Policing America: Racism, Reform, and Redefining Justice

FIGURE 1  □ Breonna Taylor, June 5, 1993 – March 13, 2020

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INTRODUCTION

I was eating lunch at a well-known barbeque chain recently when the clock struck noon and the national anthem began to play over the loudspeaker. There were 20 people in the restaurant and I was one of three Black people. Everyone was standing, hats came off, and people started to sing. As a veteran, I placed my hand over my heart, as did everyone else, except my fellow Black brother and sister. I thought immediately: no hand over the heart is silent protest. As a student of history, I remember the Kerner Commission’s most quotable line in a report on racial unrest in the 1960s that predicted, “our nation is moving toward two societies, one black, one white—separate and unequal.” Failure to address racial inequities would result in the “continuing polarization of the American community and, ultimately, the destruction of basic democratic values.” Waiting for my fries, I felt I was witnessing the commission’s prophecy come true.

The news and cellphone videos published in the spring of 2020 captured what Black Americans have endured for so long. On February 23, 2020, a trio of white men in Glynn County, Georgia chased and shot Ahmaud Arbery, a 25-year-old unarmed Black man, as he jogged in a residential neighborhood. The shooters, who claimed self-defense, were not arrested until May 7, 2020. On March 13, 2020, in Louisville, Kentucky, plainclothes officers served a no-knock warrant at the apartment of Breonna Taylor, a 26-year-old emergency medical technician. Officers were looking for Taylor’s former boyfriend, suspected of selling drugs. When officers crashed through the door, Taylor’s current boyfriend shot at who he thought were intruders and officers fired back, shooting Taylor eight times, killing her. No one was arrested. On May 25, 2020, Christian Cooper asked Amy Cooper (no relation) to leash her dog as he watched birds in New York City. Incensed, Amy Cooper called 911 and claimed that, “There is an African-American man—I am in Central Park—he is recording me and threatening myself and my dog. Please send cops immediately.” Amy Cooper was gone when officers arrived, but was later charged with filing a false police report after public outcry over the event on social media. The same day on a Minneapolis, Minnesota street corner, George Floyd, a 46-year-old father of five suspected of passing a counterfeit $20-dollar bill, was placed face down with his hands handcuffed behind his back and slowly suffocated under the weight of a police officer’s knee on his neck for close to nine minutes. Floyd’s last words were, “I can’t breathe.”

Americans saw for themselves that while, in theory, all lives matter in the criminal justice system, when the victims are Black and the offenders are white, Black lives matter less. What follows in this brief primer is an examination of the intersectionality of race and policing, the push for police reform, and for a new definition of community policing that makes “equal justice under law” a reality. I use the term Black, which includes African Americans, but not every Black person in America is African American. I am not here to castigate or shame and blame law enforcement. My hope is by discussing race and policing from different perspectives, we harness the power to change our society and heal the relationship between police officers and the Black community. Let us make the most of this moment in time.

Stephanie A. Jirard
August 2020
“We are all human, and we all just want a chance: A chance at life, a chance in education, a chance at a future, really.”

Robyn Rhianna Fenty, Harvard University, February 2017

A brief history

Does racism exist in America? The answer may not be obvious to you, especially if you rely on news reports, pundit opinions, or listening to the country’s elected officials to answer that question. On June 17, 2020, the U.S. Senator for South Carolina, Tim Scott, the lone African American in the Republican caucus stated, “We are not a racist country.” A mere 11 days later on June 28, 2020, Senator Scott was in the news again reacting to President Donald Trump’s Twitter post showing a supporter yelling “white power.” Senator Scott reacted and said, in part, “The truth of the matter is when you hear things like that racist chant towards white power, we should have the same response with the same type of energy that we have for those folks we know have been disadvantaged for so long.” Scott’s whiplash response—denying and then accepting racism in America—represents the political divide of defining Black history in America.

Life is defined by rhythm and ritual. We have baseball in the spring and football in the fall. We have graduations and holiday gatherings. Life in America is defined by the “original sin” of kidnapping and enslaving Africans for labor for the economic benefit of white Americans and then excluding, after slavery ended, those with black skin from full integration into American society. The scholarly work on the history of slavery and African American repression in America’s social and legal life is legion. Current political figures such as Attorney General William Barr and National Security Advisor Robert O’Brien testified in June 2020 that systemic racism does not exist in American policing, although empirical studies suggest that, indeed, Black people are shot more often, arrested more frequently, and sentenced more harshly than their white counterparts. Whether one believes systemic racism exists in policing or not, there exists wide racial differences in trusting that police officers act in the best interests of the public, with Black people expressing much less confidence that police officers are responsive to their community needs. 

To understand what is meant by the term structural or institutional racism and how it affects the criminal justice system, let us rewind the clock to the early 1800s to take a snapshot of a southern plantation, its mansion, and its enslaved persons (see Figure 2). To build a mansion, start with the foundation and then build the structure. The foundation of the mansion is African slave labor, underneath the main house, “permanently barred by law and custom from mainstream society.” Churchgoers were, however, troubled by slavery’s dehumanizing practice. To appease those inclined to abolition, politicians turned to science to explain the natural inferiority of the Black race and, hence, the virtue in slavery in giving Black people a natural outlet for their “beastly” nature. Punishments for enslaved
people, who were perceived not as sentient humans but rather as one step above the ape (see Figure 3), had to be harsh to be memorable: slave collars, whippings, amputating limbs to prevent escape, rapes and, of course, lynchings.²

**Structural racism** is the way America was built to support racial segregation; it is the mansion’s foundation, roof, and walls. The structure of democracy is the rule of law everyone must obey. Society’s institutions dictate our social interactions and well-being and are represented by each room of the mansion. Institutions, like the mansion’s rooms, are interconnected and organize our daily lives—jobs, schools, neighborhoods, and justice. If criminal justice is room number 1, prosecutors can decide who to charge and what crime to charge; they can move the couch and end table, for example, but room furnishings do not change the mansion’s structure (see Figure 2). Racism embedded in the structure of American society directly influences organizational behavior, which is called **institutional racism**.³ Society’s institutions dictate our social interactions and well-being. Institutional racism is each room of the mansion. Room 1 is our justice system, room 2 our schools, room three 3 neighborhoods, and room 4 our jobs. In each room furniture can be removed or rearranged, but room content does not
change the mansion’s structure. For an example of institutional racism, let us look at the federal sentencing guidelines ("Guidelines"). The guidelines enacted in 1987 reduced all sentencing to a mathematical score to reduce disparities among different people convicted of similar federal offenses: The higher the score, the longer the sentence. A defendant’s criminal history may raise their sentencing score.

In 1998, federal judge Nancy Gertner of the District of Massachusetts was determining Alexander Leviner’s sentence for felony possession of a firearm and noticed his prior
convictions were for traffic offenses while driving in wealthy, white Boston suburbs. Leviner is African American. Judge Gertner noted the “fact that African American motorists are stopped and prosecuted for traffic stops, more than any other citizens,” and refused to calculate the driving offenses in Leviner’s criminal history score. Leviner’s traffic offenses are now known as an example of the “driving-while-Black” penalty. The invisible hand of over-policing drivers of color in white neighborhoods can lead to more convictions for minor offenses resulting in, ultimately, longer federal sentences.

For those who may still question if America is a society that treats people differently based on race, legal cases reflect the historical arc of our institutions (see Figure 4). The Dred Scott (1857) case confirmed the status of Black people as “inferior” slave chattel (property) never meant to enjoy the fruits of citizenship. The promise of legal equality is often tempered by court decisions that limit the promise. The Thirteenth Amendment abolished slavery, except upon conviction of a crime. The conviction exception perpetuated Black servitude through the criminal justice process. The Fourteenth Amendment declared everyone equal under the law, but Plessy v. Ferguson (1896) upheld state authority to establish “separate but equal” facilities based on race.

![FIGURE 4](image_url)
To prevent school integration ordered by the *Brown v. Board of Education* (1954) case, governments in southern states enacted laws designed to keep Black people and white people separate in what Senator Harry Byrd of Virginia called “massive resistance.” Virginia’s Prince Edward County shut down the entire school district from 1959–1964, leaving Black children uneducated while white children attended state-funded academies, as told in the *Griffin v. Prince Edward County* (1964) case.

In 1924, Virginia’s Racial Integrity Act (Act) outlawed interracial marriage between Black people and white people because such unions were “scientifically unsound.” The act’s racism was portrayed as a “public health concern.” In medical care, the federal Public Health Service deprived Black men of a cure for syphilis for 40 years for the chance to watch how the disease ravaged the body and infected families, as told in the *Pollard v. United States* (1973) case. In criminal justice, it was routine practice for the government to ensure Black defendants were judged and convicted by all-white juries by the systematic exclusion of eligible Black jurors, a history told in the *Foster v. Chatman* (2016) case. The government continues to restrict the right to vote and access to the ballot box based on race as explained in *Shelby County v. Holder* (2013). In housing, the government allowed real estate covenants to restrict home sales based on race and allowed mortgage companies to redline Black citizens into impoverished neighborhoods, as revealed in the *Shelley v. Kraemer* (1948) case.

Where one lives has an impact on susceptibility to police violence. Enslaved people, denied equal opportunity to enter through the mansion’s front door, were relegated to the back. Enslaved people could only move through the mansion and enter rooms with white permission. Enslaved people were not invited into the parlor to sit and enjoy afternoon tea as guests of their white hosts; under no circumstance could one imagine people who were enslaved as hosts being waited upon by a white staff. Slave cabins had none of the amenities of comfort. In the absence of access to society’s institutions from which people derive worth and value, such as employment for profit and education for skill, the collection of families who were enslaved on a plantation suffered from despair, poverty, and crime, ailments that still infect marginalized communities today. Indeed, in speaking about racial segregation in housing during the 1960s, the Kerner Commission reported, “white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.”

Research shows that “[r]acial residential segregation is a significant predictor of the magnitude of the Black-white disparity in fatal police shootings at the city level. Efforts to ameliorate the problem of fatal police violence must move beyond the individual level and consider the interaction between law enforcement officers and the neighborhoods that they police.” Creating mixed-income housing neighborhoods is one way to racially integrate neighborhoods, where people of color who populate low-income housing can have wealthier, often white, neighbors. The government continues to resist residential integration based on income, though. President Trump tweeted on August 11, 2020, “The ‘suburban housewife’ will be voting for me. They want safety & are thrilled that I ended the long running program where low-income housing would invade their neighborhood.” Many people read the president’s tweets associating low-income housing with a safety risk as leveraging institutional power to maintain the status quo and disparities in policing based on zip code.
Implications for American policing

Implicit bias and over-policing marginalized communities

As a long-time criminal justice professional, I know that police officers in America are often good, decent, and honorable people. Most police departments are dedicated to helping victims, solving crimes, and preventing violence. There is a general acknowledgment that police actions are based on the crime committed and the suspect’s behavior, rather than a suspect’s race. Racially-biased policing, however, is connected to the steady diet of implicit biases we eat from the table of media, politics, and law and the way institutions construct race. Implicit bias is a mist we inhale that shortcuts our brains to make quick associations like cats and dogs and ketchup and mustard. It is “the automatic and unconscious stereotypes that drive people to behave and make decisions in certain ways.” America’s effort to keep Black people in the figurative basement of social relations has created the implicit bias associating “black” with “the other.” The problems that have plagued America’s race relations have also infected American policing. As the father of modern policing Robert Peel said in his 1829 principles, “. . . the police are the public . . . the public are the police.”

Early colonial watchmen patrols were unarmed volunteers. At the height of slavery in the 1800s, slave patrols bore arms as officers chased runaway slaves from state to state to repatriate “property” back to their owners, a practice codified by law. After the Civil War, police officers enforced the Jim Crow laws separating Blacks and whites while the Ku Klux Klan’s lynchings went unpunished. In the 1950s in California, Chief William Parker of the Los Angeles Police Department (LAPD) organized the force into a quasi-military hierarchy. Los Angeles freeway development isolated marginalized communities making police cruelty to Black residents all but invisible. On August 11, 1965, after a Black motorist was unlawfully arrested, the Watts neighborhood in Los Angeles erupted into days of rioting, looting, protests, and deaths—a now familiar cycle of clashes sparked by white officers mistreating or killing Black men: in Miami (1980), when a jury acquitted police officers in the beating death of Arthur McDuffie during a traffic stop; in Los Angeles (1992), when a jury acquitted police officers in the beating of motorist Rodney King; in Ferguson, Missouri (2014), when an officer killed Michael Brown; and in Portland, Oregon (2020), with over 50 days of protests and property damage in the demand for justice for George Floyd’s death.

The first entry point into the criminal justice system is typically through police contact. Not all police officers treat people differently based on race, but what accounts for the disparate numbers in a police encounter with a Black person more likely resulting in an arrest than a white person? Leading sociologist James Q. Wilson, a criminal justice giant, with co-author George L. Kelling, advanced in 1982 the “broken windows theory” of crime prevention, which posits a window that remains broken indicates neighborhood neglect and invites crime. In practice, the theory lead to vigorous enforcement against low-level quality of life crimes common in poor urban areas. Wilson then wrote with fellow Harvard University professor Richard J. Herrnstein a definitive tome that linked biology and crime. In Crime and Human Nature, Wilson and Herrnstein conclude that “constitutional traits [genes] correlate with criminal behavior,” or in the words of Lady Gaga, criminals are “born this way.” The Holocaust in WWII grounded its legitimacy in eugenics, the “science” of culling the human race of
defectives to genetically engineer a superior race. In Wilson’s analysis, a person’s intelligence quotient (IQ) was mainly fixed by social caste. Herrnstein then advanced his IQ work in 1994 with Dr. Charles Murray when they co-wrote, *The Bell Curve: Intelligence and Class Structure in American Life.*

*The Bell Curve* remains controversial for its main tenet that IQ is immutable and heritable and is represented in society by the bell’s shape. If you trace the arc of a bell, one side starts low, rises to an apex, and then descends to the other side, which represents the highest achievement. Charles Murray, in an interview about the curve, argued either side of the bell was fixed, impervious to external forces. Thus, the government should direct tax dollars for the benefit of the greater good—those in the middle of the bell curve. Murray says that society has no control over where people of different races fall on the curve. If it just so happens that the lower end of the curve is heavily populated by Black people and the middle by white people, so be it. Murray insists the bell curve argument is not racist, although some authors disagree.

The marriage of the “science” that asserted that the enslaved population were animal-like with an inherent low IQ to the public policy of racial separation made police enforcing the law the *de facto* form of social control for Black people. The association of “black” and “beast” is used as a shortcut in popular culture representing Black men as hyperaggressive and hypersexual, depicted in films such as *The Birth of a Nation* (1915) and in books such as *To Kill a Mockingbird* (1960). This association has been used to instigate mass murder, as in the case of Dylann Roof, who shot and killed nine Black parishioners during a prayer service at Charleston, South Carolina’s Emanuel African Methodist Episcopal Church in 2015 because, according to Roof’s confession, he had to stop Black men from “raping white women.” The consequences of the implicit bias association of “black” and “criminal” has justified the disproportionate *use of force* against black bodies.

Researchers studied two different groups of test subjects, police officers who were mostly white men in their 30s and college students who were mostly white women in their 20s, to measure overt prejudice and unconscious bias. The studies asked subjects to complete a psychological test in which they matched photos of Black and white children with photos of large cats, like lions or tigers, or with apes. The results indicated that those police officers who trended toward “dehumanizing” Black children were also officers whose records indicated a history of using force against Black children in custody. And the college students who were subjected to the same baseline of animal imagery and photographs of Black and white children overestimated the age of the Black child by four years, which means the perception of a child of color was that he was nearly 14-years-old, when in reality he was 10-years-old—that’s the difference between a fifth and a ninth grader. Presuming a Black child is older and more culpable may have tragic consequences, as in the Cleveland, Ohio, November 22, 2014, death of 12-year-old African American Tamir Rice, shot by a white police officer while holding a simulated rifle in a deserted playground; the first officer to call in reported, “Shots fired. Male down. Black male. Maybe 20.” The president of the police union, Steve Loomis, confirmed that officers did not perceive Rice to be a preteen when he said, “Tamir Rice is in the wrong . . . He’s menacing. He’s 5-feet-7, 191 pounds. He wasn’t that little kid you’re seeing in pictures. He’s a 12-year-old in an adult body.” Officers not only believed Rice was an adult, but in the two seconds it took from arriving on the scene to fatally shooting Rice, they also believed their lives were at risk by the toy rifle and, under the law, were allowed to respond with deadly force.
Use of force continuum

The Fourth Amendment to the U.S. Constitution prohibits “unreasonable” seizures. Arrests are “seizures,” and using unreasonable force in subduing a suspect violates the Constitution. In the seminal case Tennessee v. Garner (1985), 15-year-old Edward Garner, an African American teenager in the eighth grade, was shot in the back of the head running from a home from which he had stolen $10 and a purse. Tennessee law allowed officers to “use all the necessary means to effect the arrest.” Mr. Garner’s family sued the police department, and the U.S. Supreme Court found that Garner paying with his life for the misdemeanor of eluding arrest was unreasonable. In evaluating the legality of an officer’s use of force, the U.S. Supreme Court is loath to be too prescriptive. The Court said in Graham v. Connor (1989), “the relevant inquiry is ‘whether the officers’ actions [were] objectively reasonable in light of the totality of the circumstances.’” To determine reasonableness, reference is typically made to the Use of Force model (see Figure 5). The appropriate use of force on the right is triggered by the suspect’s behavior on the left. An offender yelling and screaming (threshold resistant active) does not trigger pepper spray in the face and eyes (harmful defensive tactics). Actively fighting in resisting arrest (harmful assultive bodily harm) does not trigger the use of deadly force (lethal). By the time George Floyd was handcuffed on the ground, he was compliant (professional), and restricting Floyd’s airflow, a defensive tactic (harmful), was excessive.

On June 12, 2020, Atlanta police officers spoke to a drunken Rayshard Brooks for over 30 minutes before effectuating an arrest. Brooks grabbed an officer’s Taser and ran away, discharging the Taser in the officers’ direction (assultive bodily harm). The corresponding

![Figure 5: Use of Force Continuum](image-url)

**Source:** The Use of Force Model was developed by Dr. Franklin Graves, Federal Law Enforcement Training Center, and Professor Gregory J. Connor, University of Illinois Police Training Institute. Copyright 1997, G. Connor. All rights reserved. Used by permission.
reaction for officers on the force model should have been a defensive tactic (harmful), but the use of lethal deadly force by shooting Brooks in the back was excessive, and the officer was charged with murder. The dilemma for an officer whose use of deadly force is unwarranted was the April 4, 2015, shooting death of an unarmed Black man, Walter Scott, after a traffic stop for a defective taillight in South Carolina. Office Slager shot Scott eight times in the back as Scott was running away. Cellphone video caught Slager placing his service Taser next to the fallen Scott, providing Slager justification for the use of deadly force. In 2017, Slager was sentenced to 20 years in prison after pleading guilty to federal civil rights violations and, in exchange, the state murder charge was dropped.

Reform in police officers’ use of force against the public requires a mandatory assessment of how often officers use force and against whom, and a clear definition of when use of force is “excessive.” There is no single central repository for data on police use of force. Police and sheriffs from around the country (18,000 agencies) may voluntarily provide the federal government information, making toothless the law that requires the U.S. Attorney General to compile use of force statistics. Private efforts to capture data on officers’ use of force are seeking to fill the information void.

Evidence of a race-based effect of policing tactics

Let us use as an example excerpts from government investigations into institutional practices that structurally disadvantaged Black people based on race in New York City, Chicago, and Ferguson, Missouri.

**New York City, 1990s–2000s.** Civil libertarians sued the New York City Police Department (NYPD) for random stops and frisks to find illegal drugs and guns. The law under *Terry v. Ohio* (1968) requires articulable suspicion that “criminal activity is afoot” to justify a stop. Research found that after controlling for the differences in NYPD precincts and “race-specific estimates of crime participation,” police stopped people of color at a rate that far exceeded their percentage of the population. For example, between 2004 and 2012, NYPD stopped 4.4 million people and more than 80 percent of those stopped were Black and Latino. Despite the city’s excuse that racial-ethnic minority communities are high-crime areas, justifying police focus under the problem-oriented policing (POP) model, on August 12, 2013, a federal judge found the amount of contraband discovered during stops was so small that the crime prevention rationale did not justify the blatant racial profiling in violation of the citizens’ constitutional rights.

**Chicago, IL, 2014.** The killing of teenager Laquan McDonald by police on October 20, 2014, as he skipped knife in hand on a busy street after slashing tires, was a capstone to years of police brutality in Chicago’s Black community. The Department of Justice (DOJ) investigated whether the Chicago Police Department (CPD) engaged in a “pattern and practice” of racial discrimination. After interviewing hundreds of people, reviewing thousands of documents and hours of videotape, the DOJ concluded the CPD engaged in excessive and abusive maltreatment “especially toward black and Latino residents.” A common refrain from Black residents was with the CPD, there was “no treating you as a human being.” No area of the
Community Reactions to Police Violence

CPD operations was untouched by a failure to train properly in the law and custom of the use of force. Inconsistency ruled the day.

Ferguson, MO, 2015. The killing on August 9, 2014, of teenager Michael Brown by a white officer over a struggle with a gun sparked community protests based on reports that Brown had his hands up in surrender when shot. The DOJ conducted an intensive investigation of life for Black residents in Ferguson and discovered the court system, working in tandem with law enforcement, engaged in a systemic pattern of abuse that kept Black people living in poverty perpetually trapped in a “debtor’s prison” revolving door. The report stated: “Ferguson’s police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes. Ferguson’s own data establish clear racial disparities that adversely impact Black Americans. The evidence shows that discriminatory intent is part of the reason for these disparities.” The municipal court’s practice of using the police as a “revenue generating” arm of government, the report concluded, fostered a view of the racial-ethnic minority community not as constituents to serve, but as people to exploit. President Barack Obama, in response to Ferguson unrest, appointed a Task Force for 21st Century Policing that suggested, unlike the Ferguson scheme, courts and police should be honest and transparent in all of their public dealings.

DISCUSSION QUESTION

On June 24, 2020, three police officers from Wilmington, North Carolina were overheard on an audiotape talking about race relations when someone said, “We are just gonna go out and start slaughtering their f-----g n----rs. I can’t wait. God, I can’t wait.” The officers then talked about the need for a civil war to “wipe ‘em off the f-----g map. That’ll put ‘em back about four or five generations.”

When confronted about their statements, the officers said they were not racists and were suffering from the stress over protests since George Floyd’s death. The officers were fired.

You be the judge: Are the statements evidence of structural/institutional racism, or are the officers simply “bad apples” who were having a bad day?

COMMUNITY REACTIONS TO POLICE VIOLENCE

“No Black community has ever taken to the streets demanding that White people would just love us more. Communities march to stop the killing. Racism is about behaviors, not feelings.”

Philip Atiba Goff, John Jay College of Criminal Justice, New York City
Birth of #BlackLivesMatter and #ICantBreathe

On August 4, 2020, a woman who once lived out of her car with her children defeated a 10-term incumbent in the Democratic primary for the congressional seat representing Missouri’s first district, which includes St. Louis. Cori Bush traced the birth of her political activism to the protests in nearby Ferguson in the wake of Michael Brown’s death. Bush said, “With Ferguson, it was really the start of saying ‘Black Lives Matter’ and getting people to understand what that’s like.” Ms. Bush’s identification as a Black Lives Matter (BLM) activist is an indication of the inroads the BLM movement has made in traditional politics.

The BLM movement began when Alicia Garza made a Facebook post in July 2013 after the acquittal of George Zimmerman for the killing of Trayvon Martin, an unarmed Black teenager, on February 26, 2012. Garza’s post was both catharsis and a call to action when she wrote, “I continue to be surprised at how little Black lives matter . . . Our lives matter.” Friend Patrisse Cullors created the hashtag #BlackLivesMatter, Opal Tometi built the social media platform, and a movement launched. “People think that we’re engaged with identity politics. The truth is that we’re doing what the labor movement has always done—organizing people who are at the bottom.”

When a Black veteran shot and killed five Dallas police officers and wounded nine more in an ambush on July 7, 2016, and another veteran of color ambushed and killed three police officers and wounded three more 10 days later, the hashtags #BlueLivesMatter and #AllLivesMatter trended as a direct rebuke to “Black Lives Matter.” The crux of the dissonance between saying “Black Lives Matter” and “All Lives Matter” is that, according to its founders, the BLM hashtag does not devalue the larger community, but exists to amplify the government failure relating to policing and race. The Democratic candidate for Vice President in the 2020 election, Senator Kamala Harris (CA), said in the wake of the demands for justice for George Floyd that, “Black Lives Matter . . . is about Black lives, that do matter,” reflecting the ascendency of the BLM hashtag to a national movement.

Similarly, “I can’t breathe” were the last words on July 17, 2014, of Eric Garner, who was placed in a chokehold after berating the police officers in Staten Island, New York, for harassing him for selling single cigarettes in violation of tax laws. Garner, wrestled to the sidewalk by a bevy of officers, said “I can’t breathe” 11 times before falling unconscious and dying. After the cellphone video went viral, the hashtag #ICantBreathe began to proliferate, symbolizing a cry for help that is often ignored. Linking hashtags naming victims of police violence can mobilize protests, gather signatures for change.org petitions demanding justice, and attract celebrity tweets and retweets that can help focus worldwide attention on local events. An analysis of 15 million tweets from May 27 to June 4, 2020, indicates the hashtag #GeorgeFloyd started in the epicenter of his death in Minneapolis and morphed into a national and international #BlackLivesMatter hashtag protest demonstrating the power of social media to inspire civic engagement.
Protests

People sometimes forget that America was founded in an act of anarchy. The preamble to the Declaration of Independence, a courtesy the country’s founding fathers sent to Britain’s King George III, states when a government formed and operated by the “consent of the governed” abuses the natural rights of man to “life, liberty and the pursuit of happiness,” the governed have not only the right but the “duty, to throw off such Government.” The American Revolution was fought to preserve citizen rights to self-determination in a democracy, and the First Amendment rights to “peaceably assemble” and “petition the government for redress” are the cornerstone of American freedom. Peaceful protests have transformed the aspirational pledge that “all men are created equal” into truth for the country’s marginalized communities. The non-violent protest model of Mohandas Gandhi (1869–1948) resulted in India’s freedom from 100 years of British colonial rule. The non-violent protest model requires passive defenselessness for those whom state actors may violate. In the American South, Dr. Martin Luther King, Jr., inspired by Gandhi, lead peaceful protests in the quest for racial equality, but also lead protesters in acts of civil disobedience. Civil disobedience is challenging the law when citizens believe the law has no moral legitimacy, what Congressman John Lewis (D-GA) called “good trouble” in the fight for civil rights. The protests after the notable deaths of Black men in police custody have been peaceful, disobedient (ignoring curfew orders), and have turned into riots.

There is often an invisible catalyst for when a protest becomes a riot. Riots erupted in Baltimore, Maryland in April 2015 when Freddie Grey died after suffering a spinal cord injury during police transport. Grey, upon seeing police officers, ran away and was arrested. Research into the causes of the weeks of unrest showed that while race was an organizing feature of the loosely organized protests that morphed into riots, the confluence of years of pent up frustration from a community’s social needs long ignored sustained the riots for weeks. When looting, criminal mischief, and arson happens in predominately racial-ethnic minority communities in response to a race-based police incident, the public often asks, “why are people
destroying their own communities?” There is an implicit understanding that destroying what other people value, such as property, gets people’s attention in a way that another news story about racism does not. Indeed, the economic effects of riot-caused looting and arson can be measured in the billions of dollars, but the slow progress of full recovery can devastate a community for a generation. The response to looting may turn deadly. In Kenosha, Wisconsin, Jacob Blake, a 29-year-old Black man, was paralyzed after a white police officer shot Blake in the back seven times on August 23, 2020. After two days of riots, teenager Kyle Rittenhouse crossed state lines from Illinois to Wisconsin armed with an AR-15 type rifle. Video shows Mr. Rittenhouse with groups of armed white men patrolling the streets as police officers in armored vehicles announce, “We appreciate you guys, we really do.” Mr. Rittenhouse is later caught on videotape scuffling with protesters, running away and falling down. As Rittenhouse was about to be hit with a skateboard, he shot his rifle multiple times, killing two men and wounding a third. Online supporters have raised over $700,000 for his defense. From jail, Mr. Rittenhouse spoke to the public via his attorney’s cellphone thanking his supporters and declaring, “I’m going to be out of here soon.”

**Calls to demilitarize the police**

In the protests in the wake of Michael Brown’s death, the city of Ferguson deployed heavily armored vehicles and police officers in military tactical gear. Local police accessed the military hardware as a result of the 1990 National Defense Authorization Act, which allows for the transfer of surplus materiel to use in drug enforcement operations. Critics of supplying army equipment to small town America argue that the federal imprint separates police officers from their traditional role to protect and serve, inducing officers to perceive the community as enemy combatants. The militarization of police has given rise to what is known as the “warrior cop” who has been exacerbated by declaring “wars” on social ills such as drugs and crime. President Obama, by a May 2015 executive order, stopped the transfer of large armored vehicles, bayonets, and large caliber weapons to local police departments. President Trump, in August 2017, rescinded Obama’s order and revived the flow of military-grade supplies back into civilian communities, as seen in news photographs of the police response to street protests.

**State and federal law enforcement responses to local protests**

In July 2020, President Trump used an executive order to send federal officers to Portland, Oregon to protect the federal courthouse from protestors. Federal authorities do not have jurisdiction over state and local protesters, yet federal officers in battle camouflage fatigues identified only as “police” were videotaped shooting people with rubber bullets (that have a metal core), detonating flash grenades, and using pepper spray and tear gas to disperse the crowds. There were reports that federal authorities were seizing protesters, placing them in unmarked vehicles, and driving away. The federal presence exacerbated tension in the local community. “Moms Against Police Brutality,” mostly white women in yellow shirts and bicycle helmets, linked arms to form a wall between protesters and federal officers; the moms
organized in response to George Floyd calling out “Momma!” before he died (see Figure 6). The Portland City Council passed a resolution on July 22, 2020 prohibiting local law enforcement from assisting federal troops in quelling the protests. When the president recalled the federal officers from Portland, there reportedly was a marked decrease in violence, and then a resurgence.54

**Calls to “defund” the police**

George Floyd’s death was the catalyst for the Minneapolis City Council on June 26, 2020, to vote to replace the police force with a new public safety commission lead by someone with “non-law enforcement experience in community safety measures.” The call to “defund the police” is a call to shift money from law enforcement into social services for the Black community—job training, community health centers, schools, parks, and the arts. The “defunding” goal is to reduce reliance on an officer responding with a Taser and gun to a scene where a social service response is more appropriate. If a mental health professional instead of a police officer responded in a Texas parking lot where Pamela Shantay was experiencing a mental disturbance; or responded in a Virginia hospital parking lot where Linwood Lambert was suffering from acute cocaine intoxication; or responded on a Colorado street where Elijah McClain was walking, was detained, and cried out, “I’m an introvert, please respect my boundaries that I am speaking,” maybe all three of these Black people would still be alive. Helping people in crisis without drawing a weapon is the defunding goal.
Police also recognize they do not have the education and training of crisis counselors, as former Dallas, Texas, Police Chief David Brown said, “We’re asking cops to do too much in this country. We are. Every societal failure, we put it off on the cops to solve. Not enough mental health funding, let the cops handle it.” The lack of mental health training was the impetus for Lovely Warren, the Mayor of Rochester, New York, to move the crisis intervention team from police command to the Department of Youth and Recreation. On March 23, 2020, officers answered a call of a person in distress and found Daniel Prude, a 41-year-old Black man, running naked in the street, high on drugs and incoherent. Prude mentioned he had COVID-19 and, in accordance with protocol, officers placed a hood over Prude’s head to prevent transmission, but then suffocated Prude by forcing him face down on the pavement. The Chief of Police La’Ron Singletary resigned, the seven officers involved in Mr. Prude’s death were suspended, and the state Attorney General Letitia James announced the commencement of grand jury proceedings to determine if probable cause exists for the bringing of criminal charges. Warren, Singletary, and James identify as Black and represent a slice of diversity in New York law enforcement.

Experts caution that defunding the police does not mean taking money away from Black communities. The call to defund the police should not make matters worse. On August 11, 2020, the police chief for Seattle, Washington, Carmen Best, the first African American woman to lead the force, resigned. Chief Best was furious that the Seattle City Council voted to defund 100 police officer positions. The Chief said that all the good work to diversify the force would be lost because, based on seniority, the younger officers of color would be the first fired.

Community empowerment is the central tenet of decentralizing police power in the community, and leaders should be mindful of the potential unintended consequences of the call to defund.

**DISCUSSION QUESTION**

You be the judge: Will protests facilitate police reform, or is patient work through the legislative process a better avenue? Why?

**Calls to end qualified immunity**

Under the Civil Rights Act of 1871, as amended, a person may bring a civil lawsuit against the government for causing harm. If a police officer uses excessive force or kills without justification, the victim has to show the police officer was acting pursuant to their lawful authority—in uniform and on duty, not in an off-duty bar fight, for instance—and that the officer’s actions deprived the victim of their constitutional rights. In their defense, officers will often claim qualified immunity, which is limited protection from lawsuits. For a court to determine if an officer is entitled to qualified immunity, the judge first examines if the officer’s actions at the time were reasonable. The next step is to analyze whether the rights deprived
were not clearly established, which means the state of the law across the country was in flux. For example, police received a 911 call reporting a woman acting erratically in her front yard, yelling, screaming, and hacking at a tree with a knife. Officers arrived and within minutes of Amy Hughes not complying with commands to put the knife down, Officer Kisela shot Hughes four times, inflicting non-life threatening injuries. Hughes sued Officer Kisela for violating her Fourth Amendment right to be free from unreasonable seizure—getting shot, but the U.S. Supreme Court found Officer Kisela was entitled to qualified immunity. The high Court found that at the time Kisela shot Hughes, the law was hopelessly muddled and not clearly established. The Court examined similar cases of excessive force, all with different legal outcomes, and found Kisela could not have known the contours of a vacillating body of law. In dissent, Associate Supreme Court Justice Sonia Sotomayor said granting Kisela the cloak of immunity allowed officers to “shoot first, ask questions later.”

The U.S. Congress has proposed a sweeping police reform law, The George Floyd Justice in Policing Act of 2020 (H.R. 7120), which seeks to limit qualified immunity. Allowing citizens to hold officers responsible for excessive force may limit future tragedies. The Floyd Act provides, in part, that:

It shall not be a defense or immunity in any action brought under this section against a local law enforcement officer . . . that—

(2) the rights, privileges, or immunities secured by the Constitution and laws were not clearly established at the time of their deprivation by the defendant, or that at such time, the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was lawful.

Under the intended Floyd Act, Officer Kiesla may have been found responsible “by needlessly resorting to lethal force” before trying to de-escalate the situation involving a woman exhibiting signs of emotional disturbance.

REFORM EFFORTS

“These reforms are focused on bringing real change to end the systemic discrimination that exists in our criminal justice and policing systems that have impacted minority communities for far too long.”

Connecticut Governor Ned Lamont at the July 31, 2020, signing the Police Accountability Act (H.B. No. 6004, 2020) into law.

The standard approach to police reform

What changes in academy training would be most effective in changing the police officer culture around race and police authority? Cadets receive diversity training, but without leadership’s commitment to eradicating racist talk and behavior among the ranks from the
time the cadet graduates until they retire, simply providing training is ineffective in changing officers’ hearts and minds. Police departments mimic military hierarchies where obedience and following orders is paramount. An analysis of how an officer on the job could stay silent in the face of morally reprehensible behavior may be answered by social learning theory. Deviance is learned. The actor Denzel Washington won a best actor award for portraying a Los Angeles police officer initiating a rookie in the ways of corrupt narcotics work in the movie *Training Day*. For police officers, the social learning theory “suggests that police are more likely to engage in misconduct when peers are engaged in such behavior and there are few consequences.” During George Floyd’s arrest, three officers watched Officer Chauvin kneel on Floyd’s neck until medical help arrived. The lawyer for one officer who stood by and was later charged with aiding and abetting Floyd’s death argued in court, “What is my client supposed to do other than follow what the training officer said?” The lawyer was implying the officer’s rookie status prevented his intervention. If police were trained to talk across rank about the reality of the Black experience with law enforcement in a constructive and consistent way, perhaps the rookie would have felt empowered to speak up. Similarly, officers feeling under siege from the country’s spasms of protests should make routine the reporting of their fellow officers’ misconduct. When good officers sit on the sidelines of justice and do not speak up, the price paid is community trust. True reform requires courage to address race and officer misconduct all the time.

Connecticut’s new law to reform police practices to reduce or eliminate racial discrimination reflects the direction the country is heading to make law enforcement accountable to the racial-ethnic minority community. The list of most notable reforms includes:

- Police disciplinary records are subject to Freedom of Information Act requests.
- Body and dashboard cameras are mandatory for any officer interacting with the public.
- Cities and towns can create civilian review boards, which will have subpoena power through their local legislative bodies (i.e., Board of Selectmen).
- Uniformed police officers must have their names and badge numbers readily visible on all outer garments.

Connecticut’s reforms recalibrate the police relationship with the public and reinforce civilian control over police operations. The federal government’s investigation into Chicago’s Police Department found a lack of meaningful supervision fostered a lawless culture that encouraged officers to believe they were not simply investigators, but judges and juries as well. History tells us when military power is not subordinate to civilian control, democracy is at risk. The people we consent to bear arms and have authority over us do not get to define the boundaries of their authority. Connecticut’s reforms will hopefully restore trust with the racial-ethnic minority communities the police serve.

One additional structural reform, either in academy training or on the force, is reinforcing de-escalation techniques before resorting to fatal force. Former Central Intelligence Agency
(CIA) officer and Federal Bureau of Investigation (FBI) Special Agent Chuck Joyner suggests that officers follow a de-escalation checklist to reduce use of force incidents:

- Don’t be a jerk who enjoys provoking people.
- “If you start out nice, you can always get mean, but if you start out mean, you can never be nice.”
- Communicate: “Is there anything I can say or do that will get you to comply with my commands?”
- “Be the 57-year-old you, not the 17-year-old you,” meaning think like a mature person with experience.
- “Don’t take it personally, don’t make it personal.” Members of the community may disrespect you, but it is not about you; they do not even know you.
- “Don’t hang with angry people.” Recognize when you are too angry to work and take the day off.
- “De-escalation never means compromising officer safety.” Respect the public, but be prepared for unforeseen threats.

Joyner emphasizes that de-escalation techniques are a pillar of good policing. Oklahoma City Sergeant Megan Morgan agreed and said, “Since the implementation of our de-escalation policy, our use-of-force numbers have decreased.” Responding with a social services approach in non-lethal situations may help save lives.

Re-assessing the role of the police union

One powerful obstacle to police reform is the police union. Officers rely on unions to insulate police from allegations of misconduct and to negotiate contracts for salaries and benefits. Unions offer solidarity against what many perceive to be management’s sacrifice of a tainted officer. When the public demands oversight and accountability of police, particularly after a high-visibility incident, unions have organized work slowdowns, refusals to arrest, and refusals to police minor infractions. In 2016, to change the use of force culture, the Police Executive Research Forum (PERF) endorsed 30 Guiding Principles on Use of Force, and unions immediately opposed the move. The tension lies in balancing reform with an officer’s ability to protect themselves on the street. When a police officer is disciplined for misconduct, or even fired, police unions protect the confidentiality of personnel records and may mandate the re-hiring of officers who were once deemed unfit. On August 4, 2020, former Atlanta, Georgia police officer Garrett Rolfe, charged with murder in the shooting death of Rayshard Brooks and currently out on bond, sued the city and the former mayor seeking to be reinstated to the police force with full pay and benefits, all while wearing an electronic monitoring device around his ankle.
During the protests in the wake of George Floyd’s death, officers in Buffalo, New York, on June 4, 2020, were approached by a 75-year-old man, Martin Gugino, who was then pushed back from a line of officers in riot formation. Gugino fell and hit his head on the sidewalk. Two officers were suspended without pay pending an investigation. In retaliation to the officers’ suspension, on June 5, the police union refused to pay legal fees for any officers involved in protest-related events, causing 57 officers to resign from an emergency response team for lack of indemnity coverage. Union president John Evans declared the union’s support for the suspended officers who, Evers said, were just “following orders” to clear Niagara Park of protesters before curfew. Meaningful reform must address the limits of collective bargaining to protect proven misconduct.

Diversifying the ranks

There may be some measurable relationship between the diversity of a police department and the use of force. A 2020 study of 911 calls revealed that “white officers use force 60 percent more than black officers and use gun force twice as often.” But how do departments that may have troubled community relations attract and retain officers of diverse backgrounds? One notable reform to increase the presence of officers who reflect the communities they serve is to hire part-time officers of color as a gateway to the formal police hiring process. Affirmative action is legal redress to remedy years of racial exclusion by considering the race of an applicant in hiring. Having diverse police officers does not immediately translate to an environment free from discrimination. On June 18, 2020, Prince George's County (MD) Police Chief Hank Stawinski resigned after receiving a report from the American Civil Liberties Union (ACLU) that detailed incidents of racial harassment and discrimination within his police ranks that went unpunished. Good mentorship relationships can help with retention and career advancement of officers of color, while reducing feelings of isolation and eliminating acts of racial hostility in the workplace.

Organizational theory for successful culture change

Many police departments announcing reform initiatives look to Camden, New Jersey as a model. In 2013, as a result of rampant internal corruption and skyrocketing community violence, the city of Camden used a budget deficit to replace the city police department with a county-wide police force. The reorganization required veteran and rookie officers alike to reapply for positions. With no police union in place, officials celebrated the ability to create a police force responsive to community needs. The photograph of police officers marching “in solidarity” with members of the Black Lives Matter movement represents this success (see Figure 7). The force remains predominately white in a predominately Black city, but officers have worked hard to bring ice cream trucks to neighborhoods, host barbeques, increase training to deal with mental illness, and establish partnerships with the city’s homeless shelters. They have worked hard to engage with the people, not just lock them up.

Camden gave itself a fresh start. For existing police departments with entrenched hierarchies, there are three steps to help make diversity and inclusion a celebrated ideal. First, accept that changing an organizational culture takes time. Leadership should make short, medium,
and long-range goals with measurable incremental measures of success. To define success, seek the input of everyone in the department, from line officers to support staff. Hearing everyone’s voice is crucial to the lasting success of any new initiative. The structure of policing in hiring new officers and promoting those already on the force remains, for many, filled with barriers to diversity. One interim fix for police departments with a limited access to a pool of diverse candidates is to cultivate a diversity of opinions. Ensure that dissent about police practices is heard and conflict around differences of opinion is welcomed.

Second, ask the line officers to suggest informal changes on how to improve police culture, and then implement formal rules to reinforce the new culture. Look for change leaders within the police force, rewarding those who are carrying inclusion principles forward to incentivize everyone’s participation in the department’s new community relations. Lastly, hold dear the pillars of community policing. Consider having police live in the communities they serve so constituents are neighbors as well. Once Robert Peel’s principle is a reality of recognizing the public and the police are one community, we can make healthy relationships the norm between law enforcement and marginalized communities, which will benefit all of society. Make America the place where everyone is proud to put their hands over the heart for the national anthem.

**DISCUSSION QUESTION**

*You be the judge:* Which suggested police reform do you think will have the most impact on improving the relationship between the police and marginalized communities?
Notes

1. President’s National Advisory Commission on Civil Disorders (1968), known as the Kerner Commission after its chief, Illinois Governor Otto Kerner.


13. President’s National Advisory Commission on Civil Disorders (1968).


16. @realDonaldTrump “The ‘suburban housewife’ will be voting for me. They want safety & are thrilled that I ended the long running program where low income housing would invade their neighborhood. Biden would reinstall it, in a bigger form, with Corey [sic] Booker in charge! @foxandfriends @MariaBartiromo” August 11, 2020; 7:59 a.m.


23. On July 21, 2020, Planned Parenthood made public its decision to rename its Margaret Sanger clinic because Sanger supported eugenics.


25. Charles Murray (Nov. 8, 1994). The Bell Curve Booknotes, C-SPAN https://www.youtube.com/watch?v=LdG2rJoE2pg


27. Dylann Roof Confession to FBI Agents. https://www.youtube.com/watch?v=JKRoFoy_Hpc


31. An analysis of the video shooting of Mr. Scott https://www.youtube.com/watch?v=c6UzGlxQ_Og/

32. At first glance it appears justice was served when former officer Michael Slager was sentenced to 20 years in federal prison for federal civil rights violations, but Slager’s successful avoidance by plea bargain of a state murder charge for killing Walter Scott and from serving a sentence in state custody is a gift many defendants who kill do not enjoy.


40. U.S. Department of Justice, Investigation of the Chicago Police Department (2017). Washington, D.C. https://www.justice.gov/opa/file/925846/download/ “Chicago is the largest city in Illinois and the third largest metropolitan area in the United States with approximately 9.5 million residents, 2.7 million of whom live within the city limits. The City is racially diverse: 33% of current residents are black, 32% are white, 29% are Latino, and 8% identify as Asian or multi-racial. The median household income in Chicago is $48,522, 17 which is below the national average of $53,889. 22% of the City’s residents live below the federal poverty threshold.”


44. Senator Kamala Harris (D-CA) (July 10, 2020). Interview. The Last Word. MSNBC.


57. Interview: What Does It Mean to Dismantle a Police Department? [June 8, 2020]. The Rachel Maddow Show, MSNBC https://www.youtube.com/watch?v=RzNIgYgsZm8


