

THE PATH FORWARD: IMPROVING THE DYNAMICS OF
COMMUNITY-POLICE RELATIONSHIPS TO ACHIEVE
EFFECTIVE LAW ENFORCEMENT POLICIES

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INTRODUCTION

In a world in which police understand themselves to be a bulwark against crime, having a good handle on crime data is critical. According to the best data available, crime has been steadily trending downward for the last few decades. There has been a national decline in crime, and the decline in New York City across all crime categories has been the most dramatic.¹ Recently, however, some have sounded an alarm regarding rising crime rates, primarily in big cities.² In the summer of 2015, their clarion call was based on what Professor Jeffrey Fagan and I called more “sophistry than science”: The bulk of their evidence for a crime spike was

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1. See Franklin E. Zimring, *The City that Became Safe: New York’s Lessons for Urban Crime and Its Control* 1–27 (2012) (charting the decline in crime in New York City and comparing the magnitude of that decline to the decline in other cities). Specifically, Professor Zimring notes that “[t]he homicide rate in New York City [was] 18% of its 1990 total in 2009.” *Id.* at 4.

2. See, e.g., Heather Mac Donald, *Rise in Crime Is a Reason to Fear Anti-Police Rhetoric*, *N.Y. Times: Room for Debate*, <http://www.nytimes.com/roomfordebate/2015/06/04/have-fearful-police-brought-an-end-to-the-drop-in-crime/rise-in-crime-is-a-reason-to-fear-anti-police-rhetoric> (on file with the *Columbia Law Review*) (last updated Oct. 26, 2015, 4:02 PM); see also James B. Comey, Dir., FBI, *Remarks Delivered at the University of Chicago Law School: Law Enforcement and the Communities We Serve: Bending the Lines Toward Safety and Justice* (Oct. 23, 2015), <http://www.fbi.gov/news/speeches/law-enforcement-and-the-communities-we-serve-bending-the-lines-toward-safety-and-justice> [<http://perma.cc/KYL2-JW8Z>].

pinned on a comparison of percentage increases over the last year.³ Percentage increases do not mean much when absolute numbers are small,⁴ and only two data points do not make a trend. The point of identifying a trend is to make a claim about the general direction of a set of data, so one needs more than two points in order to say something meaningful about the direction of data over time. In 2017, crime still trends downward in many cities, but there is also data that indicate some troubling trends. In a handful of cities, crime—especially violent crime—is going up.⁵ Cities with notable increases over the last two years include Baltimore, Chicago, and Washington, D.C.⁶

I. THE COMPLEX RELATIONSHIP BETWEEN POLICE AND THE COMMUNITY:
EXPLORING EXISTING SOCIOLOGICAL, PSYCHOLOGICAL,
AND HISTORICAL RESEARCH

A. *Interpreting Crime Reports*

Of course, the ability to theorize or speculate on these changes depends upon the ability to measure changes in crime accurately. Scholars often measure changes with reference to statistics collected by the FBI. For over eighty years, the FBI has compiled data as part of its Uniform Crime Reporting Program (UCR).⁷ The FBI collects data from local agencies and publishes them in an annual report, *Crime in the United States*.⁸ This report is considered the official data set on American crime. It is slow, imprecise, and subject to manipulation.⁹ Moreover, because of

3. See Tracey L. Meares & Jeffrey A. Fagan, *Crime Statistics Don't Show that the Sky Is Falling*, N.Y. Times: Room for Debate, <http://www.nytimes.com/roomfordebate/2015/06/04/have-fearful-police-brought-an-end-to-the-drop-in-crime/crime-statistics-dont-show-that-the-sky-is-falling> (on file with the *Columbia Law Review*) (last updated Dec. 19, 2015, 6:07 PM).

4. *Id.*

5. See generally Matthew Friedman, Ames C. Grawert & James Cullen, Brennan Ctr. for Justice, *Crime in 2016: A Preliminary Analysis 1–2* (2016), http://www.brennancenter.org/sites/default/files/publications/Crime_2016_Preliminary_Analysis.pdf [<http://perma.cc/2VSW-JVBY>] (noting that in “specific cities, especially Chicago,” crime data show an “urgent need to address violence” and that the “murder rate is projected to rise by 13.1 percent [in 2016], with nearly half of this increase attributable to Chicago . . .”).

6. *Id.* at 12.

7. FBI UCR Publications, FBI: Unif. Crime Reporting, <http://ucr.fbi.gov/ucr-publications> [<http://perma.cc/BZQ9-APYN>] (last visited Jan. 31, 2017).

8. *Id.*

9. See FBI's National Crime Data Found to Be Flawed, Manipulated, Prison Legal News (Apr. 15, 2013), <http://www.prisonlegalnews.org/news/2013/apr/15/fbis-national-crime-data-found-to-be-flawed-manipulated/> [<http://perma.cc/MJQ2-TDZB>]; Aviva Shen, *What Happens When People Panic About Crime Rates*, ThinkProgress (Aug. 20, 2015), <http://thinkprogress.org/what-happens-when-people-panic-about-crime-rates-8ef19aae2a0b> [<http://perma.cc/G2BN-YXQY>] (describing how manipulation of crime statistics is used to accomplish varying ends).

the way the data are collected, it is difficult to use the UCR for anything beyond macro trends with respect to very general categories of crime. Some researchers look to calls for service as a better data source to detect changes in the reality of crime on the ground.¹⁰ Calls-for-service databases contain both 911 (and sometimes 311) calls and police-initiated events.¹¹ Such data may also be an important source for understanding the relationship between the public and the police. So much of our understanding of the relationship between changes in crime and the interactions policing agencies have with the communities they serve depends on having relatively granular, real-time measures of crime. Reliance upon grosser categories and large time gaps for change will necessarily mask these responses.¹²

In a recent study, Professors Matthew Desmond, David Kirk, and Andrew Papachristos present an example of how researchers can use such data.¹³ The researchers studied how police brutality against unarmed Black men affects cities and the Black community in particular by examining whether there was a change in the number of 911 calls in Milwaukee before and after a highly publicized incident of police violence against an unarmed Black man, Frank Jude.¹⁴ Jude was attacked by several White police officers in October 2004 after they accused him of stealing a police officer's badge at a party.¹⁵ The officers stomped on his face with heavy boots and punctured his eardrums with pens.¹⁶ After the incident, Jude's photo was shown in the newspaper demonstrating his

10. See David A. Klinger & George S. Bridges, Measurement Error in Calls-for-Service as an Indicator of Crime, 35 *Criminology* 705, 706 (1997) (collecting and summarizing studies suggesting the superiority of the calls-for-service measure); see also Anthony A. Braga, Hot Spots Policing and Crime Prevention: A Systematic Review of Randomized Controlled Trials, 1 *J. Experimental Criminology* 317, 322 (2005) (noting appropriate measures of crime include calls for service).

11. See Alison Wakefield & Jenny Fleming, *The SAGE Dictionary of Policing* 17–19 (2009) (defining calls for service and explaining the benefits of this data source).

12. Cf. Richard Rosenfeld & Robert Fornango, The Impact of Police Stops on Precinct Robbery and Burglary Rates in New York City, 2003–2010, 31 *Just. Q.* 96, 118 (2012) (explaining in a related context that annual measures of crime mask subannual effects of policing strategies).

13. Matthew Desmond, Andrew V. Papachristos & David S. Kirk, Police Violence and Citizen Crime Reporting in the Black Community, 81 *Am. Soc. Rev.* 857 (2016) [hereinafter Desmond et al., *Police Violence and Citizen Crime Reporting*]. Recently, Professors Desmond and Papachristos summarized the results of this study in the *New York Times* opinion pages. Matthew Desmond & Andrew V. Papachristos, Why Don't You Just Call the Cops?, *N.Y. Times* (Sept. 30, 2016), <http://www.nytimes.com/2016/10/01/opinion/why-dont-you-just-call-the-cops.html> (on file with the *Columbia Law Review*) [hereinafter Desmond & Papachristos, *Call the Cops*].

14. See Desmond et al., *Police Violence and Citizen Crime Reporting*, supra note 13, at 859.

15. *Id.* at 860.

16. *Id.*

extensive injuries.¹⁷ The results of the researchers' analysis of 911 calls surrounding this incident are startling. After Jude's beating was reported in the local press, Milwaukee residents—and especially residents of Milwaukee's Black neighborhoods—were less likely to report crimes by calling 911.¹⁸ The magnitude of the crime-call decline in Milwaukee was large and long lasting. It persisted for over a year, “result[ing] in a loss of approximately 22,200 911 calls, a 17 percent reduction in citizen crime reporting, compared with the expected number of calls.”¹⁹ Moreover, the “missing” calls were primarily confined to the areas of Milwaukee in which mostly African Americans lived.²⁰ After a year, the number of calls went up again.²¹

Among other things, these big swings in the number of 911 calls in Milwaukee cast new light on the so-called “Ferguson Effect.” The Chief of the St. Louis Metropolitan Police Department was the first to use the term “Ferguson Effect” as a way to explain an increase in crime following social unrest and protests in the aftermath of the death of Michael Brown in Ferguson, Missouri.²² The term was later popularized by Heather Mac Donald²³ and then caught on in the media.²⁴ While early (generously

17. *Id.*

18. *Id.* at 865–66. Importantly, Professors Desmond, Kirk, and Papachristos's analysis controlled for crime rates, previous calling patterns, and neighborhood characteristics. *Id.* at 862. The authors also tested whether calls for automobile crashes changed before and after the Jude beating to ensure that another event, such as staff capacity at 911 call centers, was not the source of declining calls. *Id.* at 868. Because the crash calls remained constant through the test period, this analysis revealed that the decline was specific to crime calls. *Id.*

19. Desmond & Papachristos, *Call the Cops*, *supra* note 13; see also Desmond et al., *Police Violence and Citizen Crime Reporting*, *supra* note 13, at 867 (providing charts noting the same).

20. See Desmond et al., *Police Violence and Citizen Crime Reporting*, *supra* note 13, at 870 (explaining the “Jude Effect” was largely confined to “Black Milwaukee”).

21. See *id.* at 871 (explaining that over time, reporting returned to normal levels).

22. See Christine Byers, *Crime up After Ferguson and More Police Needed*, *Top St. Louis Area Chiefs Say*, *St. Louis Post-Dispatch* (Nov. 15, 2014), http://www.stltoday.com/news/local/crime-and-courts/crime-up-after-ferguson-and-more-police-needed-top-st/article_04d9f99f-9a9a-51be-a231-1707a57b50d6.html [<http://perma.cc/J4FB-ZEB4>]. Note, however, that the idea that there was an increase at all was highly contested—trends require at least three data points! See *infra* note 24 (citing sources that discuss evidence as to whether there was a crime increase).

23. See Heather Mac Donald, *The New Nationwide Crime Wave*, *Wall St. J.* (May 29, 2015), <http://www.wsj.com/articles/the-new-nationwide-crime-wave-1432938425> (on file with the *Columbia Law Review*).

24. See, e.g., Matt Ford, *Debunking the Ferguson Effect*, *Atlantic* (Nov. 21, 2015), <http://www.theatlantic.com/politics/archive/2015/11/ferguson-effect/416931/> [<http://perma.cc/CTB4-5EY6>]; Neil Gross, *Is There a ‘Ferguson Effect’?*, *N.Y. Times* (Sept. 20, 2016), <http://www.nytimes.com/2016/10/02/opinion/sunday/is-there-a-ferguson-effect.html> (on file with the *Columbia Law Review*); John Kass, *Chicago Cop Is the Face of the Ferguson Effect*, *Chi. Trib.* (Oct. 6, 2016), <http://www.chicagotribune.com/>

described) analyses of the “Ferguson Effect” relied on rather crude crime measures, such as year-to-date comparisons and only one prior data point, the recent analysis of the much more fine-grained 911 call data suggests that the spike in reported crime may have resulted not from police failing to do their jobs—police “going fetal”²⁵—but instead from a return to a normal pattern of reporting incidents after an unnaturally low dip. This sequence, a period of low reporting of crime incidents followed by a normalization of reporting, created an appearance of a spike in crime.

B. *Exploring “Legal Cynicism”*

The fact that people would decline to call the police to report crime after a serious incident of police brutality is, to put it mildly, concerning. It means that some people are making decisions not to call on public servants who have sworn to protect and help them even after they have been seriously victimized. Declining to call police after one has been victimized is a behavior that is an order of magnitude different from a person telling a pollster that she does not like or trust police.²⁶

Sociologists over time have developed theories to explain how people negotiate their relationship to legal authority when they experience both high levels of neighborhood crime and intense policing to address private predation. For example, Professors Robert Sampson and Dawn Bartusch found, paradoxically, that Chicago neighborhoods experience widespread tolerance of subcultural deviance: Residents refuse to report violations of law to the police while simultaneously condemning deviance at higher levels than residents of areas where people claim greater propensity to call the police.²⁷

This phenomenon, which Professors Sampson and Bartusch call “legal cynicism,” has been explored by other scholars. In ethnographic work, Professor Elijah Anderson has explained that when people believe they cannot rely on legal authorities, they take the law into their own

news/columnists/kass/ct-ferguson-effect-chicago-police-1007-20161006-column.html (on file with the *Columbia Law Review*).

25. “Going fetal” refers, of course, to Chicago Mayor Rahm Emanuel’s speculation about a supposed slowdown in police activity following social unrest and protest and an attendant increase in crime. See John Byrne, Emanuel Blames Chicago Crime Uptick on Officers Second-Guessing Themselves, *Chi. Trib.* (Oct. 13, 2015), <http://www.chicagotribune.com/news/local/politics/ct-emanuel-fetal-police-met-20151012-story.html> (on file with the *Columbia Law Review*).

26. See Bruce Drake, Divide Between Blacks and Whites on Police Runs Deep, *Pew Res. Ctr.: Fact Tank* (Apr. 28, 2015), <http://www.pewresearch.org/fact-tank/2015/04/28/blacks-whites-police/> [<http://perma.cc/59RL-TKVB>] (describing various surveys identifying a racial divide on perceptions of police performance and community trust).

27. See Robert J. Sampson & Dawn Jeglum Bartusch, Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences, *32 Law & Soc’y Rev.* 777, 800–01 (1998).

hands and operate according to a “code of the streets.”²⁸ By demonstrating that declines in poverty do not mitigate the high levels of legal cynicism associated with persistent levels of homicide, Professors Kirk and Papachristos have shown that legal cynicism has serious consequences for the health and well-being of neighborhoods.²⁹ It is only recently, however, that scholars have been able to document the scale and dimension of the problem in such a precise way as Professors Desmond, Kirk, and Papachristos were able to in their study.

C. *Perceptions of Fairness*

Research on the sociology of legal cynicism overlaps with research in psychology concerning how people come to conclusions about whether authorities are fair. Psychology is implicated here because we must understand what it means for someone to conclude that legal authorities, like the police, are legitimate in order to conclude that citizen disengagement reflects public perceptions of those authorities’ illegitimacy. This research in psychology focuses not upon a philosophical explanation of legitimacy but rather seeks to understand how people make decisions to voluntarily comply with the law, defer to requests from authorities, and cooperate and engage with them.³⁰

The psychological research extends over multiple decades and is grounded in work from the 1960s focused on distributive justice.³¹ Early researchers argued that people’s sense of the equitable distribution of costs and benefits determined their sense of fairness: People will be more likely to believe that a just outcome is fair when they receive an outcome they feel that they deserve.³² One problem with the research, though, was that it consistently showed that people were less concerned with unfair allocations in outcomes than with their treatment in the process of getting those outcomes.³³ So another group of scholars started to research decisionmaking procedures. Those scholars showed that people expressed commitments to the particular ways in which decisionmaking

28. Elijah Anderson, *Code of the Street: Decency, Violence, and the Moral Life of the Inner City* 66–67 (1999).

29. See David S. Kirk & Andrew V. Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 *Am. J. Soc.* 1190, 1228–29 (2011).

30. See generally Tom R. Tyler, *Why People Obey the Law* 57–68 (2006) [hereinafter Tyler, *Why People Obey the Law*] (revealing study results suggesting that people obey the law when they believe it is legitimate and examining policy conclusions from this result).

31. See generally E. Allan Lind & Tom R. Tyler, *The Social Psychology of Procedural Justice* 10–12 (1988) (describing early theories of distributive justice and its influence on future research).

32. See *id.* at 63–83.

33. See *id.* at 77–78 (“[T]he legitimacy measure is more strongly influenced by procedural fairness judgments than by distributive fairness judgments.”); see also Tyler, *Why People Obey the Law*, *supra* note 30, at 78–80 (explaining the difference between distributive fairness and procedural fairness).

was carried out independent of the outcomes that were ultimately produced. Professors Allan Lind and Tom Tyler crystallized the insight in their path-breaking book, *The Social Psychology of Procedural Justice*, by demonstrating that people appear to understand the ways in which legal authorities treat them not as information about outcome control, as was originally thought, but instead as opportunities to gather information about how legal authorities view them and the group or groups to which they belong.³⁴

People tend to place much more weight on how authorities exercise power as opposed to the ends for which that power is exercised. Since Professors Lind and Tyler published their book, researchers have studied public evaluations of judges, political leaders, managers, and teachers, and the findings are consistent: Conclusions regarding legitimacy are tied more closely to judgments of the fairness of actions than to evaluations of the fairness of outcomes or effectiveness of actors in achieving outcomes.³⁵ In other words, the relationship between the public and how authorities make decisions is inherently relational instead of instrumental. Although much of the early work focused on decisionmaking by the courts and organizational leaders,³⁶ some scholars have recently applied the decades of research on procedural justice to policing. They have learned that people are more satisfied with police decisions when they believe that the police are exercising their authority through fair procedures.³⁷ Studies further indicate that people are more

34. See Lind & Tyler, *supra* note 31, at 230–37 (explaining group value theory).

35. See Tracey L. Meares & Tom R. Tyler, Justice Sotomayor and the Jurisprudence of Procedural Justice, 123 *Yale L.J. Forum* 525, 529–35 (2014), <http://www.yalelawjournal.org/forum/justice-sotomayor-and-the-jurisprudence-of-procedural-justice> [<http://perma.cc/F5YB-K32G>] (summarizing the literature).

36. See, e.g., Tyler, *Why People Obey the Law*, *supra* note 30, at 109–10 (discussing research from the 1970s through the 1990s considering procedural justice in the courts); Joel Brockner & Phyllis Siegel, Understanding the Interaction Between Procedural and Distributive Justice: The Role of Trust, *in* *Trust in Organizations: Frontiers of Theory and Research* 390, 395 (Roderick M. Kramer & Tom R. Tyler eds., 1996) (referencing the “diversity of studies” exploring “how people reacted to their encounters with legal authorities” and “how employees responded to organizational changes”).

37. See Lyn Hinds, Building Police–Youth Relationships: The Importance of Procedural Justice, 7 *Youth Just.* 195, 206 (2007) (concluding that “young people’s views of the legitimacy of police are positively linked to police use of procedural justice”); Tal Jonathan-Zamir & David Weisburd, The Effects of Security Threats on Antecedents of Police Legitimacy: Findings from a Quasi-Experiment in Israel, 50 *J. Res. Crime & Delinq.* 3, 5 (2013) (finding that in Israeli communities, procedural justice is consistently “the primary antecedent of [police] legitimacy”); Tom R. Tyler & Cheryl J. Wakslak, Profiling and Police Legitimacy: Procedural Justice, Attributions of Motive, and Acceptance of Police Authority, 42 *Criminology* 253, 276 (2004) (demonstrating conformance of the procedural justice model with people’s beliefs about whether they have been profiled by police).

willing to defer to police decisions when they feel the police are acting fairly.³⁸

Procedural justice turns out to be the key in determining whether the public will conclude that legal authorities behave fairly. Research is clear that perceptions of procedural justice depend upon four factors.³⁹ First, participation and voice are critical. People report higher levels of satisfaction in encounters with authorities when they have an opportunity to explain their situation and perspective on that situation.⁴⁰ Even when people are aware that their participation will not impact the outcome, they nonetheless want to be taken seriously and listened to.⁴¹ Second, people care a great deal about the fairness of decisionmaking by authorities.⁴² That is, they look to indicia of decisionmaker neutrality, objectivity, factuality, consistency, and transparency (as well as transparency in decisionmaking as a general matter across cases). In this way, it turns out that it matters a great deal to people in their interactions with legal authorities whether the decisionmaker takes the time to explain what he or she is doing and why.⁴³ Third, people care a great deal about how they are treated by legal authorities such as police officers.⁴⁴ Specifically, people desire to be treated with dignity, respect for their rights, and politeness.⁴⁵ Note, however, that procedural justice cannot

38. See Tom R. Tyler, *Multiculturalism and the Willingness of Citizens to Defer to Law and to Legal Authorities*, 25 *Law & Soc. Inquiry* 983, 1014–15 (2000) (arguing procedural justice shapes the willingness of the members of both majority and minority ethnic groups to defer to law and legal authorities); see also Lorraine Mazerolle et al., *Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial of Procedural Justice*, 51 *Criminology* 33, 55 (2013) (using randomized field experiment testing varying police behavior to demonstrate that procedural justice shapes police legitimacy); Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 *Psychol. Pub. Pol'y & L.* 78, 78–79 (2014) (examining Americans' views about the police and the courts to demonstrate that procedural justice shapes legitimacy, compliance, and cooperation). In these studies the notion of fairness is captured by the factors of procedural justice.

39. See *Comm. to Review Research on Police Policy & Practices*, Nat'l Research Council, *Fairness and Effectiveness in Policing: The Evidence* 304 (Wesley Skogan & Kathleen Frydl eds., 2004) [hereinafter *Nat'l Research Council, Fairness and Effectiveness in Policing*] (describing the four factors as participation, neutrality, treatment signifying dignity and respect, and trust).

40. *Id.*

41. *Id.*

42. *Id.*

43. See Tyler & Wakslak, *supra* note 37, at 277 (explaining the relevance of quality decisionmaking and transparency in policing).

44. See *Nat'l Research Council, Fairness and Effectiveness in Policing*, *supra* note 39, at 304.

45. *Id.*; see also Mazerolle et al., *supra* note 38, at 34–35 (discussing a study contrasting two types of routine traffic stops in which the experimental condition specified that the officer follow a script operationalizing the key components of procedural justice).

simply be condensed into this single factor.⁴⁶ Fourth, in their interactions with authorities, people want to believe that authorities are acting out of a sense of benevolence toward them.⁴⁷ That is, people attempt to discern why authorities are acting the way they are by assessing how they are acting. They want to trust that the motivations of the authorities are sincere and well intentioned. Basically, members of the public want to believe that the authority they are dealing with believes that they count and cares about them. In relationships with law enforcement, the public makes this assessment by evaluating how police officers treat them.

D. *Examining Relationships (Past and Present)*

Importantly, the public's understanding of the legitimacy of any legal authority, but especially the police, is not merely transactional. A person's own interactions with the police and her perception of the legitimacy of police in general matter, but so do the relationships that she has with others who have their own interactions with police. And, the perception of legitimacy is further influenced by how interactions with police have occurred over time. Trustworthiness implicates history. It matters that young men of color today tell stories of being stopped, beaten, or having their friends killed by police for reasons that do not quite add up—or, worse, for no reason at all—and it matters that there is a through-line of such stories going back decades.⁴⁸ It matters that the historical relationship between police and so many people in communities of color includes participation by law enforcement in lynchings and denial of civil rights to African Americans.⁴⁹ In these

46. Too often, police officials and even scholars conflate the idea of simply being polite to citizens with pursuing procedural justice principles. For example, in their recent book, Professors Charles R. Epp, Steven Maynard-Moody, and Don Patrick Haider-Markel argue that Professor Tyler's theory of procedural justice is undermined by the fact that African American drivers were dissatisfied with police interactions even when police acted politely. See Charles R. Epp, Steven Maynard-Moody & Donald Haider-Markel, *Pulled Over: How Police Stops Define Race and Citizenship* 114–20 (2014). I have argued that such an assessment ignores the importance of the other aspects of procedural justice. Indeed, Professor Epp and his colleagues' own findings can be interpreted to demonstrate that African American motorists can recognize the difference between being stopped for good reasons and bad (or no reason at all), an issue clearly consonant with the fair decisionmaking factor of procedural justice. See Tracey L. Meares, *The Law and Social Science of Stop and Frisk*, 10 *Ann. Rev. L. & Soc. Sci.* 335, 345–46 (2014).

47. See Nat'l Research Council, *Fairness and Effectiveness in Policing*, *supra* note 39, at 304.

48. Cf. *Utah v. Strieff*, 136 S. Ct. 2056, 2069–72 (2016) (Sotomayor, J., dissenting) (describing the “indignity” of a stop when an officer is “looking for more” and recognizing that “it is no secret that people of color are disproportionate victims of this type of scrutiny”).

49. With respect to lynchings, see generally Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror* (2d ed. 2015), <http://eji.org/sites/default/files/lynching-in-america-second-edition-summary.pdf> [<http://perma.cc/36E6-VZCN>] (providing a history of lynching and noting that many lynchings occurred in

communities it was often the police themselves who literally put handcuffs on wrists of Black men before the noose was tightened around their necks, or who looked away when mobs tore men out of their homes and away from their families for failing to respect whiteness.⁵⁰

The fact that state action has played and continues to play such a powerful role in signaling to people the ways in which people make sense of how they do or do not belong in society is essential. It means that it is not adequate to define good policing simply in terms of whether law enforcement officers effectively address crime; rather, police must understand themselves as vehicles through which individuals understand themselves as citizens.⁵¹ In an analysis of concepts of procedural justice applied to populations in the United Kingdom, Professors Ben Bradford, Kristina Murphy, and Jonathan Jackson offer a compelling view: police officers as “mirrors.”⁵² The argument here is quite straightforward. Fair treatment by police increases a person’s identification with national identity while poor treatment undermines it.⁵³ Interestingly, then, procedural justice is not important only to how an individual understands her relationship to state and legal authority but also to how she understands herself in relation to other groups.

the context of criminal allegations against Black people); see also Charles Ramsey, TEDx Talks, *Mending Broken Trust: Police and the Communities They Serve*, YouTube (Feb. 8, 2016), <http://www.youtube.com/watch?v=mbNCatXqcLw> (on file with the *Columbia Law Review*) (explaining that a key signal of police involvement in lynchings is photos showing the victims’ wrists handcuffed behind their backs). That police played an active role in the denial of civil rights, especially voting rights, to Black Americans in southern states is well known.

50. See Brian Greer, *Little Rock’s Last Lynching Was in 1927, but the Terrible Memories Linger*, *Ark. Times* (Aug. 4, 2000), <http://www.arktimes.com/arkansas/little-rocks-last-lynching-was-in-1927-but-the-terrible-memories-linger/Content?oid=2378104> [<http://perma.cc/6JCY-4T2J>] (describing police involvement in lynchings in Arkansas and elsewhere); Brentin Mock, *The ‘Great Migration’ Was About Racial Terror, Not Jobs*, *CityLab* (June 24, 2015), <http://www.citylab.com/crime/2015/06/the-great-migration-was-about-racial-terror-not-jobs/396722/> [<http://perma.cc/6AJG-DWL9>] (asserting that “terror and violence” in the South caused African Americans to flee to northern cities).

51. See Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 *Annals Am. Acad. Pol. & Soc. Sci.* 159, 167 (2014) (using curriculum theory to explain that how police treat people teaches them a great deal about their status as citizens).

52. Ben Bradford, Kristina Murphy & Jonathan Jackson, *Officers as Mirrors: Policing, Procedural Justice and the (Re)Production of Social Identity*, 54 *British J. Criminology* 527, 543 (2014) (suggesting “when people felt the police were fair in a general sense, and/or felt they had been personally fairly treated by officers, the strength of their identification with this group was enhanced, and they granted the police more legitimacy”).

53. *Id.* at 528.

II. MOVING FORWARD

This wide range of research naturally raises the question of what to do. One thing is clear: A focus on—and demand that police focus on—changing crime rates to the exclusion of other issues that are equally, if not more, important, such as enhancing trust in police, is a serious problem. That is why in 2015, the President’s Task Force on 21st Century Policing—on which I had the honor of serving—stood up building trust and legitimacy as the first pillar of our recommendations to President Obama.⁵⁴ Building trust and legitimacy was the foundation on which each one of the fifty-nine recommendations that the Task Force provided to the President rested.⁵⁵

With respect to this positive vision there is a caution, however. The recent empirical research discussed above that powerfully suggests that police can be community builders, of course, brings with it concerns about mission creep: Police already worry and complain that the public views them as social workers and expects them to respond to every problem that makes life in urban America difficult.⁵⁶ The reality is that it is unfair to expect police to solve what is fundamentally a social safety net problem with the crude tools of crime fighting simply because they are available twenty-four hours a day, seven days a week, and 365 days a year. And, as Professor Elizabeth Hinton shows, there is a long history in this country of turning social welfare problems into crime problems with respect to the African American community.⁵⁷

Even granting these issues, policing agencies are not without pathways to change. First, the law enforcement community must acknowledge the necessity of a new goal for policing. Crime reduction at all costs does not provide a warrant for aggressive proactive policing.⁵⁸

54. See President’s Task Force on 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing 9–18 (2015), http://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf [<http://perma.cc/Q89P-LLMR>] (describing Pillar 1).

55. *Id.* at 1 (describing trust and legitimacy as the “foundational principle”).

56. Chief Edward Flynn of Milwaukee spoke compellingly of this challenge at a town hall meeting with President Obama. See Ashley Sears, “A Way to Cross Parallel Conversations:” Chief Flynn Speaks with President Obama at Town Hall, Fox6 (July 15, 2016, 9:33 PM), <http://fox6now.com/2016/07/15/a-way-to-cross-parallel-conversations-chief-flynn-speaks-with-president-obama-at-town-hall/> [<http://perma.cc/Q3FP-NVJB>].

57. See Elizabeth Kai Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* 30–32 (2016) (arguing that President Lyndon Johnson’s poverty programs paved the way for harsh criminal justice policies that deeply affected African Americans); see also Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* 101–05 (2010) (detailing how, at the turn of the century, Progressives addressed White immigrants’ involvement in crime with social service support, while Blacks received punishment in the criminal justice system).

58. Note a similar statement by the President’s Task Force on 21st Century Policing. Recommendation 1.6 states: “Law enforcement agencies should consider the potential

Instead, policing agencies should commit to the ideas that all lives are valuable, that the state should endeavor to protect everyone, and that a person's rights and dignity must always be observed. Fortunately, police are taking steps in this direction.⁵⁹ For example, the new emphasis on de-escalation training is a critical aspect of the acknowledgement that, in civilian encounters, police must limit the loss of life and avoid harm even when they are legally entitled to use deadly force.⁶⁰

But changes such as these simply nibble around the edges of the problem. Consider an analogy. Former Cleveland District Attorney Tim McGinty lamented, when announcing at a press conference that a Cleveland grand jury had declined to bring charges against the officer who shot and killed Tamir Rice, that the shooting was a "perfect storm of human error, mistakes and miscommunication."⁶¹ Imagine if Prosecutor McGinty were a Federal Aviation Administration (FAA) regulator as opposed to a county prosecutor. Who would be satisfied by his statement that a plane crash that caused the loss of a soul (common industry parlance used to refer to the number of people on an aircraft) was the result of a "perfect storm"? More likely, the expectation would be that every aspect of the machine would be overhauled and those operating it would be examined, questioned, and trained in order to ensure that the incident did not reoccur. This analysis would be expected because "safety" is the cornerstone of the agency's mission—safety for everybody, not just pilots and crew members.⁶²

Obviously, policing is not just like flying an airplane, but regulatory approaches such as those the FAA follows can teach a great deal to those who work in law enforcement. Start with the mission statement. Rather than crime reduction at all costs, the goal of policing should reflect the public's expectation that those responsible for protecting us from one

damage to public trust when implementing crime fighting strategies. Crime reduction is not self-justifying. Overly aggressive law enforcement strategies can potentially harm communities and do lasting damage to public trust, as numerous witnesses over multiple listening sessions observed." President's Task Force on 21st Century Policing, *supra* note 54, at 16.

59. See U.S. Dep't of Justice, Success Story Map, Cmty. Oriented Policing Servs., <http://cops.usdoj.gov/Default.asp?Item=2827> [<http://perma.cc/GKJ6-BU9K>] (last visited Feb. 1, 2017) (depicting places where agencies have implemented the recommendations of the President's Task Force, including statewide efforts).

60. See Timothy Williams, Long Taught to Use Force, Police Warily Learn to De-escalate, N.Y. Times (June 27, 2015), http://www.nytimes.com/2015/06/28/us/long-taught-to-use-force-police-warily-learn-to-de-escalate.html?_r=0 (on file with the *Columbia Law Review*) (noting the prevalence of de-escalation programs throughout the country).

61. Timothy J. McGinty, Cuyahoga Cty. Prosecutor, Statement on the Decision of the Grand Jury in the Tamir Rice Case (Dec. 28, 2015), <http://prosecutor.cuyahogacounty.us/en-US/SYN//68177/NewsDetailTemplate.aspx> [<http://perma.cc/QE47-CPCN>].

62. Mission, Fed. Aviation Admin., <http://www.faa.gov/about/mission/> [<http://perma.cc/D54M-TS4S>] (last visited Mar. 16, 2017) ("Our continuing mission is to provide the safest, most efficient aerospace system in the world.").

another should understand that their first mission is to protect the sanctity of life—all life, equally.⁶³

To undertake this work, retraining of police officers and leaders is necessary. It is a point of first order to teach police that a commitment to enhancing their own public legitimacy is at least as, if not more, important than the technology of crime reduction.⁶⁴ Additionally, it is extremely difficult for managers to expect police officers to treat members of the public in ways consistent with procedural justice when police officers themselves are rarely treated with procedural justice in their workplaces.⁶⁵ Finally, agencies can do more to simply acknowledge their participation in discrimination and wrongdoing historically and in the present.⁶⁶ Terrence Cunningham, the president of the International Association of Chiefs of Police (IACP) and the police chief of Wellesley, Massachusetts, took a step in this direction at the IACP's annual meeting this past October in San Diego.⁶⁷ Cunningham issued a formal apology to the nation's minority population "for the actions of the past and the role that our profession has played in society's historical mistreatment of communities of color."⁶⁸ Some ridiculed the statement as "cheap talk," and that reaction certainly is understandable.⁶⁹ But, in light of the impact

63. This mission statement does not seem to align clearly with the "law and order" platform of current President Donald Trump. See Standing Up for Our Law Enforcement Community, White House, <http://www.whitehouse.gov/law-enforcement-community> [<http://perma.cc/A67K-F7FH>] (last updated Feb. 1, 2017) ("The Trump Administration will be a law and order administration.").

64. See President's Task Force on 21st Century Policing, *supra* note 54, at 9–18, 44–45 (describing recommendation 4.4. and recommendation 1.6 of Pillar 1, which specify that "crime reduction is not self-justifying" and "[c]ommunities should support a culture and practice of policing that reflects the values of protection and promotion of the dignity of all," respectively).

65. *Id.* at 14 ("1.4 Recommendation: Law enforcement agencies should promote legitimacy internally within the organization by applying the principles of procedural justice.").

66. *Id.* at 12 ("1.2 Recommendation: Law enforcement agencies should acknowledge the role of policing in past and present injustice and discrimination and how it is a hurdle to the promotion of community trust.").

67. See Terrence M. Cunningham, President, Int'l Ass'n of Chiefs of Police, Remarks at the 2016 IACP Annual Conference and Exposition: The Law Enforcement Profession and Historical Injustices (Oct. 17, 2016), <http://www.iacp.org/ViewResult?SearchID=2690> [<http://perma.cc/9GNQ-7W5Z>]; see also Tom Jackman, U.S. Police Chiefs Group Apologizes for 'Historical Mistreatment' of Minorities, *Wash. Post* (Oct. 17, 2016), <http://www.washingtonpost.com/news/true-crime/wp/2016/10/17/head-of-us-police-chiefs-apologizes-for-historic-mistreatment-of-minorities/> [<http://perma.cc/G8HD-P2GU>].

68. Cunningham, *supra* note 67.

69. Evan Allen, Wellesley's Police Chief Apologizes for Historical Injustices, *Bos. Globe* (Oct. 19, 2016), <http://www.bostonglobe.com/metro/2016/10/18/wellesley-police-chief-apology-draws-praise/utO4QozuEPWhxzjRUy9GeI/story.html> (on file with the *Columbia Law Review*) (noting that while Cunningham's speech received praise, "[o]thers said that words, no matter how well-meaning, were no replacement for action, and

of incidents such as the beating of Frank Jude on the formation—and destruction—of public trust, it is difficult to conclude that the gesture is completely meaningless.

questioned why Cunningham had not acknowledged that racism within police departments was still a problem today”).

