by stations] as opposed to the previous strategy of retraction and concentration in big police divisions." See Costa 2002.
10. I have written about this historical process in the book *Patrulha e Proximidade: Uma Etnografia da Polícia em Lisboa* (Durão 2008) and in the text "Policiamento de proximidade em Portugal: Limites de uma metáfora mobilizadora" (Durão 2012).
11. *Regulamento para o Serviço das Esquadras, Postos e Subpostos*, Ministry of Internal Affairs (1961).
12. As stated in note 10, I have written about this on other occasions.
13. See Fassin 2013.

14. See Reiner 1985.
15. See Moskos 2008, specifically the pages that deal with the analysis of the arrest as message (83–86); collars for dollars (121–23); the arrest-quota (153–54); and officers as urban cowboys and the politics of stats (136–45).
16. Cf. Dominique Monjardet in *Ce Que Fait la Police: Sociologie de la Force Publique* (1996).
17. See Durão 2008; Durão 2010.
18. Here I follow the argument of Didier Fassin (2013, 183–86) and the way he reads the entanglement between policing instrumentalization and insularity based on the assumptions of Jean-Paul Brodeur (1984), then complemented by the arguments of Patrice Mann (1994). Brodeur also argues that, even at best, formal requirements, as in the cases of countries with strong police centralization (which is the case of both France and Portugal), the assumption of service cohesion remains problematic. Additionally, the police hierarchy experiences all sorts of pressures. Both theses (insularity and instrumentalization) seeking to report on the entirety of police reality stem from confusion between simplifying procedures and illustrative demonstration.
19. I follow Fassin's arguments (2013, 186, emphasis added).
20. In the foreword to the edited volume of the William Garriott book, *Policing and Contemporary Governance* (2013), John Comaroff repositions Walter Benjamin among the main authors, along with Marx and Foucault, who have contributed to establishing an anthropological perspective on policing.
21. This was very well discussed by Daniel H. Cole in his essay "'An Unqualified Human Good': E. P. Thompson and the Rule of Law" (2001, 177, 185).
22. This is argued by Benjamin (1978 [1922], 287).
23. Cf. Jauregui 2013, 127.
24. This is argued by Masco (2013, 266).
25. Foucault develops this perspective in his famous book *Discipline and Punish* (1995 [1975]).
26. To know more about what may be called "critical perspectivism," see the written debate engaged in by Didier Fassin and Clara Han in *Social Anthropology* (2013).
27. Cf. Jean Comaroff and John Comaroff (2014).
28. Eventually, my argument touches on that of Shearing and Ericson (2005). The authors stress the requirement of individual decision and the unusual practice of improvisation in policing. They do not believe, therefore, that such an activity, always in the making, is produced from a preordered and cohesively ruled world. Offering theoretical substance to the concept of "style" and "strategy," these authors see in the stories of officers and detectives their narratives of everyday life, tropes, metaphors, parables, poetic social concerns, and ways of driving generators for action; but never closed into some simple guides. The stories shared between police officers, seen from Wittgenstein's line of thinking, are previous vocabularies that help them create styles and family resemblances between different actions. However, I would stress, as Fassin does, the liaisons between rules, values and the emotional dynamics present in everyday life policing.
29. See note 13.
30. Some authors, myself included, have written about this in Frois 2008.

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