POLICING & THE PROBLEM OF PHYSICAL RESTRAINT

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Abstract: The Fourth Amendment of the U.S. Constitution prohibits unreasonable “seizures” and thus renders unlawful police use of excessive force. On one hand, this definition is expansive. In the U.S. Supreme Court’s 2021 Term, in Torres v. Madrid, the Court clarified that a “seizure” includes any police application of physical force to the body with intent to restrain. Crucially, Chief Justice Roberts’ majority opinion emphasized that police may seize even when merely laying “the end of a finger” on a layperson’s body. And yet, the Supreme Court’s Fourth Amendment totality-of-the-circumstances reasonableness balancing test is notoriously imprecise—a “factbound morass,” in the famous words of Justice Scalia.

Such breadth and imprecision in the Court’s Fourth Amendment jurisprudence create a problem: it under-specifies forms of deleterious police conduct. In particular, while scholarship has explored police firearm use, less research has considered the role of police putting “hands on” a civilian and its potential to escalate toward lethal physical encounters. This is regrettable, given that such a “hands on” scenario occurs millions of times a year. At worst, it has escalated into high-profile police killings in cases like those of George Floyd, Eric Garner, Rayshard Brooks, and Michael Brown. Simply put, when police lay “hands on” laypeople, they may hurt or even kill them.

This Article calls this “the problem of physical restraint” and systematically considers this problem in constitutional criminal procedure, law, and policy. As an initial matter, it shows how this problem is inevitable in both reformist and abolitionist agendas. It then shows how judges, policymakers, and police departments alike have overlooked such physical restraint due to legal under-specification, the political economy of policing, and a cultural-historical contingency that includes anti-Asian attitudes. It thus argues for robust intervention—judicial, legislative, and police training—to redress this oversight in pervasive police use of force.

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INTRODUCTION

Imagine you are a police officer in your first week on the job. You are lawfully interacting with a civilian, and the civilian physically lays hands on your body. How do you react?

Likely, you will have one of four reactions. At one extreme, you may determine that you are overwhelmed by the physical hold and shoot the civilian, as occurred in Kansas City in the 2013 case of unarmed firefighter Anthony Bruno who, on his wedding night, got into a physical altercation with a police officer.¹ Second, you could opt for less deadly force, such as using a taser or oleoresin capsicum (OC), better known as “pepper spray.”² Third, you may use your hands to control the person physically. Finally, you may attempt to verbally de-escalate.

If your reaction to the above hypothetical is uncertain, this is not surprising: American law, policy, and culture systematically overlook such a “hands on” scenario. Consider constitutional criminal procedure. As every student of Criminal Law and Criminal Procedure knows, the Fourth Amendment of the U.S. Constitution prohibits unreasonable “seizures” and thus renders unlawful police use of excessive force.³ On one hand, this definition is expansive. In the U.S. Supreme Court’s 2021 Term, in Torres v. Madrid, the Court clarified that a seizure includes any police “application of physical force to the body of a person with intent to restrain.”⁴ Crucially, Chief Justice Roberts’s majority opinion emphasized that police may seize even when merely laying “the end of a finger” on a layperson’s body.⁵ And yet, on the other hand, the Supreme Court’s Fourth Amendment totality-of-the-circumstances reasonableness balancing test is notoriously imprecise—a “factbound morass,” in the famous words of Justice Scalia.⁶ Such breadth and imprecision in the Court’s Fourth Amendment jurisprudence creates a problem: it under-specifies forms of dele-

⁵ Id. at 998 (citing 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *288 (1768)).
⁶ Scott, 550 U.S. at 383.
terious police conduct, in particular how police should conduct themselves when laying “hands on civilians.”

Cynthia Lee and Gregory Parks have previously explored aspects of this question through study of police training and psychology. Otherwise, scholars have paid little systematic attention to such situations, wherein police engage with civilians through physical holds, punches, kicks, or throws. In fact, this space is so under-specified that it does not even have a single name: it is alternatively referred to as police self-defense, hand-to-hand, “hands on,” combatives, or survival tactics. This is especially surprising given that the

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7 See generally Seth W. Stoughton, How the Fourth Amendment Frustrates the Regulation of Police Violence, 70 EMORY L.J. 521 (2020) (discussing the Fourth Amendment in the context of police use of force).


9 Jose Torres, Predicting Law Enforcement Confidence in Going ‘Hands-On’: The Impact of Martial Arts Training, Use-of-Force Self-Efficacy, Motivation and Apprehensiveness, 21 POLICE PRAC. & RSCH. 187, 187 (2018) (“[L]ittle attention has confronted when de-escalation is not possible, and the officer can or has to physically engage a citizen without lethal force.”).


chokehold—an obvious category of physical restraint—made national news following the death of Eric Garner, who suffocated to death after New York City police officers choked him from behind.\textsuperscript{15} Writ large, this scenario is staggeringly common: while the typical police officer will never fire a gun in his or her career, all officers will lay hands on a civilian as early as their first week.\textsuperscript{16} And although reliable data on policing practice is difficult to find and even harder to measure,\textsuperscript{17} studies show that police effect over 4.5 million arrests annually,\textsuperscript{18} and reports on the amount of nonlethal force used by the police include rates of up to 31.8\% of all arrests made.\textsuperscript{19} According to another estimate, “police use or threaten to use force in 1.7\% of all contacts and in 20.0\% of all arrests.”\textsuperscript{20}

When police lay “hands on,” the stakes are high. First, police tactics may present a problem unto themselves, wherein officers use excessive physical force in an unwarranted situation and injure or kill a layperson. This occurred, for example, when Officer Derek Chauvin placed a knee on George Floyd’s neck in Minneapolis in 2020 and when police officers choked Eric Garner


\textsuperscript{17} Rachel Harmon, \textit{Why Do We (Still) Lack Data on Policing?}, 96 MARQ. L. REV. 1119, 1121 (2013) (“[T]oday we still lack enough information about what the police do to shape their conduct effectively.”); Ristroph, \textit{supra} note 12, at 1216 (“[W]e lack good data on police violence, and partly because we do not yet know what data to collect.” (first citing generally Harmon, \textit{supra}; and then citing Roland G. Fryer, Jr., \textit{An Empirical Analysis of Racial Differences in Police Use of Force} 2 (Nat’l Bureau Econ. Rsch., Working Paper No. 22399, 2016), https://www.nber.org/system/files/working_papers/w22399/w22399.pdf [https://perma.cc/E958-ZKXF])); STOUGHTON ET AL., \textit{supra} note 14, at 231 (“Anyone who looks for reliable data about police uses of force . . . is quickly frustrated; even dedicated researchers . . . have found themselves stymied.”).


\textsuperscript{20} Id.
from behind in New York City in 2014. Second, “hands on” may lead to further escalation in the use of force toward firearm use. This occurred, for example, when Atlanta police tackled Rayshard Brooks to the ground and shortly thereafter shot him in 2020, and in 2014 when Michael Brown and Officer Darren Wilson engaged in a physical altercation through the window of a police SUV, before Officer Wilson shot and killed Brown.

Simply put, when police lay “hands on,” they may hurt or even kill laypeople. This Article calls this the **problem of physical restraint**, defined as the situation wherein police use their own bodies (hands, body weight, etc.) to forcibly control a civilian’s movement. Part I of this Article describes the problem of physical restraint. It also describes the body mechanics gap, which is a police failure to address the problem of physical restraint, in three regards—the physical distance between two people, a collective conceptualization in the use of force, and the lack of knowledge in the mind of the individual police officer in how to address the problem of physical restraint. Part II then emphasizes that the problem of physical restraint is inevitable, and thus must be addressed by both police reformists and abolitionists. Part III provides an explanatory account of the persistence of the physical restraint problem, considering constitutional criminal procedure, federal and state law, and the political economy of policing. Part IV describes and evaluates the rise of hand-to-hand training, which has proliferated in police departments nationwide in recent years. It also argues that Western cultural conceptions of violence and anti-Asian attitudes have likely deterred certain departments from engaging in such training. Finally, Part V situates such training alongside changes to Fourth Amendment judicial evaluation of use of force and broader police reform efforts in law and policy.

The present moment is ideal for analyzing the problem of physical restraint. First, as noted above, the Supreme Court in *Torres* explicitly affirmed in 2021 that police may unconstitutionally “seize” when engaging in physical restraint. Second, lower federal court jurisprudence on such force is evolving.

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22 Id.

23 See infra notes 44–88 and accompanying text.

24 See infra notes 67–88 and accompanying text.

25 See infra notes 89–105 and accompanying text.

26 See infra notes 109–230 and accompanying text.

27 See infra notes 239–423 and accompanying text.

28 See infra notes 256–296 and accompanying text.

29 See infra notes 426–443 and accompanying text.

applying various constitutional tests to physical restraint. And third, a contemporary trend—hand-to-hand police training—claims to redress the problem of physical restraint. Progressive police departments, such as the one in Camden, New Jersey, have made hand-to-hand skills integral to their community-oriented approach to policing. And since hand-to-hand trainings began in Marietta, Georgia, police reported a 53% reduction of injuries to the person being arrested when force was required, a 23% reduction of the use of a taser, and a 48% reduction of injuries to officers using force.

This Article contributes to several important scholarly discourses. First, it meets the current moment of national discourse regarding police violence, contributing to scholarship that has considered this question from constitutional and sub-constitutional levels. In recent years, for example, scholars have considered the role of police unions, insurance regulation of police, local

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31 See, e.g., Chambers v. Pennycook, 641 F.3d 898, 906 (8th Cir. 2011) (considering “whether the force used to effect a particular seizure is ‘reasonable’” under the Fourth Amendment (quoting Graham v. Connor, 490 U.S. 386, 396 (1989))); Hyde v. City of Willcox, 23 F.4th 863, 870 (9th Cir. 2021) (considering the constitutionality of the use of force during pretrial detention).


33 See, e.g., Unity Policing Model, CAMDEN CNTY. POLICE DEP’T (Jan. 6, 2022), https://camdencountypd.org/unity-policing-model/ [https://perma.cc/VA7G-PNFJ]. In Camden, New Jersey, the police department was dissolved and reincorporated under a county policing system. Michelle M.K. Hattfield, Can Police Unions Help Change American Policing?, 5 UCLA CRIM. JUST. L. REV. 211, 241 (2021). In this process, “[h]undreds of officers were fired and made to reapply following new training and psychological evaluations.” Sidney Fussell, What Disbanding the Police Really Meant in Camden, New Jersey, WIRED (July 1, 2020), https://www.wired.com/story/disbanding-police-really-meant-camden/ [https://perma.cc/GZH6-VLNV]. Camden saw a decline in violence following these changes. Id. The city previously reported multiple shootings daily, but has since dramatically reduced shootings to once every few days. Interview with Kevin Lutz, Captain, Camden, New Jersey Police Department (Dec. 21, 2021); Fussell, supra. In particular, the Camden Police Department lists de-escalation first in the principles it upholds, alongside “wellness, leadership, transparency, and empathy.” Unity Policing Model, supra.


35 See, e.g., Ristroph, supra note 12, at 1182; Garrett & Stoughton, supra note 13, at 218 (considering the Fourth Amendment’s application to excessive use of force by police).


37 See generally Benjamin Levin, Essay, What’s Wrong with Police Unions?, 120 COLUM. L. REV. 1333, 1333 (2020) (situating police unions within broader scholarly discourse on both unions and policing).
administrative regulation of police and traffic law enforcement, citizen cop watching groups, and state police commission regulation. Second, this Article fully embraces a granular, physical dimension to scholarly discourse on police reform, a dimension that is often underspecified or overlooked. Finally, this Article adds a novel angle to race and policing questions, situating oversight in police awareness of body mechanics in cultural history and anti-Asian attitudes.

I. THE PROBLEM OF PHYSICAL RESTRAINT

In our national police reform movement, the use of force remains the most significant issue. Novel ideas can and should address the factors that lead to escalation toward police violence and—at worst—lethal force. This

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39 See Maria Ponomarenko, Rethinking Police Rulemaking, 114 NW. U. L. REV. 1, 1 (2019) (analyzing permanent administrative bodies as a stand in for the public and an alternative to rulemaking for regulating police).

40 See Jordan Blair Woods, Traffic Without the Police, 73 STAN. L. REV. 1471, 1471, 1490–94 (2021) (considering flaws with the conventional notion that traffic enforcement is impossible without police and the benefits of nonpolice alternatives to traffic enforcement).

41 Jocelyn Simonson, Copwatching, 104 CALIF. L. REV. 391, 391–92 (2016) (discussing the benefits of organized copwatching as an “adversarial, bottom-up mechanism[] of police accountability” affording populations a vehicle to have direct, real-time input on policing decisions that affect their neighborhoods).

42 Rau et al., supra note 36, at 1349.

43 As will be noted in more depth below, Cynthia Lee is the only legal scholar to have meaningfully addressed the question of martial arts in policing. See Lee, Reforming the Law on Police Use of Deadly Force, supra note 8, 150–51. Additionally, Professor Seth Stoughton has briefly discussed the factors that cause an instance of physical restraint to become a seizure. Stoughton, supra note 7, at 542–45.


45 See, e.g., Shaun Ossei-Owusu, Police Quotas, 96 N.Y.U. L. REV. 529, 529 (2021) (“Mounting visual evidence of police brutality and social protests are generating an appetite for something different.”); Robin S. Engel, Hannah D. McManus & Tamara D. Herold, Does De-escalation Training Work?, 19 CRIMINOLOGY & PUB. POL’Y 721, 722 (2020) (“During this tumultuous time, a general sentiment has emerged across the country that meaningful reforms in policing are desperately needed to protect both officers and the citizens they serve.”); Training, CAMPAIGN ZERO, https://campaignzero.org/train [https://perma.cc/KD9Z-SUVN] (“The existing research literature is inconclusive on the effectiveness of training at reducing police violence . . . . [E]xisting training programs should be replaced with programs that de-emphasize firearms and use of force and that empower communities to design and implement new training paradigms for first responders . . . .”).
Part describes this problem of physical restraint, first in Part A through the example of the killing of Rayshard Brooks, and then in Part B by defining the body mechanics gap in American law and policy.

A. The Case of Rayshard Brooks

Let us preliminarily clarify the scope of the problem by examining the death of Rayshard Brooks. Due to videos from police body cameras, dashcams, and the camera at the local Wendy’s in Atlanta, Georgia, we can precisely reconstruct what occurred:

On the night of June 12, 2020, a Wendy’s employee called the police to report a man asleep in a parked car blocking the drive-through line. Shortly thereafter, Officer Devin Brosnan arrived at the scene, knocked on the window of Brooks’ car, woke Brooks up, and asked him to move the vehicle. When Brooks afterwards fell asleep again, Officer Brosnan again approached the car, woke Brooks up, and told him to move his car into a nearby parking lot space. Minutes later, Officer Garrett Rolfe arrived, asked Brooks if he had any weapons on him, and—once Brooks replied no—asked Brooks if he could pat him down to make sure; Brooks consented, and Officer Rolfe found no weapons. Officer Rolfe then performed a series of sobriety tests on Brooks; during such tests, Brooks offered to lock his car and walk home to his sister’s house. Brooks eventually failed a breathalyzer test, his 0.108% result exceeding the legal limit of 0.08%. Officer Rolfe then told Brooks that he had had too much to drink to drive and to put his hands behind his back.

What happened next is most relevant for this Article: Brooks immediately resisted arrest, the three men fell to the ground, and Officers Rolfe and Brosnan quickly lost control of the situation. As the three wrestled on the ground for thirty-three seconds, one yelled, “Stop fighting! Stop fighting!” and “You’re gonna get tased! You’re gonna get tased!” One of the officers immediately reached for his taser but it did not properly activate. Brooks then broke free, holding one officer’s taser while the other officer attempted to tase Brooks. Brooks ran away through the parking lot and, seconds later, turned to fire the taser at Officer Rolfe, who responded with three gunshots, two of

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46 See infra notes 50–65 and accompanying text.
47 See infra notes 66–87 and accompanying text.
49 Id.
which hit Brooks in the back. Brooks was taken to the hospital and died there after surgery.  

The Brooks case exemplifies the numerous factors that contribute to police killings. The case involved questions of racial bias and disproportionate impact on communities of color, police discretion to arrest, police use of force in situations where individuals resist arrest, taser use and effectiveness, and the utility of body cameras. Overlooked, however, is something else in plain sight: Officers Rolfe and Brosnan were obviously incompetent in their ability to physically manage a situation where a civilian resists arrest. Unable to place handcuffs on Brooks, the officers’ use of force rapidly escalated to tasers and then firearms, leading to Brooks’ death. This physical incompetence should come as no surprise; at its eleven-week police academy, the State of Georgia only provides three days of hand-to-hand defensive tactics training and then never requires any form of physical training again. By contrast, Georgia police officers must re-certify firearms proficiency twice a year. And yet, only a minority of officers ever use a firearm during their career, whereas every officer in their first week will engage in some hand-to-hand physicality.

How frequently does a physical restraint case like that of Rayshard Brooks arise? It is impossible to say precisely. We know that numerous con-

50 Officer Rolfe was fired but has since been reinstated; he has been charged with eleven counts of crime, including felony murder and aggravated assault with a deadly weapon. Id. Officer Brosnan has been charged with aggravated assault. Id.

51 See STOUGHTON ET AL., supra note 14, at 154 (“Any given use of force is the result of an iterative process, an interaction or, more often, a series of interactions between an officer and a subject.”).

52 Brooks was Black, the officers are both white. See generally, e.g., BUTLER, supra note 15 (reviewing the disproportionate impact of policing on black men).


55 See, e.g., BRUCE TAYLOR ET AL., POLICE EXEC. RSCH. F., COMPARING SAFETY OUTCOMES IN POLICE USE-OF-FORCE CASES FOR LAW ENFORCEMENT AGENCIES THAT HAVE DEPLOYED CONDUCTED ENERGY DEVICES AND A MATCHED COMPARISON GROUP THAT HAVE NOT 1 (2009).


57 Interview with Reinaldo Figueroa, supra note 16. See generally GA. COMP. R. & REGS. 464-5-.03.1 (2022) (making no mention of hand-to-hand training).

58 GA. COMP. R. & REGS. 464-5-.03.1(b) (2023) (“Annual firearms training shall, at a minimum, consist of three hours of training provided by a POST-certified firearms instructor . . . . ”); Interview with Reinaldo Figueroa, supra note 16.

texts arise wherein police are called upon to use physical restraint during their daily routines—often “when making an arrest, breaking up an altercation, dispersing an unruly crowd, or performing a myriad of other official activities.”

And we know that police make millions of arrests each year, though arrests are not the only times police may become involved in non-lethal physical altercations. And, as is well documented, we know that police tend to use force at higher rates against communities of color, especially Black Americans. But unfortunately, little research exists on non-lethal physical altercations with police, specifically those involving punching or kicking. For decades, the lack of standard definitions and the absence of uniform data sources have posed significant challenges to collecting reliable data on police use of force in general. Researchers and courts alike have noted the ambiguous nature of non-lethal physical altercations that may make it more difficult to collect data on the subject.


62 In 2015, 21% of U.S. residents, age sixteen or older, about 53.5 million persons, had some type of contact with police. ELIZABETH DAVIS, ANTHONY WHYDE & LYNN LANGTON, U.S. DEP’T OF JUST., NCJ-251145, SPECIAL REPORT: CONTACTS BETWEEN POLICE AND THE PUBLIC, 2015, at 1 & fig.1 (2018), https://bjs.ojp.gov/content/pub/pdf/cpp15.pdf [https://perma.cc/5KYN-U4G2]. This number was lower than the 26% of residents who had contact with police in 2011. Id. at 1. In 2015, 1.8% or 985,300 people out of the 53.5 million U.S. residents who had contact with police, experienced threats or use of force. Id. at 16 tbl.18; John Wihbey & Leighton Walter Kille, Excessive or Reasonable Force by Police? Research on Law Enforcement and Racial Conflict, JOURNALIST’S RES. (July 28, 2016), https://journalistsresource.org/criminal-justice/police-reasonable-force-brutality-race-research-review-statistics/[https://perma.cc/F3GR-S99U].

63 See Parks, supra note 8, at 42.

64 See Ristroph, supra note 12, at 1216.

65 See Graham v. Connor, 490 U.S. 386, 397 (1989) (recognizing that officers make choices about the application of force under conditions that are “tense, uncertain, and rapidly evolving” (emphasis added)); STOUGHTON ET AL., supra note 14, at 232 (“[N]ational data collection efforts have been lackadaisical, ineffective, or both.”); Kelly A. Hine, Louise E. Porter, Nina J. Westera & Geoffrey P. Alpert, Too Much or Too Little? Individual and Situational Predictors of Police Force Relative to Suspect Resistance, 28 POLICING & SOC’Y 587, 600 (2018) (noting that data limitations hindered the study of certain factors, including an officer’s “decision-making, experiences, beliefs, and expectations, as well as details about the suspect’s history with police, and alcohol/drug consumption . . . along with situational details”); Ross Wolf, Charlie Mesloh, Mark Henych & L. Frank Thompson, POLICE USE OF FORCE AND THE CUMULATIVE FORCE FACTOR, 32 POLICING: INT’L J. POLICE STRATEGIES &
In sum, physical restraint arises virtually every minute in America. And yet it is overlooked, under-specified, and under-trained; its ultimate consequence is death, either due to the physical restraint tactic or to the use of firearms.

B. The Body Mechanics Gap

The Rayshard Brooks case is not an isolated incident of police officer failure in physical restraint. American law, policy, and culture have rendered this space a collective blind spot, comparatively underexplored and underspecified. I call this the body mechanics gap. Body mechanics is the set of possible movements of the human body, rooted in human musculoskeletal structure.66 The body mechanics gap in law enforcement is a failure to address the problem of physical restraint in three regards.

First, descriptively, the body mechanics gap is a physical space: when a police officer and civilian are within physical reach of one another, the space between them transforms from benign to a zone of potentially acute physical contestation.67 Officers Devin Brosnan and Garrett Rolfe were within this physical zone when initially interacting with Rayshard Brooks.68 Given such transformative potential, this physical space must be managed as safely as possible for both the civilian and police officer involved. By definition, this is a space of tradeoffs. At one extreme, a police officer discharging a firearm would surely neutralize the civilian and be of maximum safety to the police officer. And yet, this would also be obviously undesirable—not to mention an unconstitutional use of force under the Fourth Amendment, triggering criminal sanction.69 At the other extreme, the police officer could herself resort to only

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66 See, e.g., NORMAN LINK & LILY CHOU, THE ANATOMY OF MARTIAL ARTS: AN ILLUSTRATED GUIDE TO THE MUSCLES USED IN KEY KICKS, STRIKES & THROWS 7 (2020) (describing human anatomy and its use in martial arts training). Each of us has some intuitive sense of body mechanics: we know that our thumb can easily touch our palms and yet cannot touch the backs of our hand, for example.

67 More generally, every use-of-force situation between police and a civilian involves: (1) anticipation (officer realization that she will interact with a civilian); (2) entry (an officer begins interaction, deciding how best to approach the subject); (3) information exchange (the officer and civilian evaluate one another based on exchanged verbal and non-verbal cues); and (4) final frame decision (an officer decides whether to use force and which type to use). STOUGHTON ET AL., supra note 14, at 155 (citing Arnold Binder & Peter Scharf, The Violent Police-Citizen Encounter, 452 ANNALS AM. ACAD. POL. & SOC. SCI. 111, 116 (1980)). The body mechanics gap presents itself in this final stage.

68 See Ortiz, supra note 48.

69 See U.S. CONST. amend. IV; Tennessee v. Garner, 471 U.S. 1, 11 (1985) (“Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.”).
verbal de-escalation, but this would probably be undesirable: at the point when a civilian has closed the physical space and laid “hands on” a police officer, the officer must respond with some physical force; to do otherwise risks the civilian injuring the officer or, at worst, taking the officer’s gun and using it against the officer or others.70

Second, the body mechanics gap is a gap in collective conceptualization of the use of force. Consider the following graphic from the Philadelphia Police Department71:

![USE OF FORCE DECISION CHART](https://ssrn.com/abstract=4373653)

As can be seen above, the police use of force continuum stretches from the use of a firearm to, at the other end, mere verbal engagement with a civilian.72 Drawing of weapons, tasers, and OC are in between.73 But also in this

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72 Such tactics “limit the suspect’s ability to inflict harm and advance the ability of the officer to conclude the situation in the safest and least intrusive way.” Jeffrey J. Noble & Geoffrey P. Alpert, State-Created Danger: Should Police Officers Be Accountable for Reckless Tactical Decision Making?, in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 346, 347(Roger G. Dunham, Geoffrey P. Alpert & Kyle D. McLean eds., 8th ed. 2015).
middle zone is the physical competence to manage the problem of physical restraint—a critical middle passage through which use of force may pass when either escalating or de-escalating. And yet, as noted above, the body mechanics gap renders this space so under-specified that it lacks a single name; it is alternatively referred to as police self-defense,74 hand-to-hand,75 “hands on,”76 combatives,77 or survival tactics.78 It is often overlooked or under-emphasized in police academy training and, especially, in-service training once officers join the force.

Third and finally, the body mechanics gap is a lack of knowledge in the mind of the individual police officer: an incomplete understanding of how to address the problem of physical restraint, leading to adverse physical consequences in law enforcement. Officers Devin Brosnan and Garrett Rolfe exhibited this gap when interacting with Rayshard Brooks in 2020.79 Some police officers are aware of this deficiency: a 2000 study of approximately 600 American police officers showed collective dissatisfaction with defense and control tactics, noting a 1990 survey wherein academy training varied widely—from ten to 148 hours—with only seven agencies (ten percent) requiring any such training once police entered the service.80 Over seventy-five percent of the police officers surveyed expressed interest in in-service training in defensive tactics, including wrestling, takedowns, and gun retention techniques.81

Once we become attentive to the body mechanics gap, we see it in many of the most high-profile police killings in recent memory—and also realize that the contentious issue of chokeholds is the tip of a much larger iceberg. Consider the 2014 case of Eric Garner, whom two police officers confronted for allegedly selling untaxed cigarettes and who died after Officer Daniel Pantaleo

73 STOUGHTON ET AL., supra note 14, at 154–224 (canvassing various law enforcement use of force tactics); U.S. DEP’T OF JUST., NAT’L INST. OF JUST., NCJ-181655, OLEORESIN CAPSICUM: PEPPER SPRAY AS A FORCE ALTERNATIVE 1 (1994) (defining OC, commonly known to the public as pepper spray).
74 Supra note 10 and accompanying text.
75 See, e.g., Musto, supra note 11 (describing retired SEAL’s calls for more hand-to-hand training); Kirillova et al., supra note 10, at 2; CARACCI, supra note 11.
76 See, e.g., Ristroph, supra note 12, at 1212; Tucker et al., supra note 12 (describing Sacramento police hands-on training); Murphy, supra note 12, at 745; RAHTZ, supra note 12, at 48.
77 See, e.g., Garrett & Stoughton, supra note 13, at 250.
78 See STOUGHTON ET AL., supra note 14, at 191 (describing police methods for overcoming a suspect).
79 Ortiz, supra note 48.
81 Id. at 141.
used a chokehold to subdue him. That same year, Officer Darren Wilson shot and killed Michael Brown after the two engaged in a hand-to-hand physical altercation. And in the moments before George Floyd’s tragic death in 2020, police officers were physically unable to restrain and place him in a police cruiser, at which point all three officers then used their body weight to restrain him for nine minutes and twenty-nine seconds.

Indeed, systemic inattention to the problem of physical restraint obscures research into the place of restraint in escalation toward police use of firearms, particularly when dealing with unarmed individuals. In 2015, Franklin Zimring & Brittany Arsiniega found that although the rate of killings by police had significantly declined in the past decades, it remained at approximately fifteen per 100,000 people as of 2012, the most recent data used in the study. Further work indicates a high likelihood “that there are a large number of gun cases that do not involve shots fired by civilians and that need not provoke police gunfire . . . .” And, according to the Washington Post, when the scope of incidents is limited to only police shootings of unarmed individuals, 461 unarmed people have been fatally shot by police since 2015, of which thirty-two of those shootings have occurred during 2021. In sum, “significant gaps” still exist in our collective knowledge of the problem and the impact of changes to use-of-force policies and training.

II. AN INEVITABLE PROBLEM: POLICE REFORMISM AND ABOLITIONISM

Before turning to the core of the legal analysis, we must address a threshold consideration: how should we situate the problem of physical restraint within reformist and abolitionist scholarly movements? As is well known,
criminal legal scholarship may be broadly bifurcated into two schools. In one camp, reformists argue in favor of more police training, such as de-escalation training, to reduce police violence. They note that although police may be ill-suited to respond to many situations, data suggest an inverse relationship between police presence and violent crime, at least somewhat justifying their continued existence. Alternatively, abolitionists, mindful in particular of racial and class disparities in policing, call for a complete reconceptualization of law enforcement, including abandoning state-sponsored violence in favor of community enforcement. Some currently envision an “abolitionist horizon,” wherein police are removed as a defining piece of architecture in the American political economy.

The answer is that, for both camps, the problem of physical restraint is inescapable. The reason, simply, is that communities will inevitably confront situations wherein individuals engage in violent behavior and will need to be momentarily physically restrained. Although the origins and nature of violence are contested in legal and other disciplines of scholarship, even the more hopeful conceptions of the future imagine some form of inevitable violence. For example, in an Afrofuturist conception, Professor Bennett Capers argues that “to the extent that much economic crime and even violent crime is traceable to frustrations from wealth inequality, legislation and norm building to redistrib-

89 See Amna A. Akbar, An Abolitionist Horizon for (Police) Reform, 108 CALIF. L. REV. 1781, 1802 (2020) (describing scholarly focus on reforming the police).
90 Id.
91 Generally, this is in response to studies showing a positive impact on society from the police response to violent crime. See Fields, supra note 36 (manuscript at 10) (discussing the movement to defund the police); see also Christopher Lewis & Adaner Usmani, The Injustice of Under-Policing in America, 2 AM. J.L. & EQUAL. 85, 85 (2022) (noting that the United States is under-policed compared to other developed countries).
93 See id.
ute wealth and de-fetishize unadulterated capitalism will have already removed the major incentive for much of this type of crime.” 95 But this scholar also recognized that “some crime will persist” and that “[c]hanges in police training will also likely impact police-citizen interactions.” 96 And Professor Paul Robinson has recently canvassed historical examples of “no punishment” communities that eventually had to enforce formal rules in the wake of harmful misconduct. 97

Furthermore, even in an abolitionist future, we must grapple with a society in which the Fourth Amendment no longer formally applies and other forms of regulation would constrain non-police actors such as emergency responders, mental health first responders, social workers, violence interrupters, and civilian traffic enforcement. 98 Even the most critical contemporary abolitionist projects, which argue for community or neighborhood norm enforcement over state actors in law enforcement, do not call for such actors to desist from all forms of physical restraint. 99 Such a future will likely involve technologies and tactics absent today, including “improvements to terahertz scanners [that] will soon allow officers to not only detect illegal firearms remotely, but also remotely disengage them . . . .” 100 We may also imagine a future in which police default to firearm use less, opting for verbal de-escalation or, most often, hand-to-hand de-escalation.

In this way, this Article’s focus on the problem of physical restraint is both agnostic and decidedly realist. In one regard, as just noted above, the problem inheres in any system of community norm enforcement. 101 In another regard, it sees itself as addressing a step two analysis in law enforcement. Although much scholarly emphasis rightly focuses on critical step one questions— the structural and racial factors that drive policing and over-policing—this has led to inattention to the step two question of how police physically restrain civilians. The reasons for this physical restraint may be myriad—lawful and unlawful

96 Id. at 48–49.
98 See U.S. CONST. amend. IV; Fields, supra note 36 (manuscript at 20–42). At least one scholar has called for the elimination of the current Fourth Amendment test as a solution to police violence. Stoughton, supra note 7, at 521.
99 See Allegra M. McLeod, Envisioning Abolition Democracy, 132 HARV. L. REV. 1613, 1629–30 (2019) (describing community initiatives in situations of acute mental health crises and other urgent situations, recognizing that not all interpersonal harm will be prevented by such measures).
100 Capers, supra note 95, at 42 (citing I. Bennett Capers, Techno-Policing, 15 OHIO ST. J. CRIM. L. 495, 497–98 (2018)).
101 See supra notes 94–97 and accompanying text.
stops by police, “legitimate” and “illegitimate” resistance by laypeople,\textsuperscript{102} and other, broader situational factors where this occurs.\textsuperscript{103} But such restraint warrants close scrutiny. The reality is that, literally every few minutes in America, police officers cross into this physical space; scholars and policymakers alike must grapple with this critical site of police-civilian interaction.

The analogy here is to gun use: although collective analysis must bear on the question of the critical factors leading to a law enforcement actor using a firearm—for example, over-policing of certain neighborhoods—focus should also rightly be on firearm-related decision making and skills, such that law enforcement does not use their firearm unnecessarily and act inappropriately when they do use their firearm. Similarly, focus should also be on physical-restraint-related decision-making and skills, such that law enforcement does not engage in physical restraint unnecessarily and act inappropriately when they do engage in physical restraint.

Furthermore, redressing the problem of physical restraint dovetails with our national movement to de-militarize the police.\textsuperscript{104} Many envision the end to armed police, particularly given the national movement to reduce firearm proliferation in the wake of the Uvalde and other mass shootings in 2022.\textsuperscript{105} Such change begs the question: what are the safest and most effective alternatives to firearms? As this movement grows, it will emphasize hand-to-hand skills and training to restrain individuals without recourse to guns.

In sum, redressing physical restraint is no panacea for the pathologies of contemporary policing. It is not alone sufficient to mitigate all harm, but it is necessary in any law enforcement system for physical restraint to be appropriately conceptualized and circumscribed.

\section*{III. PHYSICAL RESTRAINT IN LAW AND THE POLITICAL ECONOMY OF POLICING}

Why has physical restraint been so overlooked? The answer lies at the intersection of law and policy. The problem of physical restraint is under-
specified in constitutional criminal procedure, federal and state regulation, and the political economy of policing.

This Part begins with the question of how the Supreme Court and lower courts interpret Fourth Amendment seizures, particularly as applied to police use of force. It then considers how state statutes and regulations provide little categorical guidance regarding police physical restraint and, similarly, largely lack hand-to-hand training requirements analogous to those governing firearms. Finally, this Part discusses the function of police unions, insurance policies, and civil asset forfeiture regimes in the legal regulation of physical restraint.

A. Capacious Constitutional Law

The plain language of the Fourth Amendment prohibits unreasonable seizures, and the Supreme Court has interpreted the term capacious to include shooting, arrests, stop and frisk, and physical restraint situations. The Court has defined seizure as the situation wherein, “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave . . . .” As is well known, both civil and criminal remedies are available in cases wherein police have violated constitutional rights.

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106 See infra notes 109–162 and accompanying text.
107 See infra notes 164–212 and accompanying text.
108 See infra notes 213–230 and accompanying text.
109 See U.S. CONST. amend. IV; United States v. Mendenhall, 446 U.S. 544, 554 (1980) (“Examples of circumstances that might indicate a seizure . . . would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.”) (emphasis added) (first citing Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968); then citing Dunaway v. New York, 442 U.S. 200, 207 & n.6 (1979); and then citing 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE 53–55 (1978))); Ristroph, supra note 12, at 1193 (“[T]he word seizure is applied to a wide range of police interventions, from short conversation to brutal beating to killing.”); see also Stoughton, supra note 7, at 525 (noting that the categories of seizure and use of force are overlapping but distinct categories).
110 Mendenhall, 446 U.S. at 554; Terry, 392 U.S. at 30.
111 The patchwork of American laws regarding police use of force fall into three categories. First, individuals may bring a civil suit against a state or local government or the federal government (Bivens) in instances where their constitutional rights have been violated. See 42 U.S.C. § 1983; Bivens v. Six Unknown Named Agents, 403 U.S. 388, 397 (1971). Section 1983 “is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes.” Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979). And “Bivens actions closely parallel claims filed under § 1983.” MICHAEL AVERY, DAVID RUDOVSKY, KAREN M. BLUM & JENNIFER LAURIN, POLICE MISCONDUCT: LAW & LITIGATION § 5:2 (2022). Second, 18 U.S.C. § 242 criminalizes police willfully subjecting any person to “the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.” 18 U.S.C. § 242. This statute prohibits use of force that is “objectively unreasonable” when “judged from the perspective of a reasonable officer on the scene” and is the basis for certain DOJ investigations of police misconduct of state and local law enforcement. Graham v. Connor, 490 U.S. 386, 396–97 (1989); see also, e.g., U.S. DEP’T OF JUST., REPORT REGARDING
and the Supreme Court has brought all claims of excessive police force under the Fourth Amendment prohibition against unreasonable seizures.

As a preliminary matter, physical restraint falls clearly within the zone of Fourth Amendment seizure. In 2021, the Supreme Court in *Torres v. Madrid* held that the mental state of an officer, and whether there was an intent to restrain, was the critical focus of inquiry for determining whether police engaged in a “seizure” under the Fourth Amendment.\textsuperscript{112} In that case, two New Mexico state police officers pursued 42 U.S.C. § 1983 plaintiff Roxanne Torres while attempting to execute an arrest warrant and, as she fled in her car, fired upon her thirteen times, striking her twice.\textsuperscript{113} The issue on appeal was “whether a seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting.”\textsuperscript{114} Writing for the majority, Chief Justice Roberts explicitly affirmed the “mere-touch rule” that dictates that police may seize even when merely laying “the end of [a] finger” on a layperson’s body.\textsuperscript{115} In particular, he identified English and American judicial rulings and commentaries standing for the propositions that “‘seizure’ readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful”\textsuperscript{116} and that “[a]ll the authorities, from the earliest time to the present, establish that a corporal touch is sufficient to constitute an arrest, even though the defendant do[es] not submit.”\textsuperscript{117}

And yet, the relevant Fourth Amendment totality-of-the-circumstances reasonableness balancing test is so capacious as to under-specify physical restraint relative to deadly force such as firearm use. We will consider this test first in Supreme Court jurisprudence,\textsuperscript{118} followed by lower federal court rulings.\textsuperscript{119}

\textsuperscript{112} 141 S. Ct. 989, 994 (2021).

\textsuperscript{113} Id.

\textsuperscript{114} Id. at 993–94.

\textsuperscript{115} Id. at 996 (“Early American courts adopted this mere-touch rule from England, just as they embraced other common law principles of search and seizure.”).

\textsuperscript{116} Id. at 995 (emphasis added) (quoting California v. Hodari D., 499 U.S. 621, 626 (1991)).

\textsuperscript{117} Id. at 996 (alteration in original) (emphasis added) (quoting Nicholl v. Darley (1828) 148 Eng. Rep. 974).

\textsuperscript{118} See infra notes 121–141 and accompanying text.

\textsuperscript{119} See infra notes 142–162 and accompanying text.
1. Fourth Amendment “Seizures”

As a matter of positive law, the problem of physical restraint is over-looked because the relevant use-of-force doctrine under-specifies this form of police force.

As every law student in Criminal Procedure knows, once a court determines that law enforcement has engaged in a seizure, it must then conduct a reasonableness balancing test to determine if the amount of force that police used was constitutional given the totality of circumstances. Courts balance the “intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.” The fact-specific nature of this test means that police are free to engage in a wide variety of tactics as long as they are proportional. And yet, as Professor Bill Stuntz aptly noted, “[o]ne who studies the law of criminal investigation cannot help wondering at the chasm between the mass of rules and regulations governing where the police can look and what they can touch when they look there, and the virtual absence of any constitutional constraint on when police can strike a suspect.” Professor Alice Ristroph has also recognized that “there has been surprisingly little attention to the constitutional rules that set the boundaries of seizure authority.” And Professors Brandon Garrett and Seth Stoughton have identified such flaws as part of their call for a reconstruction of the Fourth Amendment around police tactics.

Consider the development of the doctrine. The first in this line of cases is Tennessee v. Garner, which found that a police officer acted unreasonably when he used deadly force to shoot in the back of the head a Black American male suspect who was fleeing. The Court established the test that, in determining the constitutionality of police use of force, courts must “balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion,” and, in the case of a fleeing suspect, the use of deadly force, in all circumstances, is constitutionally prohibited. Four years later, in Graham [105]
v. Connor, the Court applied this balancing again to the use of non-deadly force, stating that the Fourth Amendment governs “all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen . . . .”127 In this case, police officers injured a Black American man suffering diabetes-related symptoms on the erroneous suspicion that the man was engaging in criminal activity.128 The Court emphasized three factors that lower courts have since applied: (1) the reasonableness of the use of force “from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight”; (2) allowing for the reality that police officers are often making split-second judgments about force, in “tense, uncertain, and rapidly evolving” situations;129 and (3) the fact that the reasonableness inquiry is an objective consideration.130

Given that it relies on this totality-of-the-circumstances analysis, the Garner standard is—to put it colloquially—quite slippery.131 Although the seizure test lacks an explicit proportionality analysis, constitutional law validates a back-and-forth dynamic between police and civilians:

In a typical framework, verbal noncompliance from the suspect may be met with verbal commands. But “passive resistance” (failure to comply with commands) may be met with “hands-on tactics” or pepper spray; active resistance (efforts to escape or avoid arrest that are unlikely to inflict injury) may be met with batons, [t]asers, and other non-deadly force; and . . . any threat of death or serious bodily injury to the officer or anyone else may be countered with deadly force.132

Under Fourth Amendment jurisprudence, when an officer is confronted with lay resistance, “the officer’s authority to use force expands rapidly and reaches a license to kill quickly.”133 Recent jurisprudence has only underscored the precarious balance of under-specification and risk of escalation. In 2007, the Supreme Court in Scott v. Harris rejected any more categorical “on/off switch” regarding preconditions for use of force, re-emphasizing the “factbound mo-

128 Non-deadly force included officers “shov[ing] his face down against the hood of the car,” which led to a broken foot, cuts on his wrists, a bruised forehead, an injured shoulder, and permanent loud ringing in his right ear. Graham, 490 U.S. at 389–90.
130 Graham, 490 U.S. at 397.
132 Ristroph, supra note 12, at 1212–13 (footnote omitted).
133 Id. at 1203.

Electronic copy available at: https://ssrn.com/abstract=4373653
The Garner test is so fact-sensitive that it under-specifies forms of police force. As Professor Rachel Harmon noted, the test "provides unprincipled, indeterminate, and sometimes simply misleading guidance to lower courts, police officers, jurors, and members of the public because it fails to articulate a systematic conceptual framework for assessing police uses of force." Applied to the problem of physical restraint, the issue has often faded into the "factbound morass" of totality-of-the-circumstances analysis.

The result on the ground, then, is that in a hands-on situation, law enforcement already knows they have crossed into the legal category of a seizure. Police in such situations know they are "in for a penny, in for a pound." One consequence of this conceptual categorization is that it often disincentivizes de-escalation. In such "middle zone" situations, police may more easily use physical restraint, tasers, or pepper spray, techniques that officers may deploy with little training. If, in an alternative Fourth Amendment legal regime, the Court had placed use of firearms and tasers in a zone of greater constitutional concern, police would have more incentive to develop hand-to-hand training to prevent a situation from ripening into that space. Of course, incentives for po-

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135 137 S. Ct. 1539, 1544–45 (2017) (detailing a case wherein Los Angeles police entered a wooden shed without a warrant and did not knock or announce, then fired on two individuals, one of whom was holding a rifle).
136 141 S. Ct. 989, 994 (2021) (describing a case wherein New Mexico State Police wrongly suspected Torres to be an individual for whom they had an arrest warrant and fired upon her, injuring her as she drove away).
138 Harmon, supra note 3, at 1127; see also Stoughton, supra note 7, at 534–61 (noting flaws in the application of the Fourth Amendment totality of the circumstances reasonableness analysis to cases of police violence).
140 Cf. Garrett & Stoughton, supra note 13, at 218 ("[T]here are no constitutional incentives for police agencies to adopt rules or provide officers with training on how to approach and engage with emotionally disturbed or disabled individuals."). Police officers in departments with limited resources may undergo “barebones training in which instructors recite federal cases without giving officers sound guidance on when and how to avoid potentially fatal confrontations . . . ." Id.
lice—and government actors more generally—is a highly contested topic. But assuming that police actors do respond to doctrinal constraints, the indeterminacy and lack of incentive are significant.


Although Supreme Court doctrine provides limited categorial guidance to courts or law enforcement, lower courts—after slowly apprehending new technologies or uses of force—have conceptualized such categories of force with varying degrees of granularity. Scholarship has only lightly touched on judicial treatment of such force. Federal circuit courts fall along a spectrum of judicial intervention, using one of three different tests—de minimis force, intermediate force, and force-specific tests—to advance judicial rules that circumscribe or could be applied to circumscribe physical restraint.

As an initial matter, some circuits have adopted the de minimis force test. This is essentially a threshold test, focusing on whether the police used some minimum force necessary to trigger constitutional inquiry. This category arose from cases dealing with so-called “de minimis injuries,” or cases where the victim suffered a very minor injury due to police force. For example, in Chambers v. Pennycook, St. Louis County police executed a search warrant at an apartment with 42 U.S.C. § 1983 plaintiff Kevin Chambers in it, arresting

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143 As will be seen below, the same circuit may apply multiple tests to physical restraint. See infra notes 144–170.

144 The Eighth, Tenth, and Eleventh Circuits have adopted this category. See, e.g., United States v. Rodella, 804 F.3d 1317, 1328 (10th Cir. 2015); Chambers v. Pennycook, 641 F.3d 898, 906 (8th Cir. 2011); Nolin v. Isbell, 207 F.3d 1253, 1257 (11th Cir. 2000).

145 De minimis force includes actions such as grabbing an arm or turning someone around. See Curd v. City Court, 141 F.3d 839, 841 (8th Cir. 1998).
him while jamming a gun into his back, causing Chambers pain.146 In 2011, the Eighth Circuit Court of Appeals ruled that Chambers’ injury—which involved scrapes, bruises, and aggravation of a prior shoulder condition—was a de minimus injury that did not foreclose a Fourth Amendment claim of excessive force.147

Other circuits have introduced a more exacting test to curb physical restraint and the use of tasers, applying an intermediate force test to govern police use of force that is less than firearm use.148 Intermediate force is defined as a broad category that covers a variety of uses of force, including but not limited to tasers, dog bites, pepper spray, and strikes.149 Under this test, adopted by the Ninth Circuit Court of Appeals, the court considers whether the victim was resisting.150 Then, depending on the nature of victim resistance, courts will find a constitutional violation when intermediate force is used on an unrestrained, non-compliant suspect.151 For example, in Hyde v. Willcox, 42 U.S.C. § 1983 plaintiff Luke Hyde was arrested by Willcox, Arizona police for driving under the influence.152 While at the police station, he became resistive, and the police applied intermediate force (in the form of tasers and strikes) to restrain him—but then continued to use force after.153 In 2021, the Ninth Circuit accepted that the intermediate force was necessary before Hyde was restrained, but found the force excessive from the moment he was restrained.154 District courts outside of the Ninth Circuit have also applied the intermediate force test.155

Finally, and furthest along the spectrum of judicial intervention, courts will at times use a force-specific test, crafting judicial rules to circumscribe the

146 Chambers, 641 F.3d at 902.
147 Id. at 906.
148 Infra notes 149–155.
149 Hyde v. City of Willcox, 23 F.4th 863, 870 (9th Cir. 2022); see also Young v. County of Los Angeles, 655 F.3d 1156, 1161 (9th Cir. 2011).
151 Id. at 868.
152 Id.
153 Id.
154 Id. at 872.
155 See, e.g., Alsaada v. City of Columbus, 536 F. Supp. 3d 216, 264 (S.D. Ohio 2021); Pekrun v. Puente, 172 F. Supp. 3d 1039, 1044 (E.D. Wis. 2016); Sisneros v. Off. of Pueblo Cnty. Sheriff, No. 09-cv-01646, 2011 WL 882618, at *4 (D. Colo. Mar. 10, 2011); see also Salazar v. Molina, 37 F.4th 278, 287 (5th Cir. 2022) (“Salazar infers a rule that an officer violates clearly established law if he uses intermediate force before negotiating when a suspect is restrained, subdued, and not fleeing. This rule, even if correct, wouldn’t apply here because Salazar wasn’t restrained when he was tased . . . [and] this kind of general rule is insufficient to show clearly established law.” (citing Kisela v. Hughes, 138 S. Ct. 1148, 1153 (2018))). Even though other circuits have not explicitly adopted the intermediate force test, some implicitly use the category when applying the balancing test to fact patterns analogous to intermediate force. See, e.g., McCoy v. Meyers, 887 F.3d 1034, 1040–41 (10th Cir. 2018) (finding that police use of a lateral vascular neck restraint to the plaintiff’s neck after the plaintiff had ceased resisting constituted excessive force).
use of a particular police tactic.\textsuperscript{156} This effectively signals to the police that such force is only permissible in certain prescribed circumstances. Although courts have not yet applied the force-specific test to physical restraint, they have done so with tasers. Such stun devices “shoot electrodes a certain limited distance to hook onto an individual” and, once in place, administer several short, powerful electronic bursts that painfully shock the target so that the “individual is temporarily rendered immobile or falls down.”\textsuperscript{157} Using the Fourth Amendment Garner test, courts have imposed more constitutional restrictions around taser use, on the ground that it constitutes “serious use of force” by causing “excruciating pain.”\textsuperscript{158} Although the Seventh Circuit\textsuperscript{159} and Ninth Circuit\textsuperscript{160} previously curtailed the use of tasers in several use-of-force contexts, most emphatically, in 2016, in \textit{Estate of Armstrong ex rel. Armstrong v. Village of Pinehurst}, the Fourth Circuit Court of Appeals held that police force is only proportional when a reasonable officer would perceive immediate danger.\textsuperscript{161} Such a ruling effectively banned taser use outside of situations posing immediate danger to police, leading police departments in that jurisdiction and elsewhere to revise their taser-related policies.\textsuperscript{162} The Section that follows turns from the federal to the state lens regarding regulation of the use of force and hand-to-hand training requirements.\textsuperscript{163}

\textsuperscript{156} \textit{Infra} notes 157–162.

\textsuperscript{157} Jay M. Zitter, Annotation, \textit{Liability of Police Officer for Assault and Battery Arising from Use of Stun Gun or Taser Device}, 52 A.L.R.6th, § 2 (2010).

\textsuperscript{158} \textit{See} Est. of Armstrong \textit{ex rel.} Armstrong v. Village of Pinehurst, 810 F.3d 892, 902, 909 (4th Cir. 2016) (“A taser . . . is expected to inflict pain or injury when deployed. It, therefore, may only be deployed when a police officer is confronted with an exigency that creates an immediate safety risk and that is reasonably likely to be cured by using the taser.” (internal citation omitted)).

\textsuperscript{159} Cyrus v. Town of Mukwonago, 624 F.3d 856, 863 (7th Cir. 2010) (denying officers summary judgment on an excessive force claim wherein police repeatedly deployed a taser against a suspect suffering from bipolar disorder and schizophrenia while resisting arrest, resulting in his death).

\textsuperscript{160} Mattos v. Agarano, 661 F.3d 433, 446 (9th Cir. 2011) (finding that police used excessive force when repeatedly using a taser against a pregnant woman in her thigh, arm, and neck).

\textsuperscript{161} 810 F.3d at 903. The Ninth Circuit followed suit the following year. Jones v. Las Vegas Metro. Police Dep’t, 873 F.3d 1123, 1132 (9th Cir. 2017) (“[A]ny reasonable officer would have known that such use can only be justified by an immediate or significant risk of serious injury or death to officers or the public.” (citing Scott v. Harris, 39 F.3d 912, 914 (9th Cir. 1994))).


\textsuperscript{163} \textit{See infra} notes 164–229 and accompanying text.
B. State Statutes and Regulations

Moving beyond constitutional doctrine, the problem of physical restraint is under-specified in statutes and regulations nationwide. Although the federal government may provide grants conditioned on state and local police training requirements, no federal statute mandates the form and content of police engagement with civilians, nor training for all state and local police departments. This Section thus surveys the patchwork of use of force standards and hand-to-hand training requirements in state statutes and regulations.

1. Use of Force

Generally speaking, state statutes do not prescribe police use of intermediate or less-than-lethal force with any granularity. Most states merely refer, in broad terms, to the use of deadly and non-deadly force permitted to achieve a legitimate law enforcement purpose. For example, Wisconsin legislation

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164 As noted above, most civil actions against police officers for misconduct are filed as civil suits, alleging a violation of the Fourth Amendment of the U.S. Constitution under 42 U.S.C. § 1983. HAILES & MANALILI, supra note 142, at 65. However, state constitutions may play a further role in regulating certain instances of physical restraint. See generally William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 HARV. L. REV. 489 (1977) (noting that state courts may safeguard federal rights). Future research should investigate the constitutions of the fifty states and state court interpretations governing physical restraint.

165 Authority to Make Public Safety and Community Policing Grants, 34 U.S.C. § 10381(a) (detailing the authority of the U.S. Attorney General to make grants to state and local governments, including for the purpose of training).


167 See infra notes 170–194 and accompanying text.

168 See infra notes 197–212 and accompanying text.

169 See generally Stoughton, supra note 7, at 561–84 (reviewing “spillage” of the Supreme Court’s Fourth Amendment framework into state law, agency policy, and police culture).


171 See, e.g., Use of Force Standards Database, supra note 170 (click “Use of Force Standards Database” below the main page title). By contrast, states are more likely to regulate deadly force.
merely authorizes law enforcement officers to use force that is objectively reasonable based on the totality of the circumstances, such as “[t]he severity of the alleged crime at issue,” whether the subject “poses an imminent threat to the safety of law enforcement officers or others,” and whether the subject is “actively resisting or attempting to evade arrest by flight.”172 As another example, the Office of the Attorney General of the State of New Hampshire in its State of New Hampshire Law Enforcement Manual states that “[i]t is not possible to establish any bright-line rules about when the use of force is warranted” and that such an inquiry is highly circumstantial.173 Rather, the guidance generally follows the New Hampshire statute on physical force in law enforcement by authorizing police to use reasonable non-deadly force when necessary to effect arrest, prevent escape, overcome resistance, or defend themselves or others.174

A minority of states, however, more explicitly dictate when and how to use intermediate force. For example, Minnesota only allows the use of force by a police officer in four situations, while also limiting deadly force.175 Similarly, New Jersey’s attorney general has recently implemented a more granular statewide use of force policy that lays out general rules for determining the appropriate level and type of force for officers to use in the face of varying levels of resistance.176 The policy provides guidance to law enforcement when interacting with individuals whose conduct falls into one of five categories: cooperative person, passive resistor, active resistor, threatening assailant, or active assailant.177

Many states that lack even guidelines for intermediate force have binding regulations on deadly force. Id. For example, Connecticut allows officers to use “proportionate physical force” to address a threat or effectuate an arrest or compliance, providing only general guidance and a few prohibitions, without going into specific situations when a particular type of nondeadly force might be justified. STATE OF CONN., POLICE OFFICER STANDARDS & TRAINING COUNCIL, USE OF FORCE POLICY 6–7 (2022).

172 WIS. STAT. § 175.44(2)(b) (“When using force, a law enforcement officer is required to act in good faith to achieve a legitimate law enforcement objective.”).


174 N.H. REV. STAT. ANN. § 627:5, I; MACDONALD, supra note 173, at 44.

175 MINN. STAT. §§ 609.06, subdiv. 1, 609.066, subdiv. 2 (2022). The situations are to make an arrest, execute process, enforce a court order, or executing any other duty required by the law. Id. §§ 609.06, subdiv. 1.

176 OFF. OF THE ATT’Y GEN., STATE OF N.J., USE OF FORCE POLICY 7, § 3.3 (2022) (“Although it is not possible to determine in advance what the appropriate level of force is for every encounter, one factor that is consistent is the amount of resistance the officer is facing at the time. The less resistance an officer faces, the less force the officer should use.”).

177 Id. at 7, § 3.3(b) (stating, for a passive resistor, that “officers may rely on police presence, verbal control techniques, holding techniques, lifting/carrying, wrist locks and other manual pain compliance techniques”).
Furthermore, Indiana is in the process of adopting new statewide policies on what defensive tactics are acceptable for use.\textsuperscript{178} Despite states’ reluctance to granularly regulate intermediate force, one technique has been singled out for special regulation: chokeholds. Many states—even those states that otherwise lack significant regulation of non-deadly force—either ban chokeholds completely or limit the circumstances of their use.\textsuperscript{179} Some jurisdictions even classify chokeholds as deadly force.\textsuperscript{180} The effectiveness of these bans, however, has been questioned by scholars and the public alike.\textsuperscript{181}

At the level of local police departments, some have adopted more restrictive policies and training tools regarding use of non-deadly force.\textsuperscript{182} Several departments employ incremental use of force matrices or continuums to guide officer conduct by aligning force options with types of resistance.\textsuperscript{183} For example, the Charleston Police Department in South Carolina permits officers to use a level of force that is necessary and within the range of “objectively rea-


\textsuperscript{180} See, e.g., MINN. STAT. § 609.06, subdiv. 3(1); 550 MASS. CODE REGS. 6.05(2) (2022); IND. CODE § 35-41-3-3(a)(2) (2022).

\textsuperscript{181} Monika Evstatieva & Tim Mak, How Decades of Bans on Police Chokeholds Have Fallen Short, NPR (June 16, 2020), https://www.npr.org/2020/06/16/877527974/how-decades-of-bans-on-police-chokeholds-have-fallen-short [https://perma.cc/9HKT-B3RR]. The term “chokehold” can refer to at least two techniques: one in which pressure is applied to the windpipe at the front of the neck to prevent the subject from breathing, and another in which pressure is applied on both sides of the neck to limit blood flow to the brain. \textit{Id}. Both can subdue a subject with relative ease, but there still are substantial risks. \textit{Id}.

\textsuperscript{182} Use of Force Standards Database, supra note 170; PHILA. POLICE DEP’T, DIRECTIVE 10.2—USE OF MODERATE/LIMITED FORCE 3–7, §§ 4–5 (2022) (explaining the department’s “Use of Force Decision Chart” and stipulating the general steps in executing appropriate use of force); KNOXVILLE POLICE DEP’T, GENERAL ORDER NO. 1.6—USE OF FORCE 6–10, 18 (2021) (explaining their Use of Force Continuum, use of force authorizations and limitations, as well as describing several types of techniques the officer may employ). As one scholar vividly noted, “[d]epartments are all over the map on what constitutes a use of force for internal recordkeeping and policy purposes.” HARMON, supra note 102, at 394.

\textsuperscript{183} HARMON, supra note 102, at 410; Use of Force Standards Database, supra note 170; LINCOLN POLICE DEP’T, GENERAL ORDER 1510—FORCE AND CONTROL TECHNIQUES 6 (2022); CITY OF CHARLESTON POLICE DEP’T, ADMIN. GENERAL ORDER 23—RESPONSE TO RESISTANCE/AGGRESSION 4 (2021); PHILA. POLICE DEP’T, supra note 182, at 4; KNOXVILLE POLICE DEP’T, supra note 182, 6–7.
sonable” options based on their force continuum.\textsuperscript{184} Although not described in their written policies, the continuum presented suggests that passive resistance may warrant soft empty-hand control, and it may progress to more physical control and hard strikes (with or without intermediate weapons) as resistance becomes active or assaultive.\textsuperscript{185} As another example, the Lincoln, Nebraska Police Department resistance control continuum outlines the relationship between civilian resistance and police use of force:\textsuperscript{186}

![Lincoln Police Department Resistance Control Continuum](https://ssrn.com/abstract=4373653)

As shown above, low levels of subject resistance such as psychological and verbal resistance are paired with lower levels of police control that do not involve physical contact.\textsuperscript{187} When subjects engage in passive or defensive resistance, the continuum guides officers to respond with physical contact, but not weapons.\textsuperscript{188} Across various states, soft empty hand techniques include control holds, joint manipulation, pressure points, and other techniques used to

\textsuperscript{184} CITY OF CHARLESTON POLICE DEP’T, supra note 183, at 4–5 (“The officer will use a level of force that is necessary and within the range of ‘objectively reasonable’ options. When use of force is needed, officers will assess each incident to determine, based on policy, training and experience, which use of force option will de-escalate the situation and bring it under control in a safe and prudent manner.”).

\textsuperscript{185} See id.

\textsuperscript{186} PPCT Management Systems Resistance Control Continuum (illustration), in LINCOLN POLICE DEP’T, supra note 183, at 6.


\textsuperscript{188} PPCT Management Systems Resistance Control Continuum (illustration), supra note 186.
maintain compliance or facilitate control of non-compliant subjects. In responding to higher levels of subject resistance, hard empty hand techniques generally include kicks, punches, control strikes to pressure points, and takedowns. Finally, active aggression and deadly force assaults by the subject may warrant the use of weapons and even deadly force by law enforcement. For instance, Lincoln Police Department’s General Order on use of force explains that the continuum is a non-exhaustive guide and urges officers to constantly reassess the level of force reasonable and necessary to control a subject as their level of resistance changes.

Still, many states simply echo the United States Supreme Court or their state’s legislation dictating that officers must act reasonably. The Madison Police Department’s non-deadly force procedure permits physical force such as “focused and diffused strikes, pressure points, escort holds, decentralization techniques, holding or grabbing of subjects, etc.” The Providence Police Department describes similar less-lethal force options, but merely requires officers to choose and employ the minimum level of force that they believe to be

189 See, e.g., PROVIDENCE POLICE DEP’T, GENERAL ORDER 300.01—USE OF FORCE 5 (2021) (“Weaponless joint manipulation, leverage, pressure point, control hold, gripping, and similar techniques aimed at inducing compliance while reducing the risk of injury to the suspect.”); DURHAM POLICE DEP’T, GENERAL ORDERS MANUAL 342 (2021) (“Joint manipulations include the bent wrist and the straight arm-bar techniques, which can cause pain and enable the officer to gain physical control over a subject’s movements.”); GREENVILLE POLICE DEP’T, GENERAL ORDER 200A14—USE OF FORCE BY POLICE OFFICERS 9, § 6.2 (2020) (“Soft Empty Hand Control: Techniques that do not involve physical strikes of any kind and are designed to respond primarily to passive and defensive resistance from subjects.”).

190 PROVIDENCE POLICE DEP’T, supra note 189, at 5 (“Kicks, punches, weaponless striking techniques, tackling, wrestling, and similar techniques aimed at inducing compliance with only a moderate risk of injury to the suspect.”); DURHAM POLICE DEP’T, supra note 189, 344 (“Hard empty hand techniques are typically used to stop assaultive non-compliant behavior by a subject.”); GREENVILLE POLICE DEP’T, supra note 189, at 9 § 6.2 (“Control strikes are used to get a subject under control and include strikes targeted to pressure point areas such as the common peroneal (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck).” (emphasis omitted)).

191 PPCT Management Systems Resistance Control Continuum (illustration), supra note 186.

192 Id.; LINCOLN POLICE DEP’T, supra note 183, at 2 § II.C.3.

193 See generally Use of Force Standards Database, supra note 170 (reviewing state statutes governing use of force). See also, e.g., CITY OF MADISON POLICE DEP’T, STANDARD OPERATING PROCEDURE—USE OF FORCE 1 (2022) (“Officers may only use that force which is objectively reasonable, and only in furtherance of a legitimate, lawful objective. ‘Objective reasonableness’ is a test based on the totality of the circumstances.” (citing Graham v. Connor, 490 U.S. 386 (1989))); FARGO POLICE DEP’T, POLICY MANUAL—USE OF FORCE 2, 4 (2021) (granting officers discretion in determining the reasonably appropriate use of force in each incident and briefly suggesting options such as de-escalation and “pain compliance” techniques); HOUSTON POLICE DEP’T, GENERAL ORDER 600-17, USE OF FORCE 3–5 (2022) (differentiating between deadly force, de-escalation, and other responses to resistance, describing the latter without any particularity).

194 MADISON POLICE DEP’T, supra note 193, at 6.
objectively reasonable under the circumstances. The following subsection turns its focus to what hand-to-hand training state statutory and regulatory regimes require of law enforcement.

2. Training

What do states require for hand-to-hand training? Simply put, hand-to-hand training falls into an ambiguous zone of law enforcement regulation—both procedurally and substantively. Procedurally, the relevant institutional regulatory authority varies from state to state, resulting in inconsistent training practices. Training-related rulemaking may be codified in statute, promulgated by state-wide agencies, and/or delegated primarily to local police departments to enumerate. The clearest examples are from states that statutorily codify minimum police training requirements, but then delegate the specific frameworks, resources, and granular policies to a state agency.

For example, Vermont mandates that “no person shall exercise law enforcement authority as a law enforcement officer without completing a basic training course and annual in-service training.” The statute, however, stops short of outlining essential subject matter and time requirements. The New Mexico state legislature delegates

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195 PROVIDENCE POLICE DEPT’, supra note 189, at 7, § II(A) (“Whenever lethal force is not authorized, officers must assess the facts and circumstances pertaining to the incident at hand in order to determine if the use of less-lethal force is objectively reasonable, and if so, which less-lethal force option will best de-escalate the incident and bring it under control in a safe manner.”). In some states, recent social movements have led to significant police reform, leading to increased criminal regulation of police use of non-deadly force. Ram Subramanian & Leily Arzy, State Policing Reforms Since George Floyd’s Murder, BRENNAN CTR. FOR JUST. (May 21, 2021), https://www.brennancenter.org/our-work/research-reports/state-policing-reforms-george-floyds-murder [https://perma.cc/L8CR-LPBX].

196 See infra notes 197–212 and accompanying text.

197 Several initial challenges impede understanding of the nature and scope of physical law enforcement training across the nation. These challenges include inconsistency in publicly available training curricula and variation of terms used for hand-to-hand. Twenty-three states do not provide publicly available, easily accessible training curricula without a public records request. For available curricula, the varying terminology across state training resources precludes any deep analysis without auditing each state’s training program. For example, potential terms include “arrest and control,” “defensive tactics,” “use of force,” or “handling arrested persons.” No clear relationship exists between the availability of training curricula and geographic region or political majority. For instance, New York and Massachusetts are alongside South Dakota and Louisiana on the list of states that do not have publicly available, easily accessible training curricula. There is also no relationship between accessibility of training materials and inclusion of hand-to-hand; in other words, transparency does not correlate to more progressive training practices. The random nature of procedure and substance only adds to the lack of transparency and discord across state law enforcement training programs.

198 Most states have a specific law enforcement state agency, such as Police (or Peace) Officer Standards and Trainings (POST), or a commission by a similar name. HARMON, supra note 102, at 807–08.

199 VT. STAT. ANN. tit. 20, § 2358(a) (2022).

200 See id.
training requirement authority to the Department of Public Safety, which promulgated regulations outlining 672 hour “core basic training academy curriculum” for police officers, including twenty-two hours on the use of force as a defensive tactic. 201 Finally, at the municipal level, police departments have varying degrees of autonomy when articulating training requirements. Typically, local police departments are granted discretion vis-à-vis the relevant state agency in executing these trainings. 202 The sum total of this burden shifting is a lack of centralized authority in articulating police training standards.

Moving from procedure to substance, the broad state-level trend is that hand-to-hand training is either not required or is entirely lacking. 203 Although police officers are required to re-certify their use of firearms multiple times annually in many jurisdictions, 204 they are often required to complete only a few hours of physical training (or worse, no physical training) in a given year. 205 Of the twenty-seven states with publicly available training information,

201 N.M. CODE § 10.29.9.8 (LexisNexis 2022).
203 Although it is difficult to say with certainty, states with more granular use of non-deadly force standards may have more thorough police use of force training programs at both state and local levels. See, e.g., N.J. POLICE TRAINING COMM’N, BASIC COURSE FOR POLICE OFFICERS 143 (2016) (outlining the “Use of Force” unit in basic training and its reliance on the Attorney General’s more granular “Use of Force Policy” in learning to apply lawful use of force); Reducing Use of Force by Law Enforcement, N.J. OFF. OF THE ATT’Y GEN., https://www.njoag.gov/force/ [https://perma.cc/C82P-DNPR] (“Attorney General Grewal ordered that all 38,000 state, county, and local law enforcement officers in New Jersey complete an immersive, two-day training program on de-escalation and other tactics for limiting the use of force.”). However, this observation may merely reflect the public availability of relevant materials.
205 Frequently Asked Questions, IND. L. ENF’T ACAD. (Jan. 6, 2022), https://www.in.gov/iea/frequently-asked-questions/ [https://perma.cc/SG9T-KD2K] (requiring twenty-four hours annually, including two hours in physical tactics/use of force); N.Y. CRIM. PROC. LAW § 2.30(3) (McKinney 2021) (discussing an annual requirement for instruction in deadly physical force and use of firearms, no hours specified); BRIAN A. REAVES, DEP’T OF JUST., NCJ-249784, BULLETIN: STATE AND LOCAL LAW ENFORCEMENT TRAINING ACADEMIES, 2013, at 1, 5 & tbl.6 (2021) (showing that police spend most time on firearms training, sixty-seven hours, compared to just twenty-one hours on use of force training that includes de-escalation tactics); Jake Horton, How US Police Training Compares with the Rest of the World, BBC (May 18, 2021), https://www.bbc.com/news/world-us-canada-56834733 [https://perma.cc/N6D7-S2BP].
states break down into several categories. First, twenty-three of these states include hand-to-hand training during basic academy.²⁰⁶ Some of these states, however, only require these trainings for new recruits during basic academy, with no subsequent in-service training requirements.²⁰⁷ Second, some states have optional in-service trainings.²⁰⁸ For example, Marietta, Georgia provides a voluntary defensive tactics course derived from Gracie jiu-jitsu.²⁰⁹ Third, only seven of the twenty-seven states incorporate some form of hand-to-hand training during both basic academy and annual in-service trainings.²¹⁰ Finally, even prescribed training hours vary in structure and rigor. For example, in Indiana, the traditional curriculum has been a five-day class (forty hours total), emphasizing “on the feet” striking and weapons retention, but little to no training about what happens once individuals fall to the ground.²¹¹ The current in-service requirement is just two hours a year, but this does not have to be actual

²⁰⁶ These data are derived from a fifty state survey conducted by the author. As previously noted, for purposes of this analysis, hand-to-hand includes arrest and control, defensive tactics, use of force, or handling arrested persons.


²⁰⁸ Alaska has a limited-capacity voluntary “Fit to Fight” course that focuses on physical de-escalation. See, e.g., Alaska Krav Maga and Fitness, FACEBOOK (June 24, 2022), https://www.facebook.com/alaskakravmaga/photos/7578202525585962/ [https://perma.cc/TY9G-QRTP].


²¹⁰ These states include Arizona, California, Colorado, Indiana, Iowa, Maine, and Minnesota. California requires four hours of use of force training every twenty-four months, in addition to sixteen hours of use of force training during basic academy. CAL. CODE REGS. Tit. 11, § 1005(d)(4)(A) (2023); MINIMUM CONTENT AND HOURLY REQUIREMENTS: REGULAR BASIC COURSE (RBC)—STANDARD FORMAT 1, 1 domain no. 20 (2020). Maine includes fifty-eight hours of Mechanics of Arrest, Restraint and Control during basic training, as well as requires two hours annually for de-escalation training. See Basic Law Enforcement: Curriculum, ME. CRIM. JUST. ACAD., https://www.maine.gov/dps/mcja/training/basiclaw/curriculum.htm [https://perma.cc/EB4K-3AUD] In-Service Training Requirements for All Law Enforcement Officers (Full-Time and Part-Time), ME. CRIM. JUST. ACAD., https://www.maine.gov/dps/mcja/training/mandatory/law.htm [https://perma.cc/5RJ6-ES58]. Iowa includes Defensive Tactics during basic academy with four hours annually of de-escalation training. Basic Academy, IOWA L. ENF’T ACAD., https://ilea.iowa.gov/basic-academy/ [https://perma.cc/JWH9-NCEG].

“hands on” training and can instead be videos, a PowerPoint presentation, or even reading certain flyers.212

C. Policy Dynamics: The Political Economy of Policing

Such diffuse state and local regulation both reflect and perpetuate structural obstacles preventing the development of rules of force and hand-to-hand training. Generally, the political economy of policing highlights that police departments have extremely limited tolerances for tactics that would expose officers to physical danger. Such aversion may manifest in police union activity, insurance regimes, and civil asset forfeiture.

Police unions possess the power to demand approaches that put as much physical risk as possible on laypeople while minimizing physical risk to police.213 Police officers “are among the most densely unionized” groups in the United States.214 Given their role in forming and influencing department policies, police unions have become a significant part of scholarly discourse in recent years.215 One category of scholarship emphasizes the obstructionist critique, identifying police unions as an impediment to meaningful police reform because they oppose certain policies and constrain meaningful reform through binding terms articulated in collective bargaining agreements.216 This has arisen, for example, in initiatives by some police department leadership to have their officers wear body cameras; in some instances, unions protest on the ground that such cameras should not be worn unless police pay increases.217 At the extreme, this may interrelate with the trend toward the militarization of...
police strategies, equipment, training, and self-conception in recent decades.218 Given that hand-to-hand tactics notionally shift risk further toward police than, say, guns and tasers, it is thus possible that police unions have either objected to the use of hand-to-hand training in the past or the prospect of such obstruction has “chilled” innovation in this direction. It is telling that some jurisdictions, such as Marietta, Georgia, have not encountered such resistance because their departments are not unionized.219

Recent negative trends in policing policy may overcome some police union obstruction. Other “middle ground” tactics are ineffective—tasers have recently been shown to fail forty percent of the time, and OC spray affects both the officer and the civilian.220 Furthermore, the rise of social media has presented a new form of public accountability for such forms of law enforcement—footage of militarized police and physical enforcement punching and chokeholds have provided more significant disincentive for the deployment of such tactics. This sort of “immediate feedback” from the broader polity potentially changes the incentives of policing policy.221 This public shift in perception may also be drawing in other institutional actors, particularly insurance companies that have heretofore obstructed or failed to engage with hand-to-hand training.222 As Professor John Rappaport has recently described, police departments procure robust insurance policies to protect them from liability in civil cases.223 As a result, insurance companies may engage in their own constitutional interpretation of use of force policies, pushing police departments to provide more granular requirements than they might otherwise.224

A final variable in this political economy is civil asset forfeiture, which provides police discretion to allocate funding toward hand-to-hand training. At the federal, state, and municipal levels, police may seize assets that they rea-

218 See, e.g., BALKO, supra note 104, at 242 (documenting police militarization in the wake of the September 11th terrorist attacks); Scott A. Harman-Heath, The Quasi-Army Law Enforcement, Value Judgments, & the Posse Comitatus Act, 11 CALIF. L. REV. 367, 367 (2020) (“Few issues have been laid bare more clearly in the wake of the death of George Floyd than the prevalence and dangers of highly militarized police.”).

219 Interview with Reinaldo Figueroa, supra note 16.


221 See generally Steven Arrigg Koh, “Cancel Culture” and Criminal Justice, 74 HASTINGS L.J. 79 (2022) (discussing the role of social media in dictating criminal justice decision making).

222 See Rappaport, supra note 38, at 1573–94.

223 See id.

224 Id. at 1578–80.
reasonably believe to be the product of criminal activity. This may include, for example, real property, other property, or even simply sums of cash obtained through drug trafficking and sale. In the case of illiquid assets, law enforcement may sell such property and use the proceeds for police training or other uses. In recent years, criticism of such cases has resurfaced from scholars, policymakers, and even Supreme Court justices. For now, it appears unlikely that such policies will meaningfully change. Several police departments—including Marietta, Georgia, and Weymouth, Massachusetts—have initially funded their hand-to-hand trainings through money procured from drug-related asset forfeiture. If these regimes were to change, this could pose problems for police training budgets at a time when broader social movements pressure police funding. Mindful of the difficulty posed by the politics of policing and police funding, Part IV of this Article explores how police training in hand-to-hand training may be part of the answer to closing the body mechanics gap.

IV. CLOSING THE BODY MECHANICS GAP: THE PARTIAL PROMISE OF POLICE TRAINING

How may we close the body mechanics gap in law and policy? The simple answer is that legal actors and policymakers must attend to the inevitability, reality, and nature of physical restraint. And yet this answer belies the reality that policing in America is a vast, fragmented, and institutional enforcement practice. The political economy of policing alone requires volumes to compre-

226 Id. (“Most forfeiture activity occurs under Federal law, and most of that is connected to the traffic in illegal drugs.”).
229 Arlyck, supra note 228, at 1455–56.
230 Interview with Reinaldo Figueroa, supra note 16; Interview with Kevin Malloy, Sergeant, Weymouth Police Dep’t (Jan. 7, 2022).
232 See infra notes 239–423 and accompanying text.
hend, let alone reform. And, as noted above, divergent reformist and abolitionist paradigms question criminal justice’s future.

This Part and Part V of this Article thus call for a provisional balance between increased police training and judicial vigilance, in a broader context of deeper law and policy reforms. This Part—based on interviews with progressive police departments and law enforcement experts across the country, as well as review of hand-to-hand training curricula—will describe the nascent national trend in hand-to-hand training, drawing on original research and interviews alongside specific case examples regarding municipal and state initiatives. It will first consider Western cultural conceptions of violence, then the curriculum and specific skills that police officers learn, followed by institutional arrangements and data on use of force. Finally, it will consider the potential problems both with these trainings and their intersection with judicial categorization of intermediate force.

Legal scholarship on police use of force has paid little attention to hand-to-hand training. One notable exception is Professor Cynthia Lee’s aforementioned article, which notably addressed the potential of police hand-to-hand training in reducing race-related violence. In this work, based on an analysis of prior shooter bias studies, Lee argued that martial arts police training could give officers more confidence in their ability to handle volatile situations, relieve stress, and promote mental and emotional stability. The other is

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233 See infra notes 233–443 and accompanying text.
234 See infra notes 239–423 and accompanying text.
235 See infra notes 256–297 and accompanying text.
236 See infra notes 297–319 and accompanying text.
237 See infra notes 320–354 and accompanying text.
238 See infra notes 357–424 and accompanying text.
239 Legal scholarship on police training reform has focused on three general themes: training programs’ inadequate ability to prepare officers for the “social work” that officers are often called to perform in the field, the war-like mentality that police training instills in officers, and the effectiveness of police training to reduce the use of force, primarily but not exclusively focusing on the role of race. See generally Megan Quattlebaum & Tom Tyler, Beyond the Law: An Agenda for Policing Reform, 100 B.U. L. REV. 1017 (2020) (discussing the social work in which police officers are often undertrained and not prepared to perform despite the realities of their job); Darcy R. Samuelsohn, Comment, Educate, Don’t Escalate: Reforming the Qualified Immunity Standard for Those with Mental Illnesses to Incentivize Effective Police Training, 95 TUL. L. REV. 741 (2021) (underscoring the frequent inadequacy of mental health training for police officers); Seth Stoughton, Law Enforcement’s “Warrior” Problem, 128 HARV. L. REV. F. 225 (2015), https://harvardlawreview.org/wp-content/uploads/2015/04/vol128_Stoughton.pdf [https://perma.cc/RY97-2H2T] (examining in detail the warrior mentality that police officer training exposes to officers and actively cultivates); David A. Klinger, Police Training as an Instrument of Accountability, 32 ST. LOUIS U. PUB. L. REV. 111 (2012) (examining ways police training can be used to reduce use of force).
240 See generally Lee, Reforming the Law on Police Use of Deadly Force, supra note 8 (reviewing martial arts training to reduce shooter bias).
241 Id.
a 2022 essay by Professor Gregory Parks, who has argued that such trainings may redress racial bias in policing.\textsuperscript{242} Drawing on his expertise in psychology, Parks argues that martial arts training for police may partially mitigate the biases that police officers hold toward people of color, particularly Black Americans.\textsuperscript{243}

This assertion is timely, given recent political and law enforcement trends. During the 2020 election, Democratic candidate Andrew Yang asserted that police should engage in hand-to-hand training.\textsuperscript{244} During one town hall, he stated: “if a police officer knew that they could actually just subdue you . . . hand-to-hand, then the odds of them escalating to lethal force would go much much down . . . . That’s the kind of thing that would actually make us safer.”\textsuperscript{245} Yang’s proposal is not as anomalous as it sounds, nor is it restricted to Democratic politicians. In 2021, two Republicans in Michigan introduced a bill that would obligate the Michigan commission on law enforcement to require the rank of blue belt in Brazilian jiu-jitsu.\textsuperscript{246} Meanwhile, in recent years, municipal police departments in California, Georgia, Indiana, Massachusetts, Minnesota, New Jersey, and at least thirty other U.S. states have experimented with increased physical training for their officers.\textsuperscript{247} Some have reported a decrease in use of lethal force, decrease in use of other force, and decrease in injury to officer and civilian alike. Additionally, in 2021, the New Jersey Attorney General adopted for the entire state of New Jersey a new defensive tactics training program based on Brazilian jiu-jitsu,\textsuperscript{248} while the California Commission on Peace Officer Standards and Training (POST) approved a state-wide jiu-jitsu curricu-
lum for all police departments in the state. A 2021 TED talk also explored this question, while The Marshall Project and HBO’s Real Sports with Bryant Gumbel have recently featured this rising trend.

This Part does not conclusively advocate for nor claim to adjudicate the effectiveness of hand-to-hand training. That is an empirical matter that will take years for criminologists to study and understand. Rather, this Part situates such training within law, policy, and culture, while also highlighting the contours of future discourse regarding physical restraint. Section A discusses hand-to-hand training within traditional Western cultural perceptions. Section B details hand-to-hand training curricula. Section C provides practical examples from police forces focusing on hand-to-hand training and Section D considers how to evaluate such trainings.

A. Situating Hand-to-Hand Training in Western Cultural Perceptions of Violence and Anti-Asian Racism

Before turning to the substance of contemporary hand-to-hand training, we must situate such training in our collective American history and culture. At a deeper level, the lack of consistent, affirmative hand-to-hand training requirements may be the legacy of our Anglo-American heritage and, more recently, contemporary anti-Asian attitudes. Furthermore, the contemporary

252 See infra notes 256–296 and accompanying text.
253 See infra notes 297–319 and accompanying text.
254 See infra notes 320–351 and accompanying text.
255 See infra notes 352–419 and accompanying text.
256 While this Section primarily explores the anti-Asian dimension to cultural oversight of hand-to-hand training, other intersectionalities should be explored in future research. See infra notes 256–296 and accompanying text. Gender is most worthy of continued exploration. As noted below, police departments are disproportionately male and white. See infra note 294. Thus, much of the collective perception of violence in police departments reflects overly masculinized notions of violence. Another angle worthy of exploration is the degree to which hand-to-hand training may benefit women. On one hand, an emphasis on physical training may exclude female officers, who are generally physically smaller than male officers. On the other hand, many women engage in grappling martial arts for self-defense, on the ground that smaller opponents may use their opponents’ leverage against them. See, e.g., What Martial Arts Is Best for Small Women’s Self Defense?, GRANITE BAY JIU-JITSU (Jan. 31, 2021), https://gbjj.org/what-martial-arts-is-best-for-small-womens-self-defense/ [https://perma.cc/5FZP-
movement in hand-to-hand training draws on martial arts traditions—and much of the intuitive response toward dismissing such traditions draws on anti-Asian attitudes.\textsuperscript{257}

Historically, American policing tactics derive primarily from the English tradition, and such tradition has favored physical tools for almost two centuries.\textsuperscript{258} The London Metropolitan Police, often referred to as the oldest organized police department in the world, used a “short billy club” to subdue suspects.\textsuperscript{259} U.S. law enforcement inherited such a tactic by the mid-nineteenth century.\textsuperscript{260} It is reasonable to assume that this blunt force approach to policing evolved into contemporary law enforcement tactics regarding the use of force. Furthermore, policing in America arose alongside the advent of the firearm: police firearms training began as early as 1895, when then-President of the New York City Board of Police Commissioners Theodore Roosevelt authorized such training for police.\textsuperscript{261} By contrast, hand-to-hand training has a long but intermittent history in American law enforcement. In 1927, the Seattle Police Department began training in Japanese jiu-jitsu, and later police departments in Minnesota, Michigan, New Jersey, and California followed suit.\textsuperscript{262} In the wake of the Civil Rights Movement, martial artists also began training U.S. police departments.\textsuperscript{263} The Gracie family, the creators of Brazilian jiu-jitsu, have been conducting such trainings in the United States for three decades.\textsuperscript{264}

This path dependency is more apparent in the United States when compared to East Asian history. Historically, the first attempt at systematic martial arts training occurred in sixteenth-century China, when a Ming dynasty general NNYK]. It is possible that hand-to-hand training could thus be of particular benefit to female police officers.

\textsuperscript{258} Kaminski & Martin, \textit{supra} note 80, at 134.  
\textsuperscript{259} \textit{Id.} (citing BILL CLEDE WITH KEVIN PARSONS, \textit{POLICE NONLETHAL FORCE MANUAL: YOUR CHOICES THIS SIDE OF DEADLY} (1987)).  
\textsuperscript{260} \textit{Id.}  
\textsuperscript{261} 1 \textit{MARTIAL ARTS OF THE WORLD} 87 (Thomas A. Green ed., 2001).  
\textsuperscript{262} \textit{Id.} An even longer trend has existed in the U.S. military that has long drawn on martial arts when training its soldiers. Since 1995, for example, the U.S. Army led the Modern Army Combatives Program, which has drawn on a wide variety of martial arts traditions in order to train soldiers in hand-to-hand combat. 1/29 \textit{INFANTRY REGIMENT, FORT BENNING, GA., UNITED STATES ARMY COMBATIVES COURSE} 6 (2017), https://www.benning.army.mil/Armor/316thCav/Combatives/content/Course%20Materials/Basic%20Combatives%20Course/History%20of%20Army%20Combatives%20July%202017.pdf [https://perma.cc/ MR7T-M2LX]. The U.S. Army’s course materials even begin the history of the program with the heading “HISTORY OF MARTIAL ARTS.” \textit{Id.} The materials discuss the history of combatives training in the U.S. military from 1852, and include discussion of attempts to teach judo and jiu-jitsu during World War I. \textit{Id.}  
\textsuperscript{263} Kaminski & Martin, \textit{supra} note 80, at 134.  
\textsuperscript{264} Interview with Rener Gracie, Chief Instructor, Gracie Univ. (Dec. 14, 2021).
included both sword and boxing training in a military manual.265 Japanese police have been learning judo and kendo since 1947.266 The Taiwan National Police train law enforcement and corrections officers in kung fu.267 Of course, comparison to foreign law enforcement is limited given that many foreign jurisdictions limit private possession of firearms.268 And yet even a simple glance at other jurisdictions abroad shows a yawning gap in body mechanics awareness.269

Such historical explanation highlights a deeper contemporary cultural insight: hand-to-hand training, which draws from East Asian martial arts traditions, falls between two existing collective cultural constructions of martial arts in America. On the one hand, martial arts are seen as foreign, strange, unduly refined, and ineffective, thus laughably dismissed as detached from reality. On the other hand, martial arts exist through the prism of mixed martial arts in the televised Ultimate Fighting Championship (UFC) that many believe is unduly brutal.270 In interviews, police department leadership, officers, and jiu-jitsu police trainers reported combating these dual perceptions of martial arts as either ineffective or brutal.271 A sergeant in the Marietta Police Department stated that many officers were hesitant to engage in what they believe to be silly training from 1970s kung fu movies—or, alternatively, brutal UFC techniques.272 Rener Gracie, a Brazilian-American jiu-jitsu black belt who has led police trainings in recent years, interviewed a Marietta officer who noticed that “[h]ere’s where most [law enforcement] agencies get stuck: they believe they’re trying to do this special samurai ninja training that they need all these

265 MARTIAL ARTS OF THE WORLD, supra note 261, at 83.
266 Id. at 91; “Marshaling” an Old Art: Martial Arts in Police Training, FBI L. ENF’T BULL., Oct. 1994, at 24, 24 (“In Japan, all police officers train in various styles of Karate and Judo.”).
269 Such comparisons are also relevant in a time of greater cross-border law enforcement cooperation, wherein jurisdictions must manage criminal procedure constitutional rights and when prosecution may be deployed as a foreign policy tool. See generally Steven Arrigg Koh, Foreign Affairs Prosecutions, 94 N.Y.U. L. REV. 340 (2019) (considering cross-border prosecutions’ implications for defendant rights and foreign policy); Steven Arrigg Koh, Core Criminal Procedure, 105 MINN. L. REV. 251 (2020) (advancing a conception of criminal procedural rights in cross-border law enforcement); Steven Arrigg Koh, The Criminalization of Foreign Relations, 90 FORDHAM L. REV. 737 (2021) (considering extraterritorial law enforcement policy in the U.S. government); Steven Arrigg Koh, Othering Across Borders, 70 DUKE L.J. ONLINE 161 (2021), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1086&context=dlj_online [https://perma.cc/N2XF-YV7S] (considering the role of “othering” in transnational and international law enforcement).
271 Interview with Reinaldo Figueroa, supra note 16.
272 Id.
special requests for.”¹²⁷³ In the minds of many law enforcement institutions, martial arts is this image: exotic, ancient, and ultimately irrelevant for law enforcement purposes. By contrast, if law enforcement agencies were presented with the possibility of learning a highly effective and efficient way to defend oneself and reduce dependency on firearms, many police departments would likely adopt it.

To understand these two divergent collective perceptions, let us use the following thought experiment.²⁷⁴ Can you picture a boxer? You will likely think of muscularly built, shirtless fighters with tremendous grit and power. Muhammad Ali is among the most famous, as are Mike Tyson, Manny Pacquiao, and Floyd Mayweather.²⁷⁵ Now: can you picture a martial artist? You will likely think of Bruce Lee: a sleek, slender Asian man with his arms poised in a stylized way, focused and prepared to strike not with the powerful blows of a boxer, but with a flurry of light punches and kicks; this may also involve acrobatic jumping and yelling of certain strange, foreign sounds. This is the Western construction of martial arts: often viewed as “cartoonish,”²⁷⁶ very much tied up in the American notion of Asians as overly refined, physically weak, and even feminized.²⁷⁷ Consider the recent depiction of Bruce Lee

²⁷⁷ Chiung Hwang Chen, Feminization of Asian (American) Men in the U.S. Mass Media: An Analysis of The Ballad of Little Jo, 20 J. COMM’C’N INQUIRY 57, 68 (1996); Andrew Kung, The De-
in Quentin Tarantino’s 2019 film *Once Upon a Time in Hollywood*, in which Lee is depicted as exotic and distant, only to ultimately be beat up by a Hollywood stuntman played by Brad Pitt, the quintessential rugged American man.\(^{278}\) Jackie Chan, the next most famous film martial artist, is popularly conceived of as having a “slapstick acrobatic” and comedic style, not to mention being desexualized,\(^{279}\) as opposed to the rugged depiction of American boxers such as Rocky and Apollo Creed.\(^{280}\) As Edward Said has recognized, this is part and parcel of how Western countries have broadly viewed the East: mysterious but ultimately ineffective.\(^{281}\)

This racialized perception is starker when contrasted with the collective American perception of the UFC. In an interview, the aforementioned Rener Gracie stated that some police officers are hesitant to learn hand-to-hand skills because they fear they will learn gruesome UFC tactics.\(^{282}\) The UFC is a combat sports league that has gained popularity over the last two decades.\(^{283}\) It resembles boxing insofar as two fighters engage in combat over several rounds inside a ring, but differs from it because fighters may engage in almost any martial arts technique (e.g., kicking or wrestling).\(^{284}\) For many, the collective perception of the UFC is of brutal brawlers mercilessly beating their opponents to a bloody pulp inside a locked cage.\(^{285}\) In contrast to the perception of the

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\(^{279}\) See Gary M. Kramer, “Asian Men in Media Are So Desexualized”: Rising Star Jake Choi Fights the Hollywood Odds Against Asian American Actors, Salon (June 1, 2016), https://www.salon.com/2016/06/01/asian_men_in_media_are_so_desexualized_rising_star_jake_choi_fights_the_hollywood_odds_against_asian_american_actors/ [https://perma.cc/FAF4-EEQD].


\(^{281}\) Edward W. Said, Orientalism I (1987) (“The Orient was... since antiquity a place of romance, exotic beings, haunting memories and landscapes, remarkable experiences.”). Consider the scene in Steven Spielberg’s 1981 film Indiana Jones and the Raiders of the Lost Ark, wherein Harrison Ford is faced with a Middle Eastern swordsman dressed in black: the man laughs as he swings his sword in various ways as if prepared for a battle, only for an unimpressed Jones to respond by simply pulling a gun out of his holster and shooting the man. Raiders of the Lost Ark (Paramount Pictures 1981).

\(^{282}\) Interview with Rener Gracie, supra note 264.


\(^{285}\) When introduced in the 1990s, MMA was thought of as “barbaric and inhuman” and criticized as a sport without rules or “not a sport at all,” with some critics calling for the sport to be banned and
slender, cartoonish Asian martial artist, Conor McGregor—the UFC’s best-known fighter and a white Irish national—is praised for his “stout performances” and “brash trash talk.” And yet many would be surprised to learn that most UFC fighters characterize themselves as “mixed martial artists,” with many crediting Bruce Lee as their initial inspiration. Many UFC fighters are highly accomplished and sophisticated combat sports athletes and martial artists, holding black belts in Korean taekwondo, Japanese karate, or Thai kickboxing. The main differences are that these individuals are deploying these tactics in a live match and that they are mostly not of Asian descent.

The racialized nature of martial arts also explains why Asian-Americans are over-represented as hand-to-hand training advocates. It is not a coincidence that the only candidate to have discussed this in our national politics is Andrew Yang, a Chinese American who practices Brazilian jiu-jitsu. Likewise, it is not surprising that the only legal scholars to have seriously addressed this are going so far as to claim it would inspire “violence [to] spill over into society,” threatening public safety. Jesper Andreasson & Thomas Johansson, Negotiating Violence: Mixed Martial Arts as a Spectacle and Sport, 22 SPORT SOC’Y 1183, 1184 (2019). The late Senator John McCain, for example, once described the UFC as “human cockfighting” and called for the ban of such a “barbaric” sport. Nick Greene, How John McCain Grew to Tolerate MMA, the sport He Likened to “Human Cock Fighting,” SLATE (Aug. 26, 2018), https://slate.com/culture/2018/08/john-mccain-ufc-how-he-grew-to-tolerate-mma-the-sport-he-considered-human-cockfighting.html [https://perma.cc/YZD4-FEUP].

Cynthia Lee, who is also Asian American, and Gregory Parks, who trains in various martial arts traditions.293

Finally, these historical, cultural, and racial insights cast a novel light on racial dynamics within police departments. Although the 18,000 police departments in America vary widely in size, structure, and composition, police departments are disproportionately male and white.294 Thus, the same masculine cultures with structural and racial biases that might lead to over-policing and use of force might also trend toward excluding systems that it views as non-white and foreign.295 This may produce anti-Asian views. Such questions were mooted, for example, in the New York Police Department “scapegoating” an Asian American officer prosecuted for using excessive force in Brooklyn, while at the same time protecting white officers from prosecution in similar cases.296

B. The Curriculum

Hand-to-hand training for police has dramatically expanded in recent years.297 This modern movement in hand-to-hand training was sparked on or around the time of the Michael Brown killing in Ferguson, Missouri in 2014, and even more recently, the killing of George Floyd in 2020.298 Such training

295 See Frank Rudy Cooper, “Who’s the Man?”: Masculinities Studies, Terry Stops, and Police Training, 18 COLUM. J. GENDER & L. 671, 678 (2009) (arguing that police officers’ need to stage “masculinity contests” with civilians explains certain patterns of law enforcement, such as Terry stops and frisks and racial profiling) [hereinafter Cooper, “Who’s the Man”]; Frank Rudy Cooper, Masculinities, Post-racialism and the Gates Controversy: The False Equivalence Between Officer and Civilian, 11 NEV. L.J. 1, 19 (2010) (“A core aspect of the hegemonic pattern of police officer identity, as distinguished from the hegemonic pattern of U.S. masculinity in general, is the officer’s sense he must enact a command presence.”); Frank Rudy Cooper, Cop Fragility and Blue Lives Matter, 2020 U. ILL. L. REV. 621, 655 (arguing that police officers’ need to prove their masculinity supports the cop fragility thesis); Frank Rudy Cooper, Intersectionality, Police Excessive Force, and Class, 89 GEO. WASH. L. REV. 1452, 1498 (2021) (pointing out the police’s routine practice of “bullying black and brown people as a means of maintaining command presence” (citing Cooper, “Who’s the Man,” supra, at 674–75).
297 Interview with Rener Gracie, supra note 264.
298 Interview with James Woestman, supra note 211 (noting that hand-to-hand training has increased due to viral videos of police killings on social media, as opposed to specific use-of-force incidents in his jurisdiction).
may be found in some form in almost every U.S. state today. Often, hand-to-hand training occurs through collaboration between a police department and a martial arts school. It involves police officers learning tactics from grappling martial arts to restrain and control civilians safely.

What are officers learning in such trainings, exactly? The best-known and most widely adopted hand-to-hand curriculum is the Gracie Survival Tactics course (GST), designed and refined over the last three decades by members of the aforementioned Gracie family. The standard format is for a member of Gracie University, the GST creators, to spend a week in a municipal jurisdiction to train law enforcement in hand-to-hand tactics. An online training course is also available to train instructors who will, in turn, train their respective police departments. From there, GST requires authentication for only active-duty military personnel, active-duty law enforcement personnel, and actively employed first responders.

A review of the materials shows the following categories of hand-to-hand tactics. The first major category is the escape. In a situation where a civilian is on top of a police officer, the officer learns to use his or her body weight and leverage off of the ground to safely flip the person over without punching or kicking. The second category is the block, wherein police officers learn to defend against punches or chokes without responding in kind. The third category is control, wherein police officers use specific holds to immobilize the arm or


300 Gracie Survival Tactics (GST), supra note 247.

301 See id.

302 Application, GRACIE UNIV., https://www.gracieuniversity.com/Pages/Public/Application?enc=oVnDJOq1xY8gR3XjGc8ksQ== (fill out requisite application form sections to proceed to authentication).
leg, holding the person without punching or kicking. And finally, police learn techniques within the category of weapons retention, where they learn to use arm restraints to prevent civilians from reaching for their gun. These techniques are introduced in GST Level 1 and then further refined in GST Level 2, another week-long course. Specific techniques are also reserved for GST Level 2, including takedowns, or the practice of using leverage and the opponent’s body weight to take the opponent to the ground safely.304

Such hand-to-hand techniques derive from the “grappling” side of martial arts,305 which police departments increasingly prefer to the “striking” side of martial arts.306 As one sergeant in Marietta, Georgia stated, “we answer to society, and society doesn’t want to see us punching people.”307 Thus, although some departments have studied Muay Thai (i.e., Thai kickboxing), for example, the trend has been toward grappling arts.308 Grappling arts are potentially more effective and safer because they allow individuals to be taken to the ground and immobilized without physical damage. Judo is perhaps best known in the West given that it is an Olympic sport and has existed for longer in the United States.309 Derived from Japan, judo focuses on the use of the leverage of the opponent’s body to take the individual to the ground.310 Judo competitions involve no punching or kicking.311 In particular, police departments have most often drawn from the Brazilian jiu-jitsu tradition in hand-to-hand trainings. The literal translation of “jiu-jitsu” from the Chinese characters (柔柔) is “gentle art,” given it self-identifies as a martial art that does not involve inflicting physical damage on the opponent.312 Some describe jiu-jitsu as “fighting

303 This review is based on online access to the course materials. Gracie Survival Tactics (GST), supra note 247.
304 Id.
305 Such emphasis provides much needed descriptive clarity. The traditional dichotomy in law enforcement literature is between “soft hands” (e.g., guiding movements or escort holds) as opposed to “hard hands” (e.g., distraction blows, strikes, and takedowns). STOUGHTON ET AL., supra note 14, at 198–204. Often, other techniques are put into categories of various names. See id. (describing the categories of “Physically Holding a Subject Down” and “Chokeholds”).
306 Interview with Reinaldo Figueroa, supra note 16.
307 Id.
308 Id.
311 Laura Wright, Ju-Don’t Kick or Punch, Judo Grapples Attention, DAILY TEXAN (Sept. 14, 2012), https://thedailytexan.com/2012/09/14/ju-dont-kick-or-punch-judo-grapples-attention/ [https://perma.cc/MS3P-TRJJ].
“fire with water,” an alternative to “fighting fire with fire.” This is because jiu-jitsu focuses not on punching or kicking, but instead on using arm or leg locks or various vascular neck restraints to immobilize the other person. The sport of Brazilian jiu-jitsu is won without ever throwing a punch or kick.

Four aspects are critical to understanding the use and nature of such tactics. First, such techniques seem abstract. This should come as no surprise: the very nature of such physical techniques eludes clear description on paper. Perhaps for this reason, scholarship has largely overlooked these systems: martial arts are taught orally and are thus difficult to study systematically. Martial arts scholarship has traditionally been relegated to historians, who have noted that there are relatively few works on the subject despite its historical value. Existing research has discussed training manuals, history, and a meta-analysis on such scholarship’s importance, emphasizing its historical value in a field where it is frequently obscured by myth.

Second, regardless of this descriptive challenge, hand-to-hand skills acquired through training in grappling martial arts are highly functional in the real world. The critical point is that a person trained in grappling martial arts is not merely good at sport jiu-jitsu or judo within the confines of a rarefied rule set of athletic competition—such a person has real-world, functional skills applicable in non-sport situations. In the same way that Olympic water polo athletes have developed real-world swimming skills, Olympic judo practitioners have a tremendous advantage when engaging in a real-world physical confrontation. Whereas our collective Western intuition views the ability to engage in physical force as essentially a matter of strength or willpower, martial arts

314 Jujitsu, supra note 312.
315 See id.
318 See generally Henning, supra note 316 (reviewing the history of martial arts in China); Barry Allen, ASIAN MARTIAL ARTS: THE LEGACY OF THE WAR MACHINE, in MARTIAL ARTS IN ASIA: HISTORY, CULTURE AND POLITICS 2, 2 (Fan Hong & Gwang Ok ed., 2018) (reviewing martial arts traditions in Northeast Asia).
319 Stanley E. Henning, Academia Encounters the Chinese Martial Arts, 6 CHINA REV. INT’L 319, 319 (1999); Paul Bowman, Making Martial Arts History Matter, 33 INT’L J. HIST. SPORT 915, 915–16 (2016). As Brian Kennedy and Elizabeth Guo mention in their work on historical training manuals, although training has diverged from how it was historically practiced, “Chinese martial arts still can [be], if properly taught, . . . an outstanding form of self-defense.” KENNEDY & GUO, supra note 317, at 16 (emphasis added).
show that centuries of sustained attention to body mechanics can hone an ability to effectively defend oneself without damaging the other person.

Third, these are physical movements, some of which involve pressure or restraint on parts of a civilian’s body. This constitutes a clear form of police force—triggering Fourth Amendment constitutional concern and begging the question of how such techniques function “in the field” in the broader use-of-force continuum. This will be addressed further below.

Fourth, is a reminder to resist the temptation to dismiss such tactics based on their perceived “foreignness” or “otherness.” Such tactics are designed to address the very problem discussed in Parts I–III of this Article: the body mechanics gap, which exists between physical persons, is integral to the use-of-force continuum and is largely ambiguous in the minds of the police and in the American collective consciousness. The use of Asian-language terminology “others” such techniques in the Western mind. In fact, such schools of training merely describe highly developed systems of body mechanics knowledge.

C. Case Examples and Data on Use of Force

Let us consider case examples of these trainings. The Marietta, Georgia Police Department has one of the most established hand-to-hand training progr ats at the municipal level. Marietta began experimenting with such training after footage went viral in 2019 of police officers violently punching one individual to subdue him. More specifically, the triggering event was an altercation between one Renardo Nehemiah Lewis and Marietta police officers responding to a report of threats made inside an IHOP restaurant. Viral video of the IHOP incident shows officers shoving Lewis against the wall while trying to place him in handcuffs after he refuses to sit down. In the footage, Lewis breaks free, and officers wrestle him to the ground, with one officer punching Lewis in the head several times. This served as a “wake-up call” to the police department of 145 officers, which, under Georgia law, required annual firearms training but no hand-to-hand skill training. Since then, the Marietta Police Department began paying for Brazilian jiu-jitsu lessons for its

320 See BJJ Training Program—Data Summary, supra note 34; Ridderbusch, supra note 209; HBO, supra note 32.
322 Id.
323 Id.
324 See HBO, supra note 32.
officers and made it mandatory for new recruits. Although this initially started as a four-month trial, ninety-five of the 145 officers have since trained in the program, attending over 2,500 classes. According to internal department data, since the trainings began, Marietta has observed a 53% reduction of injuries to the person being arrested when force was required, a 23% reduction in taser use, and a 48% reduction of injuries to officers using force. Because the Marietta police officers are not part of a union, unions posed no obstacle to such training. Furthermore, funding for the hand-to-hand training was secured due to Marietta Police Department’s work with the Drug Enforcement Administration and related asset forfeiture, given that nearby Atlanta is a hub of drug trafficking and related law enforcement activities.

None of the Marietta officers who began the training have stopped; they all immediately saw its obvious utility in daily law enforcement, which consistently demands physical control and restraint skills. By one account, half of one percent of Marietta officers ever use their firearm, and yet, as soon as the first week on the street, officers will engage in some physical conduct related to policing. And although officers must show proficiency in firearm training twice a year, officers only learn defensive tactics for three days during an eleven week academy training, then never train in defensive tactics again.

This is not the sole municipal model; training requirements vary from department to department. Some require hand-to-hand training for new recruits but make it optional for all other officers; others have created a more flexible and optional program for officers of any level. In some cases, police departments or statewide police commissions pay for classes at a local martial arts school, with funding derived from a variety of sources, including sponsorship by local organizations, state and municipal channels, and asset forfeiture

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326 Interview with Reinaldo Figueroa, supra note 16.
327 BJJ Training Program—Data Summary, supra note 34.
328 Id.
329 Interview with Reinaldo Figueroa, supra note 16. As Section III.C explains, supra notes 213–230, police unions may engage in obstruction of police reform, as has been the case with body cameras in some jurisdictions.
330 Interview with Reinaldo Figueroa, supra note 16.
331 Id.
332 Id.
333 Id.
334 Id.; Interview with James Woestman, supra note 211.
derived from drug-related seizures. Others note that, over time, some officers begin paying for training on their own.

For example, the St. Paul, Minnesota Police Department has also engaged in such training since 2014, using jiu-jitsu to replace prior training focusing on “pain compliance,” or pressure points on the body that often led individuals to fight back harder, and, subsequently, officers to respond with punching, kicking, knee strikes, mace, or tasers. Today, by contrast, the emphasis is on physical de-escalation. New recruits were required to undergo training in 2015, and veteran officers began quarterly training in 2016. Between 2014 and 2020, since the training started, the data showed 37% reduction in the use of force; 68% reduction in officers employing strikes; 51% reduction in use of chemical irritants; 39% reduction in the use of tasers; 44% reduction in injuries to arrestees; and 25% reduction in officers’ injuries.

Hand-to-hand training has been integral to more wholesale law enforcement re-evaluation in some of the most progressive jurisdictions. The most notable example is Camden, New Jersey, which has won plaudits from progressives for completely disbanding its police force in 2012 and then reconstructing a new police force based on “unity policing,” described as marshaling the collective community—which includes police, residents, businesses, organizations, government, and schools—to prevent crime, promote safety, and improve society more generally. Overlooked in this coverage has been the role of hand-to-hand training, which is integrated into academy training daily.

Captain Kevin Lutz, who has an extensive background in grappling martial arts, leads the trainings. The rationale for such trainings is that with greater physical competence, officers will be more likely to slow down and avoid pan-

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335 See, e.g., Jennifer Jean Miller, Long Valley Partners Collaborate for Police Jiu Jitsu, PATCH (Dec. 6, 2021), https://patch.com/new-jersey/longvalley/long-valley-partners-collaborate-police-jiu-jitsu [https://perma.cc/5WHM-SZE6] (describing funding for hand-to-hand training through a veterans organization); Interview with James Woestman, supra note 211 (noting that funding for hand-to-hand training began with funding from Crown Point Community Foundation, a local organization that provides community grants for local agencies and private practice); Interview with Reinaldo Figueroa, supra note 16.

336 Interview with James Woestman, supra note 211.

337 Gottfried, supra note 299; STOUGHTON ET AL., supra note 14, at 191.

338 Gottfried, supra note 299.

339 Id.

340 Id.

341 Id. During that time, police also reported a twenty-nine percent increase in people who “demonstrated aggressive and assaultive behavior” toward officers and a fifteen percent increase of people carrying a weapon. Id.

342 See supra note 33 and accompanying text (providing a comprehensive discussion of Camden’s policing model).

343 Interview with Kevin Lutz, supra note 33.

344 Id.
ic because officers will know how to take a civilian to the ground and hold the individual there.345 Camden police officers undergo continuous in-service training, including with a VirTra 300 “wraparound” simulator that simulates situations from an active shooter to de-escalation.346 It is also building a practical application room with padded mats on the floor commonly found in martial arts academies to refine hand-to-hand techniques such as takedowns.347

Hand-to-hand training is not solely happening at the municipal level; states also play a role. One developing front is state-wide certification of hand-to-hand trainings. Peace Officer Standards and Training commissions (POSTs) are “statewide bodies that govern local law enforcement agencies.”348 They coordinate police training programs and, in some cases, mandate which trainings may be used and which standards local police departments must meet.349 Although they hold the potential to be influential in police reform, state POSTs have been “largely overlooked” in legal scholarship.350 At time of writing, hand-to-hand training has been certified by forty U.S. states’ POSTs.351 Most notably, on August 24, 2021, the New Jersey Attorney General’s Police Training Commission approved the use of a “defensive tactics training program based on Brazilian Jiu Jitsu.”352 The initiative’s stated goal is to “allow[] for control of resistant subjects while limiting officer and subject injury.”353 In particular, the Commission approved the GST Levels 1 and 2 courses354 for training, stating that they conform with the New Jersey Attorney General’s Use of Force Policy. The Commission will reimburse academies training police in such techniques.355 Similarly, the California POST approved a state-wide jiu-jitsu curriculum for all police departments in the state.356

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345 Id.
347 Interview with Kevin Lutz, supra note 33.
349 Id. at 1352.
350 Id. at 1353.
351 Gracie Survival Tactics (GST), supra note 247.
353 Id.
354 Id.
355 Id.
356 Jones, supra note 249.
D. Evaluating Hand-to-Hand Training

What are we to make of hand-to-hand training? This Section will consider an initial, intuitive objection: “are we really going to train police to become better fighters?”

It will then more granularly address objections rooted in irrelevance, overuse, and inherent danger, as well as the potential benefits of such training.

As noted above, this Article will not evaluate the empirical claim: namely, whether such training is or will be effective. Empirical research over a longer period is necessary to know what these trends represent; obviously, evidence-based policing and evidence-informed training are most desirable in policing reform. Methodologically, this Section will thus rely on pre-existing scholarly research data on policing, new data reported by police departments, and reports from interviews with given police departments. This is the best possible reconstruction of the phenomenon at this time and provides a framework for future research at the intersection of law and policy.

1. The Intuitive Objection

Before considering granular scholarly critiques, this Article addresses a central, overarching objection: “are we really going to train police to become better fighters?” For some, the mere idea of training police to be better at hand-to-hand skills may seem intuitively problematic, or even morally repugnant. In this conception, “the modern police officer is an agent of violence,” and thus we must summarily dismiss the possibility of providing such officers with tools to engage in such violence.

A few reasons suggest that we must, at a minimum, check such a response as we evaluate hand-to-hand training in law and policy. The initial reason to consider this is the initial empirics. As noted above, Marietta has observed a 53% reduction of injuries to the person being arrested when force was required, 23% reduction of the use of a taser, and 48% reduction of injuries to officers using force. Similarly, in St. Paul, Minnesota, between 2014 and 2020, since hand-to-hand training started, the data showed a 37% reduction in the use of force, a 68% reduction in officers using strikes, a 51% reduction in

357 See infra notes 361–376 and accompanying text.
358 See infra notes 382–401 and accompanying text.
359 See infra notes 403–423 and accompanying text.
360 This is, of course, always challenging: as one scholar noted, governing and regulating the police “require[s] data about local conditions and the costs and benefits of alternative policing strategies”—and “yet we lack that data.” Harmon, supra note 17, at 1121.
361 Ristroph, supra note 12, at 1192.
362 BJJ Training Program—Data Summary, supra note 34.
the use of chemical irritants, a 39% reduction in taser usage, a 44% reduction in injuries to arrested individuals, and a 25% reduction in injuries suffered by officers.\textsuperscript{363} To dismiss such data out of hand would itself be problematic; scholarly and policy analysis demands further analysis.\textsuperscript{364} As noted above, Gregory Parks argues that these outcomes may be rooted in psychological mechanisms that reduce police bias, particularly vis-à-vis perception and treatment of individuals of color.\textsuperscript{365}

Next, this intuitive response may boil down to skepticism of police training around uses of force: why teach police hand-to-hand tactics that they will use on laypeople? This question makes two central errors. First, it assumes such use of force is not already happening. In fact, as noted above, millions of encounters annually involve some physical restraint, and the vast majority of them by untrained officers. Second, it misconceptualizes training more generally, assuming that to “give” police something is to necessarily embolden them and endanger others. Consider this question: should police discontinue all firearm training? Almost certainly, the answer to this is no; the state must regulate police use of firearms, given they are the primary tool of deadly police force. Without any training whatsoever, police would almost certainly be more reckless with their firearm use.\textsuperscript{366} In the hand-to-hand context, we have essentially nothing governing police knowledge.

Relatedly, such an aversion to training police cuts against the grain of the accelerating national movement for de-escalation training.\textsuperscript{367} A rising trend in the United States,\textsuperscript{368} de-escalation training is—alongside anti-bias training—most demanded by policymakers, activists, scholars, police executives, and citizens alike,\textsuperscript{369} and is often touted as a “widely recognized and praised solution” to many situations dealing with excessive force.\textsuperscript{370} But unfortunately,

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{363} Gottfried, \textit{supra} note 299; see \textit{supra} note 341 and accompanying text (describing data from St. Paul’s introduction of hand-to-hand training).
\item\textsuperscript{364} Such analysis could, for example, consider the data sources themselves to determine whether the methods of collection are flawed. For a recent, deeper discussion of this topic, see generally Ngozi Okidegbe, \textit{Discredited Data}, 107 CORNELL L. REV. 2007 (2022).
\item\textsuperscript{365} See Parks, \textit{supra} note 8, at 52.
\item\textsuperscript{366} A logical question is whether too much firearm training undesirably makes police more likely to use firearms, suggesting that some middle zone may be most effective. In the physical restraint context, given how little hand-to-hand training exists, we cannot even begin to ask such a question.
\item\textsuperscript{367} As discussed more in Part V, \textit{infra} notes 427–443, de-escalation training is one of four major categories of police reform proposals, alongside funding, abolition, and bias initiatives.
\item\textsuperscript{369} Engel et al., \textit{supra} note 45, at 722.
\item\textsuperscript{370} Torres, \textit{supra} note 9, at 187.
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there is no universally accepted definition of de-escalation training. One specific definition is:

[T]aking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary . . . .

This may include creating greater separation between an officer and civilian, calming a combative civilian, waiting for backup or a supervisor, or trying to resolve situations with unarmed civilians without resorting to deadly force. According to some news reports, the heart of de-escalation is teaching police to speak in lower tones and act less threatening to calm a suspect down. Such training was included in the final report of the Obama Administration’s Task Force on 21st Century Policing—which was established just months after the 2014 killing of Michael Brown in Ferguson, Missouri and included, as an action item by members of the Equal Justice Initiative, “[l]aw enforcement agency policies for training on use of force should emphasize de-escalation and alternatives to arrest or summons in situations where appropriate.” Hand-to-hand training offers a potential similar to other forms of de-escalation training. Officers versed in these techniques may use the tactics to diffuse a physical conflict safely. The desirable outcome is that officers ratchet down the spectrum of police use of force, instead of escalating it as officers did in the Rayshard Brooks case.

Third, the intuitive response also derives from a wish that police not engage in forms of physical force. But as already noted in Part II, the problem of physical restraint is inescapable in even the most ambitious reconceptualizations of criminal justice. Police are—literally every minute in America—

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371 See Engel et al., supra note 45 at 724.
373 Lee, supra note 10, at 662.
375 THOMPSON, supra note 129, at 1 (citing OFFICE OF CMTY. ORIENTED POLICING SERVS., supra note 294).
376 OFFICE OF CMTY. ORIENTED POLICING SERVS., supra note 294, at 20.
377 See supra notes 48–50 and accompanying text.
378 See supra notes 89–105 and accompanying text.
putting “hands on” a layperson. This will emerge even if police are replaced with a bevy of community or other law enforcement actors. The question then becomes: do we provide training and regulation in this space? Or do we leave it to law enforcement to comport themselves using Western tools of violence—primarily punching and, at worst, escalating to deadly force with firearms? In either scenario, this space is completely underregulated, with virtually no guidance or training. This must be rectified.

Finally, the question itself—“are we really going to train police to become better fighters?”—exhibits the same Western cultural blind spot that characterizes the body mechanics gap. To ask this question is to assume that any hand-to-hand exchange involves “fighting,” a violent altercation involving fists, knives, or guns. In reality, another path exists, one wherein law enforcement actors are not rendered “fighters,” but are instead given physical competence to de-escalate violence once such a situation occurs.

2. Three Potential Objections

Having addressed the threshold, intuitive objection, let us consider three specific objections—all valid and thus warranting further academic research—that may be levied against hand-to-hand training: the irrelevance objection, the overuse objection, and the inherent danger objection.

First, the irrelevance objection: hand-to-hand training may make no difference given structural aspects of police brutality, especially racism. For example, scholars have noted that police killings have remained relatively static, even since the heightened collective national awareness of police violence in the wake of Michael Brown’s death in 2014. And deeper critiques, including many noted in Part II above, describe the carceral state as so deeply embedded in American history that an abolitionist reimagining is necessary.

Second, the overuse objection: police will potentially use hand-to-hand, not in place of deadly force, but to engage in excessive force that is unwarranted and/or disproportionate in a given law enforcement situation. This critique is also valid. How any tactics will be deployed, even with highly trained officers, is difficult to predict; in the field, officers balance various strategic goals, ranging from respecting individual rights to maintaining public trust and pro-

379 See supra notes 60–65 and accompanying text.
380 See supra notes 297–319 and accompanying text.
382 Sekhon, supra note 44, at 1712.
tecting community members from harm. Taser use may be an apt analogy, wherein officers deploy such tactics in too many situations, triggering above-noted judicial pushback and internal departmental reforms. Advocates for taser use have argued that the “effect is temporary but long enough for law enforcement officers to quickly handcuff a suspect” or otherwise control a person who is not complying with police orders. On the other hand, opponents argue that taser use has led to the death of hundreds of individuals of various ages and health conditions. At least one study from the University of Chicago found no evidence that tasers decreased police use of firearms.

Finally, the inherent danger objection: the tactics learned in hand-to-hand trainings may pose too much risk of harm to be used in the field, regardless of the law enforcement situation. This is also valid, at least in part. Most hand-to-hand tactics pose minimal risk to civilians and officers alike. For example, the GST curriculum involves learning how to block a punch—even officers poorly trained in blocking a punch are unlikely to cause serious harm to a civilian or themselves. Or as another example, police learn how to use their arms to engage in “weapons retention,” pinning a civilian’s arms in such a way to prevent the civilian from grabbing a police officer’s firearm.

But some techniques are riskier. The “choke” has rightly become the most infamous hand-to-hand law enforcement technique, leading to the well-known death of Eric Garner at the hands of law enforcement. Largely overlooked in this discourse is that “chokes,” as popularly described, break down into two categories of tactics. An “air choke” leading to loss of breath is never taught or used in hand-to-hand training, given that loss of oxygen can quickly lead to death. A different category, however, is the vascular neck restraint, which is sometimes seen in hand-to-hand curricula and the broader martial arts world as a safe way to immobilize another person. Such restraints involve a hold for around six seconds, leading a person to briefly lose consciousness due

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384 STOUGHTON ET AL., supra note 14, at 154.
385 Zitter, supra note 157, § 2.
386 Id.
388 The takedown, for example, involves using leverage and the civilian’s body weight to take the civilian to the ground safely. It is conceivable that a badly trained officer will put civilians at risk of hitting their heads. This is likely why such techniques are introduced in GST Level 2. And the riskiest technique is likely the vascular neck restraint. Let us consider this technique with precision and granularity. See Gracie Survival Tactics (GST), supra note 247; Gardner & Al-Shareffi, supra note 15, at 115–16.
389 Gardner & Al-Shareffi, supra note 15, at 115–16; STOUGHTON ET AL., supra note 14, at 203–04 (distinguishing between the two categories).
to restriction on the carotid arteries. After seconds, a person will wake up with no damage to their brain or body—more gentle than beating someone with fists or legs, and certainly less dangerous than shooting someone. For example, a civilian used this restraint to safely immobilize a threatening man on the Los Angeles subway; the video went viral and earned him national and international praise.

When, if ever, should police use this technique? As noted in Part III.B above, this question is moot in some states because the technique is legally foreclosed. State and municipal chokehold regulations vary widely, and thirty-seven states lack any chokehold policies. During the summer of 2020, police chokeholds were banned or restricted in thirty-three jurisdictions. In 2020, President Trump issued Executive Order 13,929, which required state and local police departments seeking federal funds to certify that they have banned chokeholds except in instances where deadly force is authorized. The Order, however, only addressed air chokes and left open the possibility of vascular neck restraints.

For the remaining jurisdictions, three considerations will be critical. First, even if vascular neck restraints are less harmful, they may be too challenging to learn and correctly apply. Even properly applied restraints may shift into a respiratory choke or, due to an improper twist of the neck, lead to paralysis or

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394 Gardner & Al-Shareffi, supra note 15, at 129.
395 Id. at 113.
397 Id.; Gardner & Al-Shareffi, supra note 15, at 118–19. Other legislative efforts have foundered. For example, in 2015, Representative Hakeem Jeffries introduced the Excessive Use of Force Prevention Act of 2015, a bill that would have amended 18 U.S.C. § 242 to forbid the use of chokeholds nationally; the bill did not receive a vote. H.R. 2052, 114th Cong. (2015) (“Section 242 of title 18, United States Code, is amended by adding at the end the following: ‘For the purposes of this section, the application of any pressure to the throat or windpipe which may prevent or hinder breathing or reduce intake of air is a punishment, pain, or penalty.’’’); H.R. 2052—Excessive Use Of Force Prevention Act of 2015, CONGRESS.GOV, https://www.congress.gov/bill/114th-congress/house-bill/2052 [https://perma.cc/W3NV-GMQX] (reflecting that H.R. 2052 was introduced but never reached a vote).
398 See STOUGHTON ET AL., supra note 14, at 204 (“The primary danger of a vascular neck restraint is that it will be applied improperly.”).
death. Second, it is highly likely the public perception of “chokes” is so negative that it is too damaging to public trust in law enforcement. Third, if permitted, police departments may narrowly circumscribe situations in which officers can deploy such tactics. Departments could restrict hand-to-hand to only lethal force situations, reasoning that officers permitted to use such holds may be less likely to use their firearm. Indeed, in at least one documented situation, the vascular neck restraint appears to have safely foreclosed police firearm use against a civilian. In Marietta, the current policy is that vascular neck restraints may only be used when officers are met with lethal force. In one case, an officer was pursuing a fleeing suspect, tackled him, and then the suspect reached for the officer’s gun. The officer used the vascular neck restraint to temporarily immobilize the suspect, defusing the situation without firing his gun at the individual.

3. Physical Competence and Psychological Confidence

Why might hand-to-hand training redress the body mechanics gap? First, it may close the body mechanics gap through physical competence. It potentially does so along all three dimensions described in Part I above. First, such training emphasizes knowledge of the physical space between individuals. When this space transforms from benign to acutely physical, officers may be more prepared to resolve such situations safely. Second, such trainings may illuminate the critical intermediate space in the broader use-of-force continuum. This could replace the collective under-specification in nomenclature with the singular category of “hand-to-hand” or “physical de-escalation”; this category will then be further fleshed out as a law enforcement tool alongside verbal commands, taser, and OC spray. And third, hand-to-hand training may close the body mechanics gap by endowing individual officers across the country with the physical tools to resolve physical restraint situations.

Another promising sign for hand-to-hand training is not just physical but psychological: in interviews, all participating police departments noted an increase in psychological confidence that police officers feel in “hands on” situations. Some published research backs this up. At least one study has sug-

399 Id.
400 Scholarship critical of chokeholds notes that officers barred from using such holds may be more likely to use their firearm. Gardner & Al-Shareffi, supra note 15, at 131 (“This is merely to suggest that in the absence of a deadly force exception to the police chokehold, police officers authorized to use deadly force may be incentivized to use force options more lethal than the chokehold.”).
401 Interview with Reinaldo Figueroa, supra note 16.
402 See supra notes 66–87 and accompanying text.
403 Interview with Reinaldo Figueroa, supra note 16; Interview with Kevin Malloy, supra note 230; Interview with Kevin Lutz, supra note 33; Interview with James Woestman, supra note 211.
gested that martial arts training increases confidence in police officers because they believe that they can defend themselves when interactions with civilians become combative.\textsuperscript{405} Professor Gregory Parks has also recently suggested that this arises not just from physical and mental skills, but also because martial arts facilities may expose officers to a broader racial community.\textsuperscript{406}

We might wonder if more police confidence is a good thing—don’t we have a societal problem of too much police confidence? In fact, as Lee and Parks have noted, the story is more complicated, suggesting that moments of a lack of confidence lead to police violence. Police officers in fear may have a “flight or fight response,” misinterpreting stressors and overreacting in unnecessary ways, especially given that certain white police officers may perceive Black people as more threatening.\textsuperscript{407} Some research on police officers shows that the most significant factor in police decisions to shoot is whether the officer “feels confident in his or her ability to command respect from the subject”—this is even more determinative than racial bias.\textsuperscript{408} Research has also shown that officers who “frequently think about the possibility of injury or danger experience more stress.”\textsuperscript{409} And studies show that officers have primarily identified administrative matters and relationships with nonpolice as stressors in police work—and that police stress is significantly related to officers’ acts of misconduct.\textsuperscript{410}

The cognitive function and psychological health benefits of martial arts training are also responsive to noted concerns about the occupation of policing more generally.\textsuperscript{411} Police officers worldwide are at an increased risk of devel-

\textsuperscript{404} Torres, supra note 9, at 195–96. Of course, other factors also contributed to confidence in “hands-on” situations. One study has shown that male officers are more confident in such situations than female officers, and that other variables relating to such confidence includes a higher body mass index, answering a large amount of high-risk calls, and working longer hours. \textit{Id.} at 197.

\textsuperscript{405} \textit{Id.} at 195.

\textsuperscript{406} Parks, supra note 8, at 49–50 (noting that the Contact Hypothesis in psychology is a means to reduce intergroup bias).

\textsuperscript{407} \textit{Id.} at 42–46.


\textsuperscript{411} Sandra Origua Rios, Jennifer Marks, Isaac Estevan & Lisa M. Barnett, \textit{Health Benefits of Hard Martial Arts in Adults: A Systematic Review}, 36 J. SPORTS SCIS. 1614, 1614 (2018); Brian Moore, Dean Dudley & Stuart Woodcock, \textit{The Effect of Martial Arts Training on Mental Health Out-
oping depression,412 anxiety disorders,413 and post-traumatic stress disorder.414 Martial arts athletes have reported significantly lower cognitive and somatic anxiety levels than other athletes.415 One study found that the benefits of martial arts may be hormonal, specifically by increasing oxytocin levels.416 Another study found that women in a Tai Chi type mindful exercise program experienced reduced mood disturbance, with less tension, depression, anger, and confusion.417 Although there has been some criticism of the methodology in some studies,418 the research indicates that martial arts participation is associated with a reduction in anger or assaultive and verbal hostility.419 Sharper focus is needed to assess how these promising benefits from martial arts disciplines could translate to police officers, or have utility in police work.

Psychological confidence may derive from physical acclimation in hand-to-hand combat situations. As noted above, little data exists on hand-to-hand combat: A Systematic Review and Meta-analysis, 24 J. BODYWORK & MOVEMENT THERAPIES 402, 410 (2020) (concluding that there is support for “martial arts training as an efficacious sports-based mental health intervention” for improving well-being).

412 Shannon Wagner et al., Depression and Anxiety in Policework: A Systematic Review, 43 POLICING: INT’L J. POLICE STRATEGIES & MGMT. 417, 417 (2020) (“[S]trong evidence supports the hypothesis that the prevalence of depression is elevated in police . . . .”).
413 Id. (finding moderate evidence that supports an elevated prevalence of anxiety in police).
414 Deborah B. Maia et al., Post-traumatic Stress Symptoms in an Elite Unit of Brazilian Police Officers: Prevalence and Impact on Psychosocial Functioning and on Physical and Mental Health, 97 J. AFFECTIVE DISORDERS 241, 243 (2007) (stating that prevalence rates of full and partial post-traumatic stress disorder (PTSD) among police officers from an elite Brazilian unit were 8.9% and 16% respectively); Ben Green, Post-traumatic Stress Disorder in UK Police Officers, 20 CURRENT MED. RSCH. & OP. 101, 101 (2004) (stating that prevalence rates for PTSD in U.K. police officers may be six or more times the prevalence rates for the broader community).
415 Infra notes 416–419 and accompanying text.
418 See Jorge Delva-Tauiliili, Does Brief Aikido Training Reduce Aggression of Youth?, 80 PERCEPTUAL & MOTOR SKILLS 297, 298 (1995) (reviewing methodological limitations that suggest conclusions on the effect of brief Aikido training on youths’ aggressive behaviors are premature); see also Rios et al., supra note 411, at 1614 (“[Q]uality of the evidence is affected by the methodological weaknesses across the studies.”); Kevin Daniels & Everard W. Thornton, An Analysis of the Relationship Between Hostility and Training in the Martial Arts, 8 J. SPORTS SCI. 95, 95 (1990) (finding that research results “support the need for prospective longitudinal studies on intra-individual hostility”).
419 Daniels & Thornton, supra note 418, at 95 (discussing findings showing that martial arts may “reduce assaultive hostility rather than serve as a model for such behaviour”); Kevin Daniels & Everard Thornton, Length of Training, Hostility and the Martial Arts: A Comparison with Other Sporting Groups, 26 BRIT. J. SPORTS MED. 118, 118 (1992) (“[P]articipation in the martial arts is associated, over time, with decreased feelings of assaultive and verbal hostility.”); Mary Ann Egan, The Effects of Martial Arts Training on Self-Acceptance and Anger Reactivity with Young Adults 4 (1992) (Ph.D. dissertation, University of South Carolina) (on file with University Microfilms International).
training and police. And yet, a way around this is through consideration of research on the psychological benefits of martial arts training more generally. In the same way that it is clear that firearms training increases the accuracy of police firearms use, research shows benefits of training in martial arts in confidence, calm, and cardiovascular health. Indeed, the interrelated physical and mental health benefits of martial arts training are well documented. British research on martial arts has concluded that studies generally indicate positive psychological effects from martial arts training. And a “majority of studies report[] positive effects resulting from hard martial arts practice,” including improvement and preservation of balance, cognitive function, and psychological health, regardless of the practitioner’s age.

V. CLOSING THE BODY MECHANICS GAP: JUDICIAL ENGAGEMENT AND OUR NATIONAL POLICE REFORM MOVEMENT

Beyond training, what is the future of physical restraint in constitutional criminal procedure and our broader national police reform movement? Section A of this Part argues that the other major prescription is judicial engagement. Section B then considers future possibilities to redress the problem of physical restraint, noting that such a future falls within complex, intersecting legal regimes of constitutional, statutory, and regulatory rulemaking, as well as the deeper political economy of policing.

A. Judicial Engagement

At the judicial level, courts must circumscribe hand-to-hand tactics in the field. As the U.S. Supreme Court clarified in 2021 in Torres v. Madrid, a Fourth Amendment challenge is available to civilians who have been injured in physical restraint situations. At the same time, we know that courts will nev-

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420 See Rios et al., supra note 411, at 1618–19; Brown et al., supra note 417, at 771–72.
422 Rios et al., supra note 411, at 1614.
423 Id.
424 See infra notes 426–438 and accompanying text.
425 See infra notes 439–443 and accompanying text.
426 141 S. Ct. 989, 994 (2021). For example, plaintiffs may recover on excessive force claims when police use canines, handcuffs, hog-tying, bean-bag or pepper-ball rounds, tasers, flash-bang devices, and acoustic devices. See, e.g., Hyde v. City of Willcox, 23 F.4th 863, 870 (9th Cir. 2022); Edrei v. Maguire, 892 F.3d 525, 529 (2d Cir. 2018) (finding a Fourth Amendment violation from use of a “long-range acoustic device”); Edwards v. Byrd, 750 F.3d 728, 732 (8th Cir. 2014) (asserting a claim against the use of, inter alia, flash-bang grenades and bean-bag guns); Cruz v. City of Laramie, 239 F.3d 1183 (10th Cir. 2001) (asserting a Fourth Amendment claim based on hog-tying); Vathekan v. Prince George’s County, 154 F.3d 173, 178–79 (4th Cir. 1998) (succeeding on a claim of excessive
er categorically prohibit physical restraint, given that they generally reject per se challenges to specific law enforcement devices or methods.\(^{427}\)

Qualified immunity doctrine may slow robust judicial consideration of physical restraint, particularly if novel techniques are used. Qualified immunity effectively raises the bar for plaintiffs in constitutional civil suits, meaning that even in cases where officers may have violated the Constitution, they will be granted immunity as long as they did not violate “clearly established law.”\(^{428}\) In 2009, in *Pearson v. Callahan*, the Supreme Court held that courts may rule on the latter without fully considering the former, meaning that a grant of qualified immunity effectively forecloses a merits-based analysis of police conduct in some instances.\(^{429}\) This means, as one scholar notes, that jurisprudence on “novel practices and technologies, like [t]asers and drones,” will slow because courts will, as a threshold matter, find that the caselaw does not clearly establish instances where such hand-to-hand contact violated a constitutional right.\(^{430}\) Should qualified immunity doctrine be pared back, as scholars and policymakers are increasingly calling for,\(^{431}\) courts will more proactively apply Fourth Amendment balancing to such cases. In instances where courts reach the merits in a case, civilian challenges to physical restraint will be left to the aforementioned vagaries of reasonableness balancing. Courts will “slosh [their] way through the factbound morass” of the nature of police use of hand-to-hand tactics, given the totality of the circumstances.\(^{432}\)

Courts should move toward a force-specific test of physical restraint—the furthest point in the spectrum of judicial intervention described in Section III.A above.\(^{433}\) Over time, courts should hone in on the precise circumstances in which such force is appropriate. This has already begun: to date, the U.S. District Court for the District of New Jersey has ruled that it would not dismiss plaintiffs’ 42 U.S.C. § 1983 claims when such plaintiffs were injured by a police canine bit the plaintiff); United States v. Johnstone, 107 F.3d 200, 205 (3d Cir. 1997) (finding excessive force where the plaintiff experienced physical force while handcuffed).

\(^{427}\) See Avery et al., supra note 111, § 2:18 (providing examples of how courts approach per se challenges to police use of force).


\(^{430}\) Schwartz, supra note 429, at 318.


\(^{433}\) See supra notes 110–163 and accompanying text.
lice jiu-jitsu-style takedown to the ground.\textsuperscript{434} This opens the door to a factual inquiry of whether the use of such a tactic was in fact reasonable.\textsuperscript{435} Judicial evaluation of such hand-to-hand tactics should ultimately redefine what constitutes reasonable force in certain physical restraint contexts. For example, courts may curtail the use of all neck restraints, limit the use of takedowns to the ground, but find that blocking of punches and weapon retention techniques do not meet the \textit{de minimis} force threshold.\textsuperscript{436}

This judicial shift may also draw in other institutional actors in the political economy of policing. For example, research shows that insurers have worked with police departments to foster officer “good judgment” using training simulators.\textsuperscript{437} The Camden, New Jersey Police Department is already developing a new training simulator involving robust physical escalation training, using padded mats on the ground.\textsuperscript{438} Insurance companies may fortify this initiative and push for its incorporation in other departments.

\section*{B. Future Possibilities in Reform and Abolition}

The next policy step must evaluate hand-to-hand training through the most rigorous methodologies possible. At least one recent randomized control trial—the gold standard for experimental and empirical research design—has shown that a robust system of Integrating Communications, Assessment, and Tactics (ICAT) training and implementation has reduced use of force incidents, civilian injury, and officer injury alike.\textsuperscript{439} Camden, for example, has been engaging in both ICAT and hand-to-hand training.\textsuperscript{440} Research focused on such departments may illuminate hand-to-hand training’s effectiveness. A critical

\begin{itemize}
  \item \textsuperscript{434} Capps v. Dixon, Civ. Nos. 19-12002, 20-1118, 2021 WL 2024998, at *3–4 (D.N.J. May 21, 2021). Furthermore, a dissenting judge in at least one state court has considered the training of an officer when evaluating use of force. Jarrell v. City of Nitro, 856 S.E.2d 625, 634 (W. Va. 2021) (“The majority, however, glosses over the fact that Sgt. Jarrell is a well-trained police officer and holds a second-degree black belt in judo, a second-degree black belt in jiu-jitsu, a second-degree black belt in taekwondo, a second-degree black belt in karate, and a third-degree black belt in taiho-jutsu . . . . Conversely, Mr. Hester was an intoxicated, nonthreatening, unarmed man.” (footnote omitted)).
  \item \textsuperscript{435} This development, applied to physical restraint tactics, could constitute a piece in a larger tactics-oriented reconceptualization of the Fourth Amendment. See Garrett & Stoughton, \textit{supra} note 13, at 290–301.
  \item \textsuperscript{436} See \textit{supra} notes 143–147 and accompanying text.
  \item \textsuperscript{437} See Rappaport, \textit{supra} note 38, at 1578–79.
  \item \textsuperscript{438} Interview with Kevin Lutz, \textit{supra} note 33.
  \item \textsuperscript{439} ROBIN S. ENGEL, NICHOLAS CORSARO, GABREILLE T. ISAZA & HANNAH D. McMANUS, CTR. FOR POLICE RSCH. & POL’Y, EXAMINING THE IMPACT OF \textit{INTEGRATING COMMUNICATIONS, ASSESSMENT, AND TACTICS} (ICAT) DE-ESCALATION TRAINING FOR THE LOUISVILLE METRO POLICE DEPARTMENT: INITIAL FINDINGS, at i, xii (2020).
\end{itemize}
question will be how hand-to-hand skills should be deployed on the ground, attentive to the irrelevance, overuse, and inherent danger objections.

Should such hand-to-hand skills be successful in reducing use of force and injury to civilians, states could implement more robust hand-to-hand requirements, both in use of force and training.\textsuperscript{441} In the short term, the aforementioned political economy concerns—police unions, insurance companies, and civil asset forfeiture regimes—may complicate adoption of such widespread legislative state mandates.\textsuperscript{442} But state POSTs could advance hand-to-hand training, as seen in the 2021 decisions in New Jersey and California to adopt GST statewide.\textsuperscript{443} And at the level of individual police departments, use of force policies must continue to be revised, and hand-to-hand training must be studied in greater depth. As discussed above, police departments have wide discretion to engage in hand-to-hand training; as a result, jurisdictions vary widely in terms of curriculum, institutional arrangements, funding streams, and data retention.\textsuperscript{444} While such departments experiment with training techniques best suited for their jurisdictions, they may learn, share, and mandate best practices for developing such programs within their various departments.

Let us conclude with final thoughts regarding reformism and abolitionism. Hand-to-hand skills should continue to be conceptualized alongside broader de-escalation and other reform movements. De-escalation training is a major category of police reform proposals that exist today, alongside movements such as re-evaluating the quantity and sources of police funding, police bias, de-militarization of the police, and reduction of firearms use. Hand-to-hand training should not take away from the validity of exploring such avenues of potential reform. We may well imagine a future where every police officer comes from the local community, is de-militarized, is highly versed in verbal de-escalation, and is highly conscious of the dangers of racial bias, operating within a police department with a community-oriented, prevention-oriented focus. Such an officer would have a wide range of tools at his or her disposal. When encountering an acute law enforcement situation, such an officer would always begin to verbally de-escalate before resorting to force. If such verbal de-escalation is unsuccessful, the officer would not punch or kick, but safely use hand-to-hand skills to de-escalate the situation—and thus not reach for their firearm.

\textsuperscript{441} At time of writing, it is improbable that the Yang proposal would be adopted at the federal level, and it is still too early to say that Michigan should adopt the aforementioned 2021 bill requiring police to have jiu-jitsu blue belts. H.R. 4525, 101st Leg., Reg. Sess. (Mich. 2021).

\textsuperscript{442} See supra notes 213–230 and accompanying text.

\textsuperscript{443} See Rau et al., supra note 36, at 1353; see supra notes 248–250 and accompanying text (discussing the New Jersey and California initiatives).

\textsuperscript{444} See supra notes 239–423 and accompanying text.
Finally, for those envisioning the abolitionist horizon, a new law enforcement future must close the body mechanics gap. A future with reduced violence, unarmed police, or perhaps even a lack of policing altogether, must attend to the reality of situations wherein an individual must be restrained. These situations may arise infrequently, hopefully, and be necessary only after robust intervention from social work and/or individuals trained in verbal de-escalation techniques. But such a future cannot afford to overlook this critical site of state-civilian engagement.

CONCLUSION

When police lay “hands on,” they may hurt or even kill laypeople. This Article grapples with this problem of physical restraint, which is overlooked and under-specified in American law, policy, and culture. This problem is inescapable in both police reformist and abolitionist agendas because it is inherent in enforcing laws and community norms. Although data on such situations is lacking, training and judicial engagement offer the initial promise of closing a body mechanics gap in physical space, collective conceptualization, and a lack of competence for law enforcement. Redressing physical restraint is alone no panacea for the pathologies of contemporary policing, but it is critically necessary for physical restraint to be conceptualized and explored in training. As criminal justice undergoes deeper reconceptualization and reimagining, policymakers and scholars alike must attend to this critical site of state-civilian engagement.