

The problem is not police training, police diversity, or police methods. The problem is the dramatic and unprecedented expansion and intensity of policing in the last forty years, a fundamental shift in the role of police in society. The problem is policing itself.

**Alex S. Vitale**

# The End of Policing

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# 1

## The Limits of Police Reform

Tamir Rice and John Crawford were both shot to death in Ohio because an officer's first instinct was to shoot. Anthony Hill outside Atlanta, Antonio Zambrano-Montes in Pasco, California, and Jason Harris in Dallas were all shot to death by police who misunderstood their mental illnesses. Oscar Grant in Oakland, Akai Gurley in Brooklyn, and Eric Harris in Tulsa were all shot "by mistake" because officers didn't use enough care in handling their weapons. North Charleston, South Carolina, police officer Michael Slager shot Walter Scott in the back for fleeing a traffic stop and potential arrest for missed child support—then planted evidence on him as part of a cover-up, which was backed up by other officers. On Staten Island, Eric Garner was killed in part because of an overly aggressive police response to his allegedly selling loose cigarettes. The recent killings of so many unarmed black men by police, in so many different circumstances, have pushed the issue of police reform onto the national agenda in a way not seen in over a generation.<sup>1</sup>

Is there an explosive increase in police violence? There is no question that American police use their weapons more than police in any other developed democracy. Unfortunately, we don't have fully accurate information about the number or nature of homicides at the hands of police. Despite a 2006 law requiring the reporting of this information (reauthorized in 2014), many police departments do not comply. Researchers have had to rely on independent information such as local news stories to cobble together numbers. One effort by the *Guardian* and *Washington Post* documented 1,100 deaths in 2014, 991 in 2015, and 1,080 in 2016—fewer than in the 1960s and 1970s, but still far too many.<sup>2</sup>

African Americans are disproportionately victims of police shootings; black teens are up to twenty-one times more likely than white teens to be

killed by police,<sup>3</sup> though these rates are often proportional to the race of gun offenders and shooting victims more broadly.<sup>4</sup> Racial profiling remains widespread, and many communities of color experience invasive and disrespectful policing. The recent cases of Ferguson and North Charleston are hardly outliers; blacks and Latinos are overwhelmingly the targets of low-level police interactions, from traffic tickets to searches to arrests for minor infractions, and frequently report being treated in a hostile and degrading manner despite having done nothing wrong.<sup>5</sup> In New York City 80 to 90 percent of those targeted for such interactions are people of color.<sup>6</sup>

This form of policing is based on a mindset that people of color commit more crime and therefore must be subjected to harsher police tactics. Police argue that residents in high-crime communities often demand police action. What is left out is that these communities also ask for better schools, parks, libraries, and jobs, but these services are rarely provided. They lack the political power to obtain real services and support to make their communities safer and healthier. The reality is that middle-class and wealthy white communities would put a stop to the constant harassment and humiliation meted out by police in communities of color, no matter the crime rate.

Those who question the police or their authority are frequently subjected to verbal threats and physical attacks. In 2012, young Harlem resident Alvin Cruz, who had been repeatedly stopped and searched by police without justification, taped an encounter with police in which he questioned the reason for the stop. In response, the police officer cursed at him, twisted his arm behind his back, and said, “Dude, I’m gonna break your fuckin’ arm, then I’m gonna punch you in the fuckin’ face.”<sup>7</sup>

Even wealthy and more powerful people of color are not immune: in 2009, Harvard professor and PBS personality Henry Louis Gates Jr. was arrested by Cambridge police in his own home; he had lost his keys, and a neighbor had called the police to report a break-in. The incident prompted President Obama to state:

I think it’s fair to say, number one, any of us would be pretty angry; number two, that the Cambridge police acted stupidly in arresting somebody when there was already proof that they were in their own home, and, number three, what I think we know separate and

apart from this incident is that there's a long history in this country of African Americans and Latinos being stopped by law enforcement disproportionately.<sup>8</sup>

Part of the problem stems from a “warrior mentality.”<sup>9</sup> Police often think of themselves as soldiers in a battle with the public rather than guardians of public safety. That they are provided with tanks and other military-grade weapons, that many are military veterans,<sup>10</sup> and that militarized units like Special Weapons and Tactics (SWAT) proliferated during the 1980s War on Drugs and post-9/11 War on Terror<sup>11</sup> only fuels this perception, as well as a belief that entire communities are disorderly, dangerous, suspicious, and ultimately criminal. When this happens, police are too quick to use force.

Excessive use of force, however, is just the tip of the iceberg of over-policing. There are currently more than 2 million Americans in prison or jail and another 4 million on probation or parole. Many have lost the right to vote; most will have severe difficulties in finding work upon release and will never recover from the lost earnings and work experience. Many have had their ties to their families irrevocably damaged and have been driven into more serious and violent criminality. Despite numerous well-documented cases of false arrests and convictions, the vast majority of these arrests and convictions have been conducted lawfully and according to proper procedure—but their effects on individuals and communities are incredibly destructive.

## **Reforms**

Any effort to make policing more just must address the problems of excessive force, overpolicing, and disrespect for the public. Much of the public debate has focused on new and enhanced training, diversifying the police, and embracing community policing as strategies for reform, along with enhanced accountability measures. However, most of these reforms fail to deal with the fundamental problems inherent to policing.

### *Training*

The videotaped death of Eric Garner for allegedly selling loose cigarettes immediately spurred calls for additional training of officers in how to use

force in making arrests. Officers were accused of using a prohibited chokehold and of failing to respond to his pleas that he couldn't breathe. In response, Mayor Bill de Blasio and Police Commissioner William Bratton announced that all New York Police Department (NYPD) officers would undergo additional use-of-force training so that they could make arrests in the future in ways that were less likely to result in serious injury, as well as training in methods to de-escalate conflicts and more effectively communicate with the public.

Such training ignores two important factors in Garner's death. The first is the officers' casual disregard for his well-being, ignoring his cries of "I can't breathe," and their seeming indifferent reaction to his near lifelessness while awaiting an ambulance. This is a problem of values and seems to go to the heart of the claim that, for too many police, black lives *don't* matter. The second is "broken windows"-style policing, which targets low-level infractions for intensive, invasive, and aggressive enforcement. This theory was first laid out in 1982 by criminologists James Q. Wilson and George Kelling.<sup>12</sup> They presented existing behavioral research that showed that when a car is left unattended on a street it is usually left alone, but if just one window of the car is broken, the car is quickly vandalized. The lesson: failure to indicate care and maintenance will unleash people's latent destructive tendencies. Therefore, if cities want to establish or maintain crime-free neighborhoods they must take action to ensure that residents feel the pressure to conform to civilized norms of public behavior. The best way to accomplish this is to use police to remind people in subtle and not-so-subtle ways that disorderly, unruly, and antisocial behavior are unacceptable. When this doesn't happen, people's baser instincts will take hold and predatory behavior will reign, in a return to a Hobbesian "war of all against all."

The emergence of this theory in 1982 is tied to a larger arc of urban neoconservative thinking going back to the 1960s. Wilson's former mentor and collaborator, Edward Banfield, a close associate of neoliberal economist Milton Friedman at the University of Chicago, parented many of the ideas that came to make up the new conservative consensus on cities. In his seminal 1970 work *The Unheavenly City*, Banfield argues that the poor are trapped in a culture of poverty that makes them largely immune to government assistance:

Although he has more “leisure” than almost anyone, the indifference (“apathy” if one prefers) of the lower-class person is such that he seldom makes even the simplest repairs to the place that he lives in. He is not troubled by dirt or dilapidation and he does not mind the inadequacy of public facilities such as schools, parks, hospitals, and libraries; indeed, where such things exist he may destroy them by carelessness or even by vandalism.<sup>13</sup>

Unlike Banfield, who in many ways championed the abandonment of cities, Wilson decried the decline of urban areas. Along with writers like Fred Siegel,<sup>14</sup> Wilson pointed at the twin threats of failed liberal leadership and the supposed moral failings of African Americans. All three of them argued that liberals had unwittingly unleashed urban chaos by undermining the formal social control mechanisms that made city living possible. By supporting the more radical demands of the later urban expressions of the civil rights movement, they had so weakened the police, teachers, and other government forces of behavioral regulation that chaos came to reign.

Wilson, following Banfield, believed strongly that there were profound limits on what government could do to help the poor. Financial investment in them would be squandered; new services would go unused or be destroyed; they would continue in their slothful and destructive ways. Since the root of the problem was either an essentially moral and cultural failure or a lack of external controls to regulate inherently destructive human urges, the solution had to take the form of punitive social control mechanisms to restore order and neighborhood stability.<sup>15</sup>

Wilson’s views were informed by a borderline racism that emerged as a mix of biological and cultural explanations for the “inferiority” of poor blacks. Wilson co-authored the book *Crime and Human Nature* with Richard Herrnstein, which argued that there were important biological determinants of criminality.<sup>16</sup> While race was not one of the core determinants, language about IQ and body type opened the door to a kind of sociobiology that led Herrnstein to coauthor the openly racist *The Bell Curve* with Charles Murray, who was also a close associate of Wilson.<sup>17</sup>

What was needed to stem this tide of declining civility, they argued, was to empower the police to not just fight crime but to become agents of moral authority on the streets. The new role for the police was to intervene in the quotidian disorders of urban life that contributed to the sense that “anything goes.” The broken-windows theory magically reverses the well-



understood causal relationship between crime and poverty, arguing that poverty and social disorganization are the result, not the cause, of crime and that the disorderly behavior of the growing “underclass” threatens to destroy the very fabric of cities.

Broken-windows policing is at root a deeply conservative attempt to shift the burden of responsibility for declining living conditions onto the poor themselves and to argue that the solution to all social ills is increasingly aggressive, invasive, and restrictive forms of policing that involve more arrests, more harassment, and ultimately more violence. As inequality continues to increase, so will homelessness and public disorder, and as long as people continue to embrace the use of police to manage disorder, we will see a continual increase in the scope of police power and authority at the expense of human and civil rights.

The order to arrest Eric Garner came from the very top echelons of the department, in response to complaints from local merchants about illegal cigarette sales. Treating this as a crime requiring the deployment of a special plainclothes unit, two sergeants, and uniformed backup seems excessive and pointless. Garner had experienced over a dozen previous police contacts in similar circumstances, including stints in jail; this had done nothing to change his behavior or improve his or the community’s circumstances. No amount of procedural training will solve this fundamental flaw in public policy.

Many advocates also call for cultural sensitivity trainings designed to reduce racial and ethnic bias. A lot of this training is based on the idea that most people have at least some unexamined stereotypes and biases that they are not consciously aware of but that influence their behavior. Controlled experiments consistently show that people are quicker and more likely to shoot at a black target than a white one in simulations. Trainings such as “Fair and Impartial Policing” use role-playing and simulations to help officers see and consciously adjust for these biases.<sup>18</sup> Diversity and multicultural training is not a new idea, nor is it terribly effective. Most officers have already been through some form of diversity training and tend to describe it as politically motivated, feel-good programming divorced from the realities of street policing. Researchers have found no impact on problems like racial disparities in traffic stops or marijuana arrests; both implicit and explicit bias remain, even after targeted and intensive training. This is not necessarily because officers

remain committed to their racial biases, though this can be true,<sup>19</sup> but because institutional pressures remain intact.

American police receive a great deal of training. Almost all officers attend an organized police academy and many have prior college and or military experience. There is also ongoing training; large departments have their own large training staff, while smaller departments rely on state and regional training centers. Many states have unified Police Officer Standards and Training (POST) agencies that set minimum standards, develop training plans, and advise on best practices. While police training standards are still more decentralized in the United States than in many countries that have national police forces and academies, the new POST system has gone a long way in raising standards and creating greater uniformity of procedures.

However, even after training officers often have inadequate knowledge of the laws they are tasked to enforce. Police regularly disperse young people from street corners without a legal basis, conduct searches without probable cause, and in some cases take enforcement action based on inaccurate knowledge of the law. In Victoria, Texas, an officer assaulted an elderly man he had pulled over for not having a registration sticker on his license plate. The man tried to explain that the vehicle had a dealers' plate, which in Texas is exempt from the sticker requirement. When the officer refused to listen, the man attempted to summon his boss at the car dealership where the confrontation was occurring. Rather than working to resolve the mistake, the officer attempted to arrest the man and in the process injured him with a Taser so badly that he was hospitalized.<sup>20</sup> In the subsequent inquiry, the officer insisted that the man's passive resistance was a threat that had to be neutralized. Since the incident was recorded on the dashboard camera of the police cruiser, the officer was fired.

The training police receive at the academy is often quite different from what they learn from training officers and peers. The emphasis is on strict discipline and rote learning of laws and rules, and emphasizes proper appearance over substance. Cadets are given little in the way of substantial advice about how to make decisions in a complex environment, according to two veteran officers' memoirs.<sup>21</sup> Even sympathetic portrayals, such as the reality television show *The Academy*, provide stark evidence of a militarized training environment run by drill sergeants who attempt to

“break down” recruits through punitive drilling and humiliating personal attacks. When officers start working, the first thing their peers often tell them is to forget everything they learned in the academy.

In some ways, training is actually part of the problem. In recent decades, the emphasis has shifted heavily toward officer safety training. Seth Stoughton, a former police officer turned law professor, shows how officers are repeatedly exposed to scenarios in which seemingly innocuous interactions with the public, such as traffic stops, turn deadly.<sup>22</sup> The endlessly repeated point is that any encounter can turn deadly in a split second if officers don’t remain ready to use lethal force at any moment. When police come into every situation imagining it may be their last, they treat those they encounter with fear and hostility and attempt to control them rather than communicate with them—and are much quicker to use force at the slightest provocation or even uncertainty.

Take the case of John Crawford, an African American man shot to death by an officer in a Walmart in Ohio. Crawford had picked up an air gun off a shelf and was carrying it around the store while shopping. Another shopper called 911 to report a man with a gun in the store. The store’s video camera shows that one of the responding officers shot without warning while Crawford was talking on the phone.<sup>23</sup> In Ohio it is legal to carry a gun openly, but the officer had been trained to use deadly force upon seeing a gun. The officer involved was not charged, and Crawford’s girlfriend was intimidated and threatened while being questioned after the incident.<sup>24</sup>

Similarly, in South Carolina, a state trooper drove up to a young man in his car at a gas station and asked him for his driver’s license. He leaned into the car to comply and the officer shot him without warning: see unexpected movement, shoot.<sup>25</sup>

Part of this emphasis on the use of deadly force comes from the rise of independent training companies that specialize in inservice training, staffed by former police and military personnel. Some of these groups serve both military and police clients and emphasize military-style approaches and the “warrior mentality.” The company CQB (Close Quarters Battle) boasts of training thousands of local, state, and federal police as well as American and foreign military units such as the US Marines, Navy Seals, and Danish, Canadian, and Peruvian special forces.

Its emphasis is on “battle-proven tactics.”<sup>26</sup> Trojan Securities trains both military and police units and offers police training in a variety of weapons in numerous settings, including a five-day “Police Covert Surveillance and Intelligence Operations” course.<sup>27</sup>

This problem is especially acute when it comes to SWAT teams. Initially created in the early 1970s to deal with rare acts of extremist violence, barricaded suspects, or armed confrontations with police, these units now deal almost exclusively with serving drug warrants and even engage in regular patrol functions armed with automatic weapons and body armor. These units regularly violate people’s constitutional rights, kill and maim innocent people—often as a result of being in the wrong location—and kill people’s pets.<sup>28</sup> These paramilitary units are increasingly being used to respond to protest activity. The militarized response to the Ferguson protests may have served to escalate the conflict there; it’s probably no accident that the Saint Louis County police chief’s prior position had been as head of the SWAT team. These units undergo a huge amount of inservice training, funded in part by seizing alleged drug money.

The federal government also began to fund training and equipment for SWAT teams in the 1970s as part of the last round of major national policing reforms, which were intended to improve police-community relations and reducing police brutality through enhanced training. These reforms instead poured millions into training programs that resulted in the rise of SWAT teams, drug enforcement, and militarized crowd control tactics.

### *Diversity*

There is no question that the racial difference between the mostly white police and the mostly African American policed in Ferguson, Missouri, contributed to the intensity of protests over the killing of Mike Brown. Reformers often call for recruiting more officers of color in the hopes that they will treat communities with greater dignity, respect, and fairness. Unfortunately, there is little evidence to back up this hope. Even the most diverse forces have major problems with racial profiling and bias, and individual black and Latino officers appear to perform very much like their white counterparts.

Nationally, the racial makeup of the police hews closely to national population figures. The US population is 72 percent white; 75 percent of police nationally are white. Blacks make up 13 percent of the population and 12 percent of police. Asians and Latinos are somewhat less well represented relative to their numbers but not dramatically so.<sup>29</sup> In the largest departments, only 56 percent of officers are white. The disparities seem greater in communities of color because of the deep segregation there. In these cases, there are invariably large numbers of white officers patrolling primarily nonwhite areas. This contrast stands out more than its converse, because whites are rarely concerned about being policed by nonwhite officers and because white communities tend to have fewer negative interactions with the police.

There is now a large body of evidence measuring whether the race of individual officers affects their use of force. Most studies show no effect.<sup>30</sup> More distressingly, a few indicate that black officers are *more* likely to use force or make arrests, especially of black civilians.<sup>31</sup> One new study suggests that small increases in diversity produce worse outcomes, while large increases begin to show some improvements; but only a handful of departments met this criterion. In the end, the authors conclude, “There’s no evidence to suggest that increasing the proportion of officers that are black is going to offer a direct solution.”<sup>32</sup> Use of force is highly concentrated in a small group of officers who tend to be male, young, and working in high-crime areas.<sup>33</sup> This high concentration of use of force may be exacerbated by weak accountability mechanisms and a culture of machismo that rewards aggressive policing, formally and informally. These same cultural and institutional forces militate against differential behavior by nonwhite officers.

At the department level, more diverse police forces fare no better in measures of community satisfaction, especially among nonwhite residents. These departments are also often just as likely to have systematic problems with excessive use of force, as seen in federal interventions in Detroit, Miami, and Cleveland in recent years. Both New York and Philadelphia have highly diverse forces (though not as diverse as their populations), yet both have come under intense scrutiny for excessive use of force and discriminatory practices such as “stop and frisk.” This is in large part because departmental priorities are set by local political leaders,

who have driven the adoption of a wide variety of intensive, invasive, and aggressive crime-control policies that by their nature disproportionately target communities of color. These include broken-windows policing, with its emphasis on public disorder, and the War on Drugs, which is waged almost exclusively in nonwhite neighborhoods. Having more black and brown police officers may sound like an appealing reform, but as long as larger systems of policing are left in place, there is no evidence that would give cause to expect a significant reduction in brutality or overpolicing.

### *Procedural Justice*

Procedural justice deals with *how* the law is enforced, as opposed to substantive justice, which involves the actual outcomes of the functioning of the system. President Obama's Task Force on 21st Century Policing report focuses on procedural reforms such as training and encourages officers to work harder to explain why they are stopping, questioning, or arresting people.<sup>34</sup> Departments are advised to create consistent use-of-force policies and mechanisms for civilian oversight and transparency. The report implies that more training, diversity, and communication will lead to enhanced police-community relations, more effective crime control, and greater police legitimacy.

Similar goals were set in the late 1960s. The Katzenbach report of 1967 argued that the roots of crime lie in poverty and racial exclusion, but also argued that a central part of the solution was the development of a more robust and procedurally fair criminal justice system that would uphold the rights of all people to be free of crime. In keeping with this, it called for a major expansion of federal spending on criminal justice. Just as local housing and social services programs needed federal support, so too did prisons, courts, and police. "Every part of the system is undernourished. There is too little manpower and what there is is not well enough trained or well enough paid."<sup>35</sup> The Commission called for improved training, racial diversity in hiring, programmatic innovations, and research. The Kerner Commission on Civil Disorders reached similar conclusion calling for "training, planning, adequate intelligence systems, and knowledge of the ghetto community."<sup>36</sup>

Similarly, Johnson's initial draft of the 1968 Safe Streets bill called for resources to recruit and train police, modernize equipment, better



coordinate between criminal justice agencies, and begin innovative prevention and rehabilitation efforts; it had the support of the American Civil Liberties Union (ACLU) and other liberal reform groups.<sup>37</sup> After Congress finished with it, the bill primarily granted funds in large blocs to states to use as they saw fit. Johnson signed the bill anyway, claiming that the core goals of professionalizing the police would be achieved. Over the next decade, the result was a massive expansion in police hardware, SWAT teams, and drug enforcement teams—and almost no money toward prevention and rehabilitation.

By conceptualizing the problem of policing as one of inadequate training and professionalization, reformers fail to directly address how the very nature of policing and the legal system served to maintain and exacerbate racial inequality. By calling for colorblind “law and order” they strengthen a system that puts people of color at a structural disadvantage and contributes to their deep social and legal estrangement.<sup>38</sup> At root, they fail to appreciate that the basic nature of the law and the police, since its earliest origins, is to be a tool for managing inequality and maintaining the status quo. Police reforms that fail to directly address this reality are doomed to reproduce it.

The Justice Department makes the same mistake in its report on the Ferguson Police Department.<sup>39</sup> It relies heavily on improving training and expanding community policing initiatives to address racial bias and excessive use of force. It also calls for police to acknowledge their historical role in racial oppression, as was recently done by FBI director James Comey and, to a lesser extent, Commissioner William Bratton in New York.<sup>40</sup> Otherwise, the document largely lays out procedural reforms designed to make the policing process more democratic through internal consultation with officers and their unions and external consultation with the public. Departments are urged to think of how the community will perceive their actions and to pursue nonpunitive interactions with people to build trust. These reforms may improve the efficiency of police bureaucracies and improve relations with those active in police-community dialogues between communities and the police but will do little to address the racially disparate outcomes of policing. That is because even racially neutral enforcement of traffic laws will invariably punish poorer residents who are least able to maintain their vehicles and

pay fines. Well-trained police following proper procedure are still going to be arresting people for mostly low-level offenses, and the burden will continue to fall primarily on communities of color because *that is how the system is designed to operate*—not because of the biases or misunderstandings of officers.

### *Community Policing*

Everyone likes the idea of a neighborhood police officer who knows and respects the community. Unfortunately, this is a mythic understanding of the history and nature of urban policing, as we will see in [chapter 2](#). What distinguishes the police from other city agencies is that they can legally use force.

While we need police to follow the law and be restrained in their use of force, we cannot expect them to be significantly more friendly than they are, given their current role in society. When their job is to criminalize all disorderly behavior and fund local government through massive ticketing-writing campaigns, their interactions with the public in high-crime areas will be at best gruff and distant and at worst hostile and abusive. The public will resist them and view their efforts as intrusive and illegitimate; the police will react to this resistance with defensiveness and increased assertiveness. Community policing is not possible under these conditions.

Another part of the problem lies in the nature of community. Steve Herbert shows that community meetings tend to be populated by long-time residents, those who own rather than rent their homes, business owners, and landlords.<sup>41</sup> The views of renters, youth, homeless people, immigrants, and the most socially marginalized are rarely represented. As a result, they tend to focus on “quality of life” concerns involving low-level disorderly behavior rather than serious crime.

Across the country, community police programs have been based on the idea that the “community” should bring concerns of all kinds about neighborhood conditions to the police, who will work with them on developing solutions. The tools that police have for solving these problems, however, are generally limited to punitive enforcement actions such as arrests and ticketing. Community policing programs regularly call for increasing reliance on Police Athletic Leagues, positive nonenforcement activities with youth, and more focus on getting to know



community members. There is little research, however, to suggest that these endeavors reduce crime or help to overcome overpolicing.

Low-level drug dealing and use generates a tremendous number of calls for police service. Criminalizing these activities has done nothing to reduce the availability and negative effects of drugs on individuals or communities. It has produced substantial negative consequences for those arrested, however, and has been a major drain on local and state resources.

The research shows that community policing does not empower communities in meaningful ways. It expands police power, but does nothing to reduce the burden of overpolicing on people of color and the poor. It is time to invest in communities instead. Participatory budgeting and enhanced local political accountability will do more to improve the well-being of communities than enhancing the power and scope of policing.

## **Enhanced Accountability**

Holding police accountable is another focus of reformers. Activists have called for police to be prosecuted criminally in most cases, though this is rarely successful, leading some to call for new forms of police prosecution. Many reformers frustrated with local inaction have looked to the federal government to intervene, though with little past success to point to. Finally, police body cameras have emerged as a possible technological fix, but raise serious privacy concerns.

## ***Independent Prosecutors***

There are major legal, institutional, and social impediments to prosecuting police. While hard numbers are difficult to come by, a successful prosecution of a police officer for killing someone in the line of duty, where no corruption is alleged, is extremely rare. A recent report found only fifty-four officers charged for fatal on-duty shootings in the last ten years; of those, only eleven were convicted.<sup>42</sup> Their average sentence is only four years, with some receiving only a few weeks. The few convictions that have occurred have resulted primarily from clear video evidence or the testimony of fellow officers.

From the moment an investigation into a police shooting begins, there are structural barriers to indictment and prosecution. When there is reason to believe that the shooting might not be justified, prosecutors tend to take a greater role. However, they must rely on the cooperation of the police to gather necessary evidence, including witness statements. Police officers at the scene are sometimes the only witnesses to the event. The close working relationship between police and prosecutors, normally an asset in homicide investigations, becomes a fundamental conflict of interest in all but the most straightforward cases. As a result, prosecutors are often reluctant to pursue such cases aggressively.

Furthermore, because DAs are usually elected, they are often reluctant to be seen as inhibiting the police, since the public sees district attorneys as defenders of law and order. Even in periods of heightened concern about police misconduct, most citizens retain a strong bias in favor of police. We can see the effects of this in the case of Darren Wilson, the officer who shot Michael Brown in Ferguson. Prosecutors spent months collecting and presenting evidence. While this made them appear thorough, it also created a public “cooling off” period, allowing the possibility that demands for prosecution would die down.

Also, the Saint Louis County DA decided to use a radically different approach in this case. Usually, prosecutors make a short presentation of the evidence to the grand jury in which they call for specific charges to be considered. Given the low threshold of probable cause and the one-sided nature of the proceedings, successful indictments are the norm. In this case, the DA decided to provide the grand jury with a wide variety of conflicting evidence and little framework to evaluate it, and allow them to decide, without any prompting, whether an indictment was justified and for what offense. This allowed the DA to absolve himself from any responsibility for the outcome and served to confuse and undermine the confidence of the grand jury, gambling that it would be likely to err on the side of caution and hold back on an indictment. Normally, this body is given clear guidance and only overrules prosecutors in extreme cases.

One alternative being pursued in several states is the creation of an independent police prosecutor’s office that is more removed from local politics. The hope is that such independent prosecutions would be viewed as more legitimate, regardless of the outcome. In addition, such so-called “blue desks” could become repositories of expertise on police

prosecutions. While still tied to politics at the state level, these bureaus, because of their singular focus, might be better able to insulate themselves from accusations of overly aggressive prosecutions, as well as charges of not supporting the police—since this is their primary purpose.

However, even when a prosecutor is motivated, there are huge legal hurdles. State laws authorizing police use of force, backed up by Supreme Court decisions, give police significant latitude in using deadly force. In the 1989 case *Graham v. Connor*, the Supreme Court ruled that officers may use force to make a lawful arrest or if they reasonably believe the person represents a serious physical threat to the officer or others.<sup>43</sup> This means that police can initiate the use of force over any resistance to arrest. In Missouri and many other places, any perceived effort to take an officer's gun justifies the use of deadly force. The court also said that the totality of circumstances must be judged with an understanding of the split-second nature of police decision-making. Therefore, considerations like the size and previous actions of the alleged perpetrator, as well as the training and guidance of the officer, are factors a jury may consider. In some cases, state laws don't even reflect the new federal standards. Recent police prosecutions in Missouri and South Carolina were clouded by state laws that allow police to shoot fleeing suspects.

Another challenge that won't be fixed by independent prosecutors is the mindset of juries. Popular culture and political discourse are suffused with commentaries about the central importance of police in maintaining the basic structural integrity of society as well as the dangerous nature of their work—as misguided as both may be. The legal standard for judging police intensifies this tendency to identify with them.

Finally, despite the “post-racial society” rhetoric, racism and bias remain omnipresent in American society—nowhere more than in the realm of criminal justice. There is abundant evidence that jury bias exacerbates racial disparities in criminal justice outcomes, including false convictions, application of the death penalty, and drug convictions. Recent research shows that the closer whites live to blacks, the more positive their views of the police are—which did not augur well for an indictment in a place like Saint Louis County. White jurors are much more likely to side with police, regardless of the race of the officer and the person killed.

### *Federal Intervention*

Many advocates have called on the federal government to be more involved in holding local police accountable and in investigating systematic policies and practices, citing the conflicts we have noted about local police and district attorneys.<sup>44</sup> Since the civil rights era, when the government acknowledged that local legal systems were refusing to prosecute perpetrators of racist violence, the Justice Department (DOJ) has been authorized to bring criminal cases against individual officers through civil rights prosecutions.

Local activists have also turned to the DOJ when they feel local police and political officials are unresponsive to their demands for systemic reforms. Since 1994, in the wake of the Rodney King incident, the DOJ has been allowed to undertake investigations, reports, and even litigation in cases where there is an indication of a pattern of constitutional violations.<sup>45</sup> Its ability to expose problems and pressure local officials is seen as an important check on local political and police power. In addition, many activists hope that federal intervention will give them more power in their ongoing dealings with local police.

In practice, such prosecutions and investigations are rare. Local police are often reluctant to cooperate, with some outright refusing to comply, forcing additional litigation, which raises costs and delays reforms. The DOJ's Civil Rights Division has only fifty lawyers, some of whom are assigned to other tasks.<sup>46</sup> In individual actions, the standard of proof requires that there be evidence of intent to deprive someone of their rights. Actions undertaken in the heat of the moment combined with any indication of a possible threat to the officer generally undermine such prosecutions. In addition, concerns about major federal intrusions into local justice systems mean that only the most clear-cut cases are brought—only around a hundred a year. The country's approximately 17,000 independent police departments all have their own ways of doing things, with remarkable autonomy. A political or legal victory imposing changes on one local police department may have no bearing on the one next door.

Even when cases end in voluntary agreements or court-imposed consent decrees, the results are rarely significant or long-lasting. In 1999, the DOJ entered into a consent decree with the New Jersey state police to address “driving while black” cases by making a number of changes in how they trained officers, assigned them to duty, conducted stops and

searches, and maintained paperwork. In the end, however, a study of their practices five years later showed that 75 percent of all stops were still directed at black and Latino motorists.<sup>47</sup> In Cleveland, the DOJ got the local police to agree to prohibit shooting at fleeing vehicles unless there was an immediate threat to life. That agreement seemed to have little effect when officers killed an unarmed driver and passenger after firing 137 shots at them, because they mistook an engine backfire for a gunshot.<sup>48</sup> The DOJ has the power to withhold federal grants from departments that don't make changes, but this is never done in practice. Instead of taking often cosmetic steps to enhance police legitimacy, the DOJ should be demanding a long-term reexamination of the expanding role of the police in racial and class inequality.

Part of the weakness of this process is that the changes imposed tend to mirror the failed reforms outlined in this chapter: improved training, installing dashboard and body cameras, and improving record keeping. The DOJ's report on police practices in Ferguson did help expose inadequate federal and state funding for municipal operations and racially biased, poor-quality police and court services. It even recommended restricting the use of highly discretionary summonses and low-level arrests, as well as reducing police enforcement in schools. Unfortunately, its main recommendation was to implement a system of "community policing," without addressing all the problems that entails. It did not discuss dialing back the War on Drugs, police militarization, or broken-windows policing.

Under the Trump administration, there is even less reason to rely on this strategy to rein in local police. Attorney General Jeff Sessions has made it clear he will be giving local police a free hand and that federal investigations and prosecutions will be few and far between, as they were under George W. Bush. Instead, we must hold local officials directly accountable for the behavior and mission of local police.

### *Body Cameras*

Reformers have pointed to body cameras as a way to deter and hold officers accountable for improper behavior. The Obama administration embraced this reform and put tens of millions of dollars into police budgets for it. Dash cameras, which have been around for longer, are

becoming widespread; police departments like to keep an eye on officers, and the cameras seem to have reduced the number of civilian complaints and lawsuits against officers. In some cases they have also aided in prosecutions.

There is a problem of officer compliance. In numerous shooting cases, officers have failed to turn on their cameras. For example: One of the officers present at the shooting of Walter Scott in Charleston did not have his camera turned on. Not a single one of the officers present at a shooting in Washington, D.C., in 2016 had their camera on. Eighteen-year-old Paul O'Neil was killed by police in Chicago who did not have their cameras on.<sup>49</sup> One study actually found that departments using cameras had *higher* rates of shootings.<sup>50</sup>

Ultimately, body cameras are only as effective as the accountability mechanisms in place. If local DAs and grand juries are unwilling to act on the evidence cameras provide, then the courts won't be an effective accountability tool. Giving local complaint review boards access to the tapes could aid some investigations, but often these boards have only limited authority.

Body cameras also raise important privacy and civil liberties concerns. What will happen to the videos? In the past, police have used the information they gather to establish gang databases, "red files" of political activists, and huge databases on individuals who are not accused of engaging in criminal behavior. Who will have access to these images? In some cases the public may have access to this material. In Seattle, where Washington State has strong sunshine laws, police have started posting videos on YouTube with the images of individuals blurred. While this provides some sense of anonymity, people familiar with the circumstances involved may find it quite possible to identify individuals. If the primary reason for public support of body cameras is to enhance accountability, then perhaps the footage should be under the control of an independent body and not the police.<sup>51</sup>

## **Alternatives**

Any hope we have of holding police more accountable must be based on greater openness and transparency. Police departments are notoriously

defensive and insular. Their special status as the sole legitimate users of force has contributed to a mindset of “them against us,” which has engendered a culture of secrecy. For too long police have walled themselves off from public inspection, open academic research, and media investigations. Entrenched practices that serve no legitimate purpose, failed policies, implicit and explicit racism among the rank and file, and a culture of hostility toward the public must be rooted out.

Police should stop fighting requests for information from the public, researchers, and the media. They should encourage more public oversight by including civilians on major decision-making bodies. Just as many hospitals, universities, and corporations have outside directors drawn from the communities they serve, the police should be bringing people in, not shutting them out. This is being done in places like Seattle and Oakland, which have created civilian police commissions with encouraging results. Ideally, these people should be chosen by communities, rather than the police or even political leaders. This is a basic requirement of democratic policing. As NYU law professor Barry Friedman notes, our failure to adequately oversee the actions of police puts our society at peril, especially as new technologies give police the ability to see into ever more aspects of our private lives.<sup>52</sup>

We can’t rely on a few well-intentioned individuals to rein in excessive police power. Countervailing institutional bases of power must be positioned to monitor the police actively and thoroughly.

### *Disarm the Police*

Since 1900, the police in Great Britain have killed a total of fifty people. In March 2016 alone, US police killed one hundred people.<sup>53</sup> Yes, there are more people and more guns in the United States, but the scale of police killings goes far beyond these differences. US police are armed with an amazing array of weapons from semiautomatic handguns and fully automatic AR-15 rifles to grenade launchers and .50-caliber machine guns. Much of the militarized weaponry comes directly from the Pentagon through the 1033 Program, a weapons transfer program that began in 1997. This program has resulted in the distribution of \$4 billion worth of equipment. Local police departments can get surplus armaments at no cost—with no questions asked about how they will be used. Small



communities now have access to armored personnel carriers, assault rifles, grenade launchers, and a variety of “less lethal” weaponry, such as rubber bullets and pepper-spray rounds. The Department of Homeland Security (DHS) has also given out \$34 billion in “terrorism grants,” a tremendous boon for military contractors trying to expand their reach into civilian policing markets.<sup>54</sup>

SWAT teams have become the primary consumers of militarized weaponry and tactics.<sup>55</sup> These heavily armed teams are almost never used for their original purpose of dealing with hostage situations or barricaded suspects. Instead, their function is now to serve warrants, back up low-level buy-and-bust drug operations, and patrol high-crime areas. Much of this expansion was driven by federal policies that funded the equipment for such teams either directly or through asset forfeiture laws.

The increased use of paramilitary units has resulted in dozens of incidents in which police have wrongfully killed or injured people—including throwing a flashbang grenade into a toddler’s crib during a Georgia drug raid in May 2014.<sup>56</sup> The child was severely burned and entered a coma. No drugs were found and no arrests made. One officer was charged with perjury but found not guilty at trial. In fact, the local prosecutor threatened to charge family members for the child’s injuries. This near total lack of accountability for botched raids, excessive use of force, and the dehumanization of suspects must be corrected. Getting rid of this military hardware would be a start, but even handguns pose a major problem. Are armed police really the most appropriate tool in most cases?

Even when officers are injured or killed, the officer’s possession of a weapon sometimes contributes to their victimization. Offenders who are committed to evading police are more likely to use deadly force precisely because they know the officer is armed. This means they are prone to escalate dramatically. An armed suspect is much less likely to shoot an unarmed officer. Does that mean that some people may evade capture? Yes. But it also means that many lives are saved, including the lives of officers, and police legitimacy is broadly enhanced. Traffic stops would be less deadly for officers and the public if police carried no weapons.<sup>57</sup>

While police insist on the need for firearms, the vast majority of officers never fire their weapons and some brag of long careers without even drawing one on duty. Some will say it acts as a deterrent and bolsters



police authority so that other force isn't necessary. This may be true at the margins, but to rely on the threat of lethal force to obtain compliance flies in the face of "policing by consent." The fact that police feel the need to constantly bolster their authority with the threat of lethal violence indicates a fundamental crisis in police legitimacy.

### *Police Role*

More than anything, however, what we really need is to rethink the role of police in society. The origins and function of the police are intimately tied to the management of inequalities of race and class. The suppression of workers and the tight surveillance and micromanagement of black and brown lives have always been at the center of policing. Any police reform strategy that does not address this reality is doomed to fail. We must stop looking to procedural reforms and critically evaluate the substantive outcomes of policing. We must constantly reevaluate what the police are asked to do and what impact policing has on the lives of the policed. A kinder, gentler, and more diverse war on the poor is still a war on the poor. As Chris Hayes points out, organizing policing around the collection of fees and fines to fund local government undermines the basic ideals of democracy.<sup>58</sup> And as long as the police are tasked with waging simultaneous wars on drugs, crime, disorder, and terrorism, we will have aggressive and invasive policing that disproportionately criminalizes the young, poor, male, and nonwhite. We need to push back on this dramatic expansion of police power and its role in the mass incarceration at the heart of the "New Jim Crow."

What we are witnessing is a political crisis. At all levels and in both parties, our political leaders have embraced a neoconservative politics that sees all social problems as police problems. They have given up on using government to improve racial and economic inequality and seem hellbent on worsening these inequalities and using the police to manage the consequences. For decades, they have pitted police against the public while also telling them to be friendlier and improve community relations. They can't do both.

A growing number of police leaders are speaking out about the failures of this approach. In the wake of the tragic deaths of five police officers in Dallas, 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 ... Here in Dallas we got a loose dog problem; let's have the cops chase loose dogs. Schools fail, let's give it to the cops ... That's too much to ask. Policing was never meant to solve all those problems.<sup>59</sup>

We are told that the police are the bringers of justice. They are here to help maintain social order so that no one should be subjected to abuse. The neutral enforcement of the law sets us all free. This understanding of policing, however, is largely mythical. American police function, despite whatever good intentions they have, as a tool for managing deeply entrenched inequalities in a way that systematically produces injustices for the poor, socially marginal, and nonwhite.

Part of the problem is that our politicians, media, and criminal justice institutions too often equate justice with revenge. Popular culture is suffused with revenge fantasies in which the aggrieved bring horrible retribution down on those who have hurt them. Often this involves a fantasy of those who have been placed on the margins taking aim at the powerful; it's a fantasy of empowerment through violence. Police and prisons have come to be our preferred tools for inflicting punishment. Our entire criminal justice system has become a gigantic revenge factory. Three-strikes laws, sex-offender registries, the death penalty, and abolishing parole are about retribution, not safety. Whole segments of our society have been deemed always-already guilty. This is not justice; it is oppression. Real justice would look to restore people and communities, to rebuild trust and social cohesion, to offer people a way forward, to reduce the social forces that drive crime, and to treat both victims and perpetrators as full human beings. Our police and larger criminal justice system not only fail at this but rarely see it as even related to their mission.

There are police and other criminal justice agents who want to use their power to improve communities and individuals and protect the "good" people from the "bad" ones. But this relies on the same degraded notion of punishment as justice and runs counter to the political imperatives of the institutions in which they operate. There are growing numbers of disgruntled police officers across the country who are deeply frustrated about the mission they've been given and the tools they've been told to use. They are sick and tired of being part of a system of mass

criminalization and punishment. This is especially acute among African American officers, who see the terrible consequences of so much that police do in their communities. Some are beginning to speak out, such as the NYPD Twelve, who filed suit against their department for its use of illegal quotas.<sup>60</sup> Many more, however, fear speaking out.

But not all police mean well. Too many engage in abuse based on race, gender, religion, or economic condition. Explicit and intentional racism is alive and well in American policing. We are asked to believe that these incidents are the misdeeds of “a few bad apples.” But why does the institution of policing so consistently shield these misdeeds? Too often, when biased policing is pointed out, the response is to circle the wagons, deny any intent to do harm, and block any discipline against the officers involved. This sends an unambiguous message that officers are above the law and free to act on their biases without consequence. It also says that the institution is more concerned about defending itself than rooting out these problems.

Is our society really made safer and more just by incarcerating millions of people? Is asking the police to be the lead agency in dealing with homelessness, mental illness, school discipline, youth unemployment, immigration, youth violence, sex work, and drugs really a way to achieve a better society? Can police really be trained to perform all these tasks in a professional and uncoercive manner? In the pages that follow I lay out the case for why the answer to these questions is no, and sketch out a plan for constructing an alternative.

Any real agenda for police reform must replace police with empowered communities working to solve their own problems. Poor communities of color have suffered the consequences of high crime and disorder. It is their children who are shot and robbed. They have also had to bear the brunt of aggressive, invasive, and humiliating policing. Policing will never be a just or effective tool for community empowerment, much less racial justice. Communities must directly confront the political, economic, and social arrangements that produce the vast gulfs between the races and the growing gaps between the haves and the have-nots. We don’t need empty police reforms; we need a robust democracy that gives people the capacity to demand of their government and themselves real, nonpunitive solutions to their problems.

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