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CRIME AND THE MYTHOLOGY OF POLICE

ABSTRACT

The legal policing literature has espoused one theory of policing after another in an effort to address the frayed relationship between police and the communities they serve. All have aimed to diagnose chronic policing problems in working towards structural police reform. The core principle emanating from these theoretical critiques is that the mistrust of police among communities of color results from maltreatment, illegitimacy, and marginalization from the law and its enforcers. Remedies have included police training to encourage treating people with dignity, investing in body cameras and other technology, providing legal avenues to encourage constitutional action by police, and creating a voice for community members to express their needs. These preeminent policing theories do not fully address a core cause of police mistrust and disaffection of communities of color and the poor. To address these symptoms of policing failure requires a consideration of the purpose and function of police. At the core of police function is a misunderstanding of policing that this Article terms "the police myth."

The police myth is the twofold belief that a primary function of police is crime control and that police solve crimes with regularity. Reliance on the police myth may provide societal comfort but has made it difficult to address rudimentary policing failure. Without understanding what police actually do and their relationship with crime, it is impossible to reimagine policing. This Article seeks to understand the myth that in large part contributes to the anomie between police and communities of color, but also creates a structural ***66** *dissonance regarding the nature and function of police and their role in a community. Dispelling this myth allows a broader reimagining of policing that recasts the policing functions and expectations of public safety.*

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***67** There is a critical conversation afoot about the future of police in America. All options are on the table as states and the federal government ***68** are considering defunding,[1] restructuring,[2] reducing the role of,[3] or otherwise reimagining police in modern society.[4] There have been strong ***69** feelings expressed by grassroots movements pushing to abolish police,[5] and on the other side, opposition based in fear that reducing policing will threaten public safety and increase crime.[6] At the crux of these debates is what role police should play in modern society. Policing scholars have recently commented that if we want to determine how to fix American policing, we must determine the purposes of police.[7] While the role of police may seem evident, it may not be so simple. The media, average citizens, and even some scholars have assumed that the role of police is to fight crime and "make people safe."[8] Maybe because it has assumed the obvious, the ***70** legal literature has largely neglected to engage in a meaningful discussion of the purpose and function of police.

The veins of policing scholarship have historically included both instrumentalist and legitimacy approaches; the former focused on improving police crime control,[9] and the latter focused on improving police and community relationships.[10] These two approaches are not binary; although legitimacy theorists certainly have instrumental aims, both approaches are missing a meaningful discussion of the role and function of police. Early 1960s instrumentalist approaches in policing literature relied on patrol policing and community policing which aimed to improve police ability to solve crime and address community concerns.[11] As reported crime rates rose in the 1970s, instrumentalist policing adapted to new technology and approaches with broken windows policing,[12] hot spots policing,[13] and ***71** predictive policing,[14] which all purportedly aimed to reduce crime and delinquency in communities. More recently, legitimacy theories have rejected instrumentalist approaches--focusing not on goals of reducing crime or improving police function--but concentrating on community lack of trust in police.[15] These varied, and sometimes diametrically opposed, theories, promulgated by Tracey Meares, Tom Tyler, Monica Bell, Jocelyn Simonson and others include procedural justice,[16] democratic and power lens policing,[17] and legal estrangement.[18] Tom Tyler and Tracey Meares focus on training of police to improve legitimacy,[19] Monica Bell encourages ***72** constitutional action to reduce public marginalization,[20] and Simonson considers democratization or wholesale shifts of power in policing structures.[21] To the extent that these theories have examined policing, they often focus on symptoms of policing failure--including racial discrimination,[22] excessive force,[23] corruption,[24] police misconduct,[25] and ***73** marginalization.[26] The last thirty years, legal scholars have largely lost sight of overall police function, goals, or police crime control metrics,[27] with some exception.[28] The theoretical framework of police investigation and more broadly, instrumentalist approaches to police reform, have remained largely without progress.[29] Legal academia has largely neglected to pursue any rigorous inquiry into the function and purpose of police.[30] While theory ignores the issues surrounding the investigative and crime solving functions of police, the lofty goals of ending marginalization and democratizing police remain unachieved.

To begin examining the purpose of police, two (so-far) uncontroversial assumptions at the foundation of the public view of police must be addressed. The first is that policing's core function involves preventing, investigating, and solving crime,[31] and the second is that crimes are solved by police.[32] These assumptions together are what this Article terms the ***74** *police myth*. A large part of the public recognizes that there are unsolved mysteries and that police are not perfect--especially when it comes to abuse and misconduct--but it also assumes largely that police fulfill their core function by solving crimes.[33] Though a significant portion of the public knows all too well that police do not regularly solve serious crimes, as these marginalized communities are often the forgotten victims of these crimes.[34]

A brief historical review confirms that from the founding of American police, the state has charged police with investigating and solving crimes.[35] Indeed, police hold a monopoly in the duty to solve crime--they are the only actors who can arrest and turn individuals over for prosecution.[36] While the charge of police has always been crime fighting, the function of police has been much broader. A closer examination of history reveals that the police function is one limited expression of a broader constitutional "police power" that includes state power over health, safety, and transportation.[37] This "police power" covers much more than criminal policing and is a power used by states to enact laws, including criminal laws.[38] The constitutional "police power" is also used to delegate power for enforcement of laws to police. Although the authority of police comes from

this state "police power," the two are distinct concepts.[39] A historical review also reveals that police have always dealt with public order issues--examples ***75** over the years range from resolving interpersonal disputes and clearing sheep from city streets to managing sewer issues and traffic.[40] States used their police power in part to entrust police with responsibility for these public order functions. Moreover, while the core function of police may have been crime control, this has only ever been in name only, as police have been involved with health, safety, and transportation issues throughout their history.[41]

The second part of the police myth is the inherent assumption that crimes are regularly solved by police. In that sense, the police myth implicates both the core function of police and the performance of police. Indeed, underlying many legal discussions of policing policy is a widely accepted--though false-- assumption that police are solving serious crimes.[42] The *serious crimes* considered here include classic felonies of murder, rape, aggravated assault, burglary, robbery, arson, and motor vehicle theft.[43] What this Article means by *solving crime* refers to a crime that is reported, ***76** then investigated and resolved through arrest and clearance.[44] The public perception of "crime solving" is a police officer determining the perpetrator responsible for a particular offense and holding that person accountable for their crime.[45] By either definition, however, crimes are not being solved as might be anticipated.

Police have never successfully solved crimes with any regularity,[46] as arrest and clearance rates are consistently low throughout history.[47] Indeed, ***77** while the public overwhelmingly assumes that police are solving crimes,[48] police have never solved the majority of serious crimes.[49] Police have cleared only twenty percent of all serious crimes in the last thirty years.[50] However, the *police myth* has persisted over time. Based on this myth, the public has regularly reported crimes to police with an expectation that they are addressed. However, police fail to solve serious crimes regularly. This failure--and the underlying myth that police do solve crimes--disproportionately impacts poor communities of color when these crimes are not addressed. The results of this failure are most profound in these communities as deeper issues of legitimacy and disaffection result with the realization that police are not available when they are needed. This Article does not argue for increased arrests, although that is one possible response;[51] rather, it focuses on the reality that public expectations for the police are not being met, as indicated by empirical data. While this Article makes no attempt to determine why police are not solving more crimes, it does recognize the consequences of the police myth. Three in particular are identified here.

First, the police myth leads to an obfuscation of the role of police and a lack of accountability for crime solving. Police are charged with solving crimes, but their actual function is much broader and more diffuse, and most of their focus is not on crime.[52] Though because the expectation is there, particularly among police themselves, the *police myth* leads police to hide the rate at which they are solving crimes.[53] There is also a lack of transparency about what police typically do, how often they actually solve crimes, and little oversight from the public on the lack of training they ***78** receive for the functions they perform.[54] The problem may not lie simply with police, since the public relies on police for many functions both criminal and non-criminal, yet expects them to solve serious crimes.[55] This incongruity and dual function has not been reconciled by policing scholars or the public. Perhaps there is an unrecognized tradeoff here: when police focus arrests on minor crimes and spend most of their time on public service functions, they are unable to focus on and solve serious crimes.[56]

A second result of the police myth is police disaffection.[57] Some common justifications for disaffection with police include racial profiling, police misconduct, gang violence, procedural injustice, and minor crime arrests.[58] This Article identifies another potentially major cause of police disaffection. Members of many communities with high crime rates are disaffected with police because they have grown used to police failing to address crime and because they often receive poor levels of police protection, which encourages self-help and in turn can increase crime.[59] This is very much connected with the third result.

Third, and finally, the police myth creates what this Article terms a *punishment-protection paradox*. Individuals sometimes fail to report crime because of the threat of "punishment" from different avenues.[60] First, ***79** reporting crime poses a threat to individuals, both from community members, and from incarceration and potential police mistreatment. But then the *punishment-protection paradox* also prevents reporting of crimes.[61] People in communities of color understand the police myth all too well. They know from experience of years of ineffective policing that police do not typically solve crimes. Also, in some cases, the solving of a crime may result in more negative interactions and a lack of "protection" felt by communities, which might make people even less likely to approach police. Even when police do arrest and sometimes incarcerate members of a community, this

can cause disaffection for all who are involved and an encouragement by others not to turn in a member of the community to the police. [62] Though on the other side, the lack of police intervention when a community member is a victim of crime is perceived as a problem of police refusing to keep the community safe or being unable to do so. And because the vast majority of serious crimes are solved by the *public*, not police, a refusal to report crime or cooperate with police perpetuates the failure of police to solve crimes and furthers the negative feedback loop. [63] This results in a serious paradox that perpetuates the police myth.

There is a latent fear about disincentivizing policing, [64] and a burgeoning fear in the criminal literature about the effects of decreased policing due to ***80** recent protests and reform efforts. [65] More recently as police departments reduce police budgets, there is a concern that there will be a dramatic loss of public safety. To understand this anticipated loss, there must be an understanding of the public function that police serve today. If, for instance, police serve mostly a social or transportation function rather than a crime control function, that has implications for the risk the public absorbs with fewer police, and what costs might ensue from over- or under-deterrence of policing. The theoretical legal police literature has recognized the importance of understanding the relationship of police with the communities they serve. [66] However, this literature has primarily focused on the symptoms and solutions for the misconduct and distrust of police. [67] Much of this important prior work has neglected that at the core of public mistrust of police, and the low rates of cooperation with police could be the neglected issue of police function. The majority of discussions in legal police literature also assume, at a minimum, that solving crime is a primary function of police. [68] Although there is some research focusing on the crime prevention role of police, little prior work has really grappled with the empirics that demonstrate that police are generally not *solving* crimes, and ***81** explored the potential affects the *police myth* has for policing theory and function. Evidence on prevention is certainly important, but it is likewise important to independently examine the underlying assumption of crime solving present in the *police myth*.

This Article, first and foremost, attempts to identify and define *the police myth* and its impacts, particularly on communities of color. To introduce this discussion, in Part I, this Article attempts to trace a brief, superficial history of policing, articulating the key functions of police over time. It demonstrates that the constitutionally animated police power delegated by states to law enforcement has always been broad--including crime but also including health, transportation, and public order functions. Part II defines the police myth and provides its empirical backing by briefly reviewing thirty years of independent data on American crime to consider the rate at which police solve serious felony crimes. It determines that overall, in the last thirty years, no more than twenty percent of serious crimes have been solved by police through arrest or clearance. Finally in Part III, this Article discusses the impacts of police mythology and the consequences of police failure to solve crimes, [69] particularly where it is most damaging, among communities of color. It provides a path forward inclusive of the groundbreaking work of policing and abolitionist circles, as well as police investigation literature. The existence of the police myth prevents a precise understanding of policing function, and certainly, the reexamining of policing, making meaningful police reform impossible.

I. BRIEF HISTORY OF POLICE FUNCTION

Police officers have historically served as public officials, but with a broader, more opaque public function than firefighters, teachers or doctors. While police--from early on--were expected to prevent crimes and create safe communities, they have also always served the public through such varied activities as dealing with unruly sheep, inspecting vegetable markets, and breaking up neighborhood spats. [70] The history of policing in the United States is heavily intertwined with racial discrimination. Policing is deeply tied to a legacy of slave patrols in the American South, the exercise of control over free Blacks, forceful responses to civil rights protests, and control of other unpopular immigrant groups. [71] While the police function ***82** included the solving of crimes from early on, police were never formally trained in this role. As police function became more defined with departments becoming more professional, the public increased their expectation that police solve crime. Today, according to police and the public, the core police function is preventing and solving crimes. Though, in actuality, police are still expected to perform many other public service functions and may never receive formal training on solving crimes even after earning the title of detective. While it is impossible to do justice to a history of policing in a brief Article, this high-level review demonstrates how policing functions have developed from early America.

Part A briefly defines “police” at their origin. Then it reviews a cursory history of police in America and how their role and function has developed over time. Police largely started as informal public servants but developed a greater focus on the professional crime-solving function. While crime solving was always part of the job description, this role has been cemented over time, though commensurate training in this area has not followed suit. Police have historically always been charged with

public order issues, including resolving noncriminal disputes, health issues, transportation, and the first official response to poverty and racial tension. [72]

A. Defining Police

"Police" comes from the Latin word *politia*, which means civil administration or government. [73] From the sixteenth century onward, "police" was used in English as a synonym for "policy" as it pertains to an organized state, civil organization, and civilization. [74] Over the next few hundred years, "police" started to mean regulation, discipline, and control of a community. [75] To control and discipline a community began to mean managing crime and punishment. Under the common law, the definition of ***83** policing was always connected with crime, [76] as well as general public order. [77] In 1769, Sir William Blackstone argued that the king, as "paterfamilias of the nation," directs "the public police," exercising the means by which "the individuals of the State, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners ...." [78] Blackstone used the term "police" to describe the power of the King to address public wrongs. [79] Blackstone broke up offenses administered by police into five categories: offenses against public justice, public peace, public trade, public health, and public order. [80] Adam Smith seemed to also believe that police function included the regulation of the inferior parts of government like cleanliness and security. [81] Indeed, historically, the definition of police included regulating crime in society as well as managing health, trade and public order. Police began as a public servant that helped society function more smoothly in many aspects, not one singularly focused on crime.

B. Early American Policing

Early American police filled a role in society that was very much a manifestation of the broad constitutional "police power" that states rely on in granting authority to law enforcement--including health, transportation and social welfare. In early America, the power to establish a police force derived from the state "police power." The U.S. Constitution provides this police power by reserving to the states "[t]he powers not delegated to the ***84** United States, nor prohibited by it to the States." [82] This "police power" is not merely the power to establish police and law enforcement. Rather, it is a much larger concept leaving to the states broad authority to take all manner of actions, including to legislate and regulate, and to enforce health and safety through law enforcement. Through this "police power," state governments passed many regulations, including regulations targeting health, public order, and criminal affairs. Some of this state power was delegated to localities and to their agents, including the police. In this Article, I discuss "police power" as it relates to police, but I recognize that this is a broad constitutional power delegated to states that has been allocated, as relates to this Article, from states to localities and their agents, police. [83] However, the point remains that the portion of "police power" exercised by police--like that allocated to local governments--involves broad functions beyond the criminal realm, including health, transportation, and public order. This may partially explain the broad and diffuse role police have always played in society. Although this diffuse role is not intrinsically positive or negative, there is a mismatch between how the public at large views police and the responsibilities of police. [84] This emphasis on public order functions is related to the police myth because it raises concerns that the priorities of the police may not be what the public assumes them to be.

The early authority of police was similar to that of the common law where police had wide-ranging public service duties. In the 1600s, New York and Boston started the first private police systems with officers employed part time. [85] From establishment, one of the early police's core functions was solving crime. [86] When the Constitution was drafted, the "police power" was seen as a vital state power and one that was integral to ***85** the functioning of a modern state. [87] In 1844, the statute establishing the first contemporary police department was passed, setting forth the role of police to detect and report offenders to the courts, recover property, and prevent crimes. [88] By the mid-1800s, [89] police became a branch of government that focused on promoting public health, safety, and morality. [90] In the latter-1800s, police officially became responsible for solving crime in Boston, [91] New York, and Chicago. [92] Indeed, crime solving and investigation were emphasized as important for a professional police force. [93] Policing during this period was heavily influenced by Sir Robert Peel, whose principles ***86** impacted the development of American policing. [94] Peel made clear in both his first and last principles that the key purpose of police was crime control, writing: the "basic mission for which police exist is to prevent crime and disorder" and "the test of police efficiency is shown

by the absence of crime and disorder." [95] Most of his other Principles focus on police having a trust-based relationship with the community, and limiting physical force in fulfilling their duties. [96] With a public police force, it was clear that crime solving as well as creating a trusting community partnership were critical to policing. However, like their predecessors, nineteenth-century police officers spent their time on public order functions like cleaning streets, inspecting boilers, distributing supplies to the poor and homeless, investigating vegetable markets, and operating emergency health services. [97]

At the turn of the twentieth century, police became even more focused on arrest and crime solving than other public service functions. [98] After Reconstruction and into the twentieth century, American police targeted Blacks in their criminal efforts, patrolling Black neighborhoods most often. [99] This was most visible in the twentieth century, as the proportion of Black people arrested for crimes vis-à-vis whites shot up dramatically. [100]

Starting in the late 1800s until the 1930s, the public became aware that police practices routinely involved violent interrogation to obtain ***87** confessions. [101] Widespread frustration with police abuse and a desire to improve police effectiveness lead to the Wickersham Commission in 1929. [102] This Commission criticized police in several areas, including "general failure" in solving a variety of violent crimes resulting in a significant "loss of public confidence." [103] The Wickersham Commission's aim was not only to consider police's failure in solving crimes but to root out police violence. [104] This first Wickersham charge never gained much traction or attention by scholars, but the Wickersham Report in 1931 resulted in progress on the latter charge, with a reduction in police violence. [105] The Wickersham reforms to address corruption were successful by some measures, but the first public recognition that police were not solving crimes failed to result in any meaningful change to the proportion of crimes solved by police.

C. Midcentury American Policing

Midcentury policing focused on instrumentalist aims of addressing skyrocketing crime rates by focusing on arrests for minor crimes. In the 1950s and '60s, police focused more on crime control through apprehension rather than prevention. [106] The rationale and purposes behind this federal ***88** investment into crime control have received significant scrutiny and the topic is a subject of much debate. For instance, according to Elizabeth Hinton, in the 1960s, the federal government invested massively into the carceral state to enforce law-and order as a reaction against the civil rights movement. [107] And whatever the rationale behind this push to increase crime control, it became clear that police only spent about 1/5 of their time on fighting crime, [108] as opposed to their public order and public safety duties. [109] It was clear in studies in the 1960s and 1970s that police were still not solving most major crimes. [110]

***89** During this same period was the birth of the Kerner Commission and community policing. [111] This Commission advocated that police should be part of the community and should help address social problems, and that this could be accomplished through a "more cooperative police-community relationship," which later became known as community policing. [112] Around the same time, James Wilson suggested in a groundbreaking book that police should be removed from social functions like helping with stray animals and that they should focus on arrest for minor crimes that will lead to arrests for more serious crimes. [113] Wilson also suggested that there was a shift among police in the 1970s that moved them away from the principal role as crime fighters, even though the public still perceived that this was their role. [114]

Some might argue that the idea of community policing was lost as police responded to the crime waves of the 1970s and 1980s, [115] but others would argue that community policing was part and parcel of this policing ramp-up and increased minor crime arrests in poor Black neighborhoods. [116] Either way, the community policing period--and increased crime rates--dramatically increased arrests throughout the United States. [117] Community policing was intended to have police seeking counsel and support from community organizations and citizens to help solve the "problems of crime, ***90** drags and violence," [118] however many police stations continued to operate like traditional patrol departments. [119] The new community police focus on minor crimes increased arrests dramatically, and this increase in arrests between the 1960s and 1980s cannot be understated. Arrest rates in this twenty-year period matched arrest rates for the entire hundred preceding years. [120] In the 1970s,

studies found that police patrols neither effectively reduced crime or fear of crime, [121] nor improved crime solving. [122] By the 1980s, many police departments claimed their focus was community policing, seemingly moving away from an institutional focus on solving ***91** major crimes. [123] While serious crime rates [124] and arrests increased during this period, [125] the proportion of serious crimes solved by police remained the same. [126]

Police continued to focus on increased arrests for minor crimes from the 1980s to the 2000s. The practice of arresting for minor crimes was influenced by the "broken windows" theory, and became even more prevalent than when it initially gained theoretical traction in the 1970s. [127] Misdemeanor arrests rose dramatically in major cities between the 1980s and the 2000s, even though there was a decrease in both violent and other major crimes. [128] Ruth Gilmore describes a five hundred percent increase in the California prison population in these twenty years, without any increase ***92** in crime. [129] Police increased apprehension rates for minor crimes, but were unable to improve the rates at which they solved major crimes. [130]

Police claimed to be focused on high crime rates in the early 1990s, [131] which dropped by the end of the decade. [132] There was a renewed instrumentalist focus by police nationally to improve crime solving-- now with the help of technology. The 1990s brought an increased focus on technology, like COMPSTAT, [133] and "hot spots policing," [134] which led police to focus their efforts in smaller areas given that crime was concentrated in small areas of the city. [135] Hot spots policing utilized historical crime data to predict future crime hot spots. [136] Though crime fell, police did not improve in the proportion of serious crimes solved in this period, as with earlier periods of policing. As the midcentury period of ***93** policing closed, instrumentalist aims moved from solving major crime to arrests for minor crimes through community policing and technology.

D. Modern American Policing

The last thirty years of policing have witnessed reduced numbers of arrests, with legitimacy and democratic aims prevailing in policing theory. The current system of American policing includes over 440,000 officers. [137] Serious crime rates have fallen dramatically, [138] yet this change has occurred without increased arrests; the numbers of arrests made by police have dropped in the last twenty five years. [139] The prevailing policing theories focus on legitimacy and procedural justice aims of reducing racial profiling and improving community distrust that has resulted from decades of mistreatment by police. [140] Another prevailing legitimacy theory is democratic policing. [141] Though similar in aim to community policing, after ***94** broad criticism of earlier iterations of community policing, [142] scholars have focused on adding more community perspectives, and even shifting the power dynamic to the public to determine the focus of police. [143]

A result of these guiding theoretical approaches has been procedural justice police training and community councils. [144] The focus over the last twenty years has been on training officers to be professional and to exercise appropriate force. In 2014, Ferguson police shot Michael Brown, resulting in the Obama Administration establishing a policing task force that found that police had become more militant and less protective of the public. [145] Other high-profile shootings in 2016 and 2020 have led scholars to critique police for perceived abusive practices, particularly targeted at minority defendants. [146] The recommendations of this presidential taskforce, like the ***95** previous Wickersham and Kerner commissions, were never implemented. [147] Unlike the Wickersham commission, this task force did not focus on police failure to solve major crimes, possibly assuming that this was not a problem, since the last time it was broadly recognized was in the 1970s. [148] While there has not been a national push to improve police crime solving, the stated priority of the largest U.S. police departments is preventing crime, and apprehending the person responsible for those crimes. [149] For instance, Los Angeles police clearly restate the Peel principles from early policing: "The test of police effectiveness is the absence of crime and the presence of public order." [150] However, the focus today of the leading policing scholarship does not emphasize the aims of preventing or solving crimes.

While over time police have reduced abusive practices and increased arrests for minor crimes, not a lot otherwise has changed. [151] Police are still working within the broad scope of public safety "police power" authority that states originally delegated to law enforcement, with their daily duties consisting of health, transportation, and social functions. Though in name

their focus has increasingly become crime control over the last fifty years, ***96** the reality has not matched the goals as police have solved generally the same proportion of serious crimes during this period. [152]

The next section focuses on defining modern police and their function, including crime control. Part I.E. explores the key functions of police and other definitions relied on in this Article. This brief section does not appropriately dissect any of these terms as they all contain serious ambiguity and the definitions presented are subject to challenge. It does attempt to explain what this Article means when it refers to police "solving crimes."

E. Defining Modern Police Function

At the heart of the police myth and reforming police lies the question: what is the function of modern police? The first aspect of the police myth is that the primary function of police is crime control. The previous sections have discussed what police functions have typically been historically, but now it is important to understand what it is that police currently do. If it is not crime solving, then what is it? Understanding the police function is a crucial first step to understanding the police myth. And it provides insight into what public function will be lost by potentially reducing the role of police. Before endeavoring to address police reform, this Article carefully considers what key functions are expected of police.

Starting at the beginning, what is meant by the "function" of the police? Is it what *police* understand their job to be, what the *public* currently understands their role to be, or what the public *should* understand their role to be? The first two questions are addressed here, though not in any sufficient matter, as there is a dearth of theoretical scholarship that explores these deep and open questions. [153] It is also relevant here that very few policing functions are determined by outside bodies or the electorate, but most come internally from police. [154] Given this lack of guidance, this ***97** Article settles on considering what the public *and* police have generally considered to be the core police function.

To determine these core functions, this Part relies on public surveys that have largely remained consistent over the years, even with the variation of the poll taker. Simply stated, the public expects the police to prevent and solve crimes. According to surveys, [155] the public understanding is that police solve major crimes. A recent public survey found that the top three functions of police according to the public were that police protect against crime (sixty-eight percent), investigate major violent crimes (seventy-eight percent) and investigate property crime and robbery (fifty-eight percent). [156] In contrast, only thirty percent of respondents thought that enforcing drug laws should be a top priority and only nineteen percent considered enforcing traffic laws to be a top priority. [157] An even larger number of police (sixty-two percent) see their role in society as protectors and enforcers of the law. [158] The police view themselves as the front line against crime, which can lead to police complaints when they are forced to do other work. [159] Thus, the consensus of the public and police is that police are focused on preventing and solving major crimes.

How do we determine police key functions? This Article cannot evaluate all police functions here, though in contemplating policework from a criminal lens, the interest might naturally be where police could--or should--intersect with the legal system. In that vein, this Article is focused on identifying the proportion of serious "crimes" that police ultimately "solve." Though to focus strictly on that would be to ignore a large part of the police function, so it is important to consider how police spend their time. In discussing police function, it is important to acknowledge that these propositions are highly ambiguous and contestable, and that further discussion and debate is needed on these important issues.

At first glance, key police functions currently seem to be (and have historically been)--very broadly speaking--maintaining public order and ***98** preventing and solving crimes. [160] Examples of such "peace" functions include aiding individuals who are in danger, facilitating the movement of people and vehicles, assisting those who cannot care for themselves, promoting and preserving civil order, resolving conflict, and providing emergency services. [161] Certainly, there is ambiguity in all of these functions and open definitions. It may be valuable to consider whether police *should* in fact spend an overwhelming majority of their time on these broad public functions. [162] The other key function of police--and arguably one that is strictly the job of police--is preventing and solving crimes. Specifically, this includes police identifying crime, identifying and apprehending offenders where appropriate, participating in criminal proceedings, protecting constitutional rights, identifying problems that are potentially serious law enforcement problems, and generally maintaining a feeling of security in the community. [163] The

areas of most interest here are the latter functions of preventing and solving crime. [164] For the purposes of this Article, police functions seem to include both preventing and solving crimes as well as broad public order functions--such as health, safety, and transportation.

In the following sections, Part I.E.I considers common police and detective functions. Part I.E.2 dispels the first part of the police myth in discussing how police spend their time in training and in the field, demonstrating that little time is spent on crime control functions. In preparing to consider data on the second part of the police myth, the final ***99** two sections define "serious crime" (Part I.E.3) and "solve" (Part I.E.4). All of these shed light on the police function and are integral to dispelling the police myth.

1. Police and Detective Functions

What are the functions of police and detectives? Who is charged with solving crimes and who solves most crimes? Understanding the current state of policing is a critical piece of understanding our misperceptions about policing investigation functions and the police myth.

Solving crimes falls under the basic police function of criminal investigation. [165] Criminal investigation involves collecting information about a suspect, bringing the person into custody, and eventually working with prosecutors to charge a crime. Typically, criminal investigations are dealt with by detectives in a separate division than patrol officers. [166] Detectives progress from the ranks of patrol officers to separate detective units that can later become more specialized to solve certain crimes. [167] Basic law enforcement training lasts around fifteen weeks, though it has increased slightly in recent years. [168] Homicide detectives typically spend a minimum of three years on patrol, two years in investigation, and then possibly obtain further training for homicide investigation. [169] Detectives are ultimately charged with crime solving, though their work involves interacting with both police and members of the public to solve crimes. [170] It is not commonly known that most crimes are solved by members of the public first, then by patrol officers, and then finally by detectives. [171]

***100** Little research exists on the effectiveness of investigative functions of police and how they impact crime solving. [172] But what the policing literature makes clear is that a detective is most effective when working with a team of police officers, [173] with close ties in a community, [174] and with access to broader information. [175] Police especially benefit from the sharing of information by members of the public, that leads to the solving of serious crimes. [176] In addition, greater dedication of investigative resources plays a role in police effectiveness. [177] Although policing theory has changed in the ***101** last thirty years, the crime investigation process, [178] and crime solving rates, [179] have remained largely the same. [180] For instance, almost thirty percent of police time is spent on patrol, even though studies show that random, motorized patrols are not effective in crime solving or prevention. [181] Investigation scholars even assert that if changes in policing have caused crime to drop, it is unlikely to have resulted from improvements in criminal investigation. [182] In sum, investigation and crime solving are largely the charges of detectives, though more crimes are actually solved by the public and ordinary police. [183]

2. Police Function and Time

There is very little data on how police spend their time, although the existing data on police training and allocation of time demonstrates that the police myth is inaccurate in asserting that a primary function of police is crime control.

Day-to-day policing has remarkably little to do with crime, despite public perception to the contrary. [184] The vast majority of police time is spent on noncriminal functions such as health, transportation, and public order. Some estimates put public order (non-criminal functions) at ninety percent ***102** of police time. [185] A recent survey of several cities who self-reported time spent by police revealed that only four percent of police time was spent working on violent crime. [186] The bulk of police time was spent on calls about noncriminal matters (around thirty-seven percent), [187] with traffic concerns taking up the next biggest chunk of police time at fifteen percent. [188] Another substantial portion of police time is occupied by administrative reporting

or personal time. [189] Indeed, one set of scholars found that the average officer spent one hour per week responding to crimes in progress. [190] This trend only becomes more apparent--and the ratio of time spent fighting crime to other duties becomes more lopsided--as you move away from populated urban communities. [191] Rural and small-town officers often address utility problems, conduct house checks for citizens on vacation, and clear cows blocking traffic. [192] In short, despite expectations that a primary police function consists of crime control, police spend a marginal amount of time addressing crime. [193]

Police training is arguably geared towards self-defense, yet police spend most of their time on noncriminal functions. When it comes to crime control training, police are primarily trained in firearm competency and self-defense. Very little training time is spent on investigating or solving crime. [194] Even detectives get most of their crime fighting skills on the job ***103** rather than from formal training. [195] Most of police officers' time is spent on non-crime emergencies, including "medical issue[s] or traffic accident[s]." [196] Yet police receive little training on health, mediation, social work, and non-law enforcement emergency situations. [197] The police myth has affected police training dramatically. If it became clear that police function only marginally involves crime, police might receive training that is more narrowly tailored to their daily functions.

Given the tiny fraction of time police spend dealing with crime, the empirics on crime solving in Part II may not come as a surprise. It is also clear that although police and the public strongly believe that a primary police function is crime control, a closer look at the way police spend their time and their training belies this police myth. The next section considers how to define "serious crimes" for the purposes of judging police function in the second part of the police myth--that police solve crimes with regularity.

104** ***3. Defining Serious Crimes

What counts as a crime? What *should* count as a crime? [198] To avoid entering the foray of these debates, [199] this Article relies on the accepted federal definition of a serious crime. It does not discuss all crimes but only focuses on serious crimes because of the wider agreement about the role for police in addressing those major crimes. Serious crimes in this Article include felonies of murder, rape, burglary, robbery, aggravated assault, (grand) larceny, [200] arson, and motor vehicle theft. It is certainly important to acknowledge here the question of how much, or whether, these crimes should be punished, while still recognizing greater consensus regarding the importance of police involvement. [201] For the purposes of this Article, a "serious crime" is one of the felonies listed above that is reported by an individual to the police. This is not the most inclusive count of how many "serious crimes" occur, since a large percentage of serious crimes are not reported to police and the number of crimes committed is roughly double what is reported. [202] But for clarity, this Article considers the proportion of serious crimes reported that police ultimately "solve," acknowledging the profound ambiguity in all terms.

4. Defining "Solve"

The next question is, how do we determine whether a crime is "solved"? The definition for "solve" used here is subject to challenge. As discussed ***105** above, it is commonly understood that a central function of police is to solve crimes. [203] But, as with the ambiguity in defining "crime," there is similar ambiguity in defining what it means to "solve" a crime.

A simple approach is to look at "clearance" as a proxy for solving crime. A clearance occurs when an individual is arrested for a crime and turned over to prosecution. This is the point at which the role of police becomes more limited. Detectives are often evaluated by clearance of crimes, [204] and clearance rates are used to judge the effectiveness of police departments. [205] Prior work has considered some of the problems with clearance rates, [206] and clearance rates are certainly not the best way to determine whether police solve crimes. What if the victim does not cooperate to have the perpetrator prosecuted? Such cases would lead to police not "solving" a crime through clearance, even if they may have found the perpetrator and be prepared to work with prosecutors. In fact, a more accurate determination of whether crimes are solved is more complicated and also considers victim crime reporting, arrest, conviction rates, and crime resolution rates. [207] However, for this straightforward analysis, and because there is no data on crime resolution without arrest or clearance, this Article considers police solving

crimes as the number of reported crimes cleared by police.[208] The next section considers the serious crime solving by police and illustrates and defines the phenomenon of the *police myth*.

II. THE POLICE MYTH

The police myth is based on a twofold belief. The first is that policing's core function is preventing and solving crime.[209] The second is that crimes ***106** are solved by police.[210] These two assumptions together comprise *the police myth*,

The first aspect of the police myth is supported by the historical account in Part I that explains how from early American policing, the function of police has included crime solving. This role only grew from the 1960s forward as crime increased and the role of police in preventing and solving crimes was ingrained in the public and police psyche. The police myth is strengthened by a societal perception that police are heroes who apprehend criminals and make people safe.[211] The police myth has been buoyed by modern-day presidents, filmmakers, and television directors, along with judges and the general public.[212] From Richard Nixon to Bill Clinton, and Barack Obama to Donald Trump, political leaders valorize police for fighting crime.[213] The Supreme Court, and other courts, have both praised and deferred to police in their role as guardians of law and order and public safety.[214] The shared perception is that crime is controlled by police who ***107** capture criminals and prosecutors who bring them to justice.[215] However, as demonstrated in the discussion in Part I.E.2, this assumption is false. Although the public and police continue to believe that the police function is largely crime control, the reality is that police spend only a tiny fraction of their time dealing with crime.[216]

The second aspect of the police myth is that crimes--particularly serious crimes--are solved by police. Police receive more training now than ever,[217] and the technology involved in GPS tracking, fingerprinting, and geospatial monitoring have all improved immensely in the last thirty years.[218] None of these factors have impacted the police myth. This Part conducts an independent review of national statistics on police crime solving. It reviews reported crime rates and clearance rates to determine whether police are solving crimes. It relies on data during a roughly thirty-year period between the years 1990 and 2019.[219] Many of the details of these numbers or calculations are not articulated here, as they are not critical to this discussion.[220] For the purposes of this Article, a simple discussion of reported crimes and the percentage of those that are cleared by police is ***108** sufficient.[221] Reported crimes are those where an individual files a formal report with a police station.[222] Serious crimes considered here include violent crimes (murder and nonnegligent manslaughter, rape, robbery, and aggravated assault) and property crimes (burglary, larceny-theft, motor vehicle theft, and arson).[223] Clearance rates are determined by comparing crimes reported to police with the number of individuals arrested and turned over to police for prosecution or cleared by exceptional means.[224]

Before obtaining a picture of police crime solving rates for serious crimes, it is worth noting that a complete picture of crime is "likely bleaker" than shown by the current statistics on major crimes.[225] National crime data does not track statistics on many serious offenses. Some of these include identity theft and credit card fraud, sexual exploitation, human trafficking, revenge porn, and child exploitation.[226] Presumably, without tracking, police are worse off in solving internet crime than traditional major crimes.[227] Nonetheless, this Article fails to consider all serious felony crimes, since so many serious crimes are not captured by national statistics.[228] Given the data available, the serious crimes listed above are considered here to establish a baseline for policing function. The next two sections define reported crimes and clearance rates.

***109** *A. Reported Crimes*

To understand police crime solving, first this Article turns to reported crimes, which are the number of crimes reported nationally to police.[229] At the outset, this Article recognizes that about half of all serious crimes are reported to police.[230] This has largely been the trend for the last thirty years. Approximately fifty percent of violent crimes, and between thirty to forty percent of property crimes, are reported to police in a given year.[231] This is not to put blame exclusively on police, as individuals make the choice not to report crimes for a variety of reasons that will be discussed below but should be considered in this evaluation.[232]

It is presumed that the actual number of crimes committed is roughly double this amount--for both violent and property crimes--though crime reporting for property crimes is lower than violent crimes. [233] Individuals refusing to report crimes to police is likely emblematic of police disaffection and the *punishment-protection paradox*, as discussed in Part III.

B. Clearance Rates

Clearance rates demonstrate the percentage of crimes reported to police that result in arrest and are turned over for prosecution. [234] Clearance rates are not a great measure of police success since there is evidence that crimes with weak evidence were routinely cleared historically, with some improvement recently. [235] While there are likely still major inaccuracies in ***110** clearance rates, [236] in order to rely on a simple metric to determine crime solving, clearance rates will suffice. For the last thirty years, police have cleared twenty percent of all serious crimes, including murder, rape, robbery, aggravated assault, theft, burglary, and motor vehicle theft. [237] Clearance rates are very similar to arrest rates--all between twenty to twenty-five percent. [238] In other words, police cleared almost as many crimes as they arrested for in most years. [239] This is certainly a revelation to most people who would never have thought that on a good year, police solve less than a quarter of reported cases. Figure 1 breaks down the overall clearance rate for major crimes from 1990 to 2019. [240] The percentage of major crimes where police clear a crime has not changed overall, though individual crimes fluctuate over the years. [241]

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***111** The next section puts the data on police reporting and clearance rates into context of the police myth.

C. Understanding the Police Myth

The *police myth* is in part the societal belief that police solve crimes. The police myth is perpetuated by the media and through the neglect of many scholars. In the classic sense of apprehending criminal defendants, police are failing--both in apprehending a large percentage of defendants but also in improving their ability to apprehend felony defendants over the last thirty years. Most individuals who commit serious offenses are never held accountable for the crimes they commit, and the majority of people who endure such crimes suffer with no state rejoinder or restitution. I recount clearance rates over time with some caution as I realize that clearance rates are not the entire story by any stretch and that the nature of crime and crime categories have changed over the time period I am reporting. [242] This Article does not argue that police should arrest felony perpetrators in larger quantities, though this option is considered below. It simply makes the point that public and police perceptions are not met by the empirical realities of police reporting, clearance, and conviction data. This is not to say that because police are not arresting defendants, they are not preventing crime--and thus succeeding in one aspect of their crime control function. [243] Though ***112** for any successful policing theory, the police myth must be accounted for by scholars grappling with the reality of police failure to solve crimes. This Article does not dispel the police myth in support of an instrumental argument that police are capable of solving most serious crimes, but simply aims to inform a more accurate understanding of the police function. Ultimately this Article seeks to understand the police function to inform both instrumental and theoretical discussions of policing.

A fundamental error of the police myth is the societal belief that if a serious crime occurs, the police will likely solve it. [244] This second aspect of the police myth--that police are solving serious crime--is relatively straightforward to dispel with data. Police are not solving a large proportion of major crimes. [245] As discussed above, the crime solving rate for police remains around twenty percent for all crimes over the last thirty years. [246] While for some categories like murder, the clearance rates are around sixty percent, [247] for all other major categories of crimes, the results are far lower, often less than twenty-five percent. [248] Police only clear between ten to twenty percent of the crimes that affect the most citizens, such as larceny, motor vehicle theft, and burglary. [249] This is not to suggest that police should focus on minor crimes. Nor do these broad statistics take into account that clearance disparities in minority communities tend to be worse than in other neighborhoods. What is not considered in these numbers is that police never find out about half of all serious crimes, as they remain unreported. [250] For the crimes that are reported, police only clear the case about twenty percent of the time. [251] Very few cases that are cleared result in convictions, close to ***113** only four percent of reported crimes. [252] Figure 2 illustrates the overall crime reporting (meaning the percent

of crimes reported out of those committed), clearance of reported crimes, and conviction numbers for reported crimes for a broader perspective of serious crimes. [253]

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Figure 2 demonstrates that most serious crimes are neither solved by police clearance, [254] nor result in conviction, if the crimes are reported in the first place. [255] In considering conviction rates, there is a failure to address roughly eighty-five percent of violent crimes and ninety-seven percent of property crimes. [256] While there are many possible explanations of this data, what we do know is that most reported serious crimes are not solved. And while the public expects police to solve crimes, police have not improved at ***114** solving crimes even with reduced crime rates. Over the last thirty years, fewer than half of most serious crimes have been reported to police, fewer than twenty percent have resulted in an arrest or clearance, and fewer than four percent have ended in a conviction. [257] Thus, dispelling the police myth, police apprehend very few of the individuals who commit crimes.

The public and police perception is that police solve crime, though crime solving is not a major part of the scholarly or policy discussion. [258] Is it simply that the public expects police to *prevent* crimes, but recognizes that they are not able to *solve* them? The empirics certainly belie this possibility, and the scholarly and public policy discussion is not there. [259]

The police myth remains a "myth" because the general discussion of policing has largely ignored the police failure to solve crimes. Prior policing literature has tackled clearance rates, [260] unresolved crime in minority communities, [261] and the lack of crime reporting among people of color. [262] But there is very little focus on the perpetually low rate of clearance or ***115** conviction for crimes nationally. [263] For instance, in both the future goals and goals for the last twenty years of the National Police Foundation, improving the proportion of crimes solved is not mentioned. [264] The closest reference to the lack of crime solving is reference to a crime "funnel." [265] The idea of a crime funnel is that many crimes enter at the outset with a police report, and very few are resolved with a defendant being arrested, then convicted, then imprisoned. [266] The lack of crimes solved has not been connected to policing theory, training, or function on any coordinated level.

There is also a growing field of scholarship dedicated to addressing the rights of victims of crime. [267] But this growing victims' rights movement has not addressed the police myth in any way. It has not addressed low clearance or conviction rates at all, or the large group of individuals affected by unsolved crimes. [268] The largest group of victims of crime are those who ***116** never reach the police to get help--almost double for some serious crimes. Of the reported serious crimes in 2019, the number of victims whose cases were never cleared was 5,709,766 victims (around 78.5%). [269] Yet the victims' rights scholarship has never focused on the lack of crime solving, and the majority of the legal policing literature focuses on the issues arising from the small number of cases in which a crime victim is brought through the justice system. [270] Likewise, the media has paid little attention to police crime solving as compared to other criminal justice topics. For instance, in the last ten years, there have been 56,000 articles in international newspapers discussing mass incarceration and only sixty articles discussing police clearance rates. [271] There seems to be a disconnect between how the lack of crime solving might affect society or policing. [272] Thus, the persistence of the police myth has not only misled public perception but has had other important impacts discussed in the next section.

***117 III. IMPACTS OF POLICE MYTHOLOGY**

This Article does not attempt to pinpoint exactly when the police myth came to fruition or why it exists. What is clear is that at some point Americans started to firmly believe that core police function comprised crime control, and that police solved serious crimes. This police mythology grew over time with the help of media and public figures, ignoring many years of empirical data that contradict the assumption that police largely focus on crime and generally solve it. Police have not improved at investigating and solving crimes for at least the last eighty years. [273] This is not to say that police have not been anxiously engaged in productive public work, or that police have not improved in prevention of crimes, as crime has dropped, and some evidence demonstrates that police could have contributed to a national drop in crime. [274] Police have historically always helped fulfill a broad swath of public order functions--health, welfare and transportation-- while at the same time being asked to prevent

and solve serious crimes. On top of all of these public order functions, there are thousands of minor criminal offenses and a growing criminal code that police are charged with enforcing. [275] Though this Article does not focus on explaining the cause of the police mythology, perhaps there is an unrecognized tradeoff: if police focus on public service and arrests (mostly for minor crimes), there is little time to solve serious crimes. Regardless of the causes of the *police myth*, the consequences are important to dissect. First, police function is obfuscated. Second, the police myth is a major cause of police disaffection. And finally, due to complex interconnected issues, the police myth creates a *punishment-protection paradox*. These three impacts are discussed respectively in Part III.A, B and C.

*118 *A. Obfuscation of Police Function*

The police myth leads to an obfuscation of police role and an imparity between expectations and reality for crime control. Police are charged with solving crimes, but their actual function is much broader and more diffuse-- most of their focus is not on solving crimes. The public misunderstanding of policing and mismatch between training, time spent, and expectations remains a problem in eliminating the false assumption that police solve crimes. Police have historically always had a multifaceted public role that policing theory and the public have failed to recognize. [276]

Police were borne, in part, out of a desire to control crime. Historically, the power delegated to police by the state has involved "public order" which includes preventing and addressing crime. Police core function--according to police and the public--in the last fifty years has been to prevent crime, reduce crime, and apprehend criminals. [277]

As Paul Butler states, "[t]he first responsibility of the state is to protect its citizens. When people suffer harm from other individuals, the state is now failing that responsibility." [278] However, as this Article has made clear, at least in the last fifty years, police have not fulfilled this function. Though because the expectation is there, particularly among police themselves, the police myth leads police to hide the rate at which they are solving crimes. It is commonly known by clearance rate scholars that police departments underreport and misclassify crimes or focus on making minor arrests to pad arrest rates. [279]

***119** One area for additional research is the efficacy of policing in crime prevention. Preventing crime is a broadly accepted function of police. [280] Crime prevention has been a key part of the policing function since the establishment of the profession, [281] and continues to be an oft-stated goal of police today. [282] Additional research on the effectiveness of police at preventing crime has the potential to provide a strong rationalization for the lack of police focus on solving crime. In fact, one possible explanation for the decrease in crime is effective crime prevention. [283] If police are in fact effective at preventing crime, this may provide a some rationalization for the lack of police focus on solving crime. However, more research is needed to determine whether police crime prevention tactics are actually effective. [284]

Another potential obfuscation resulting from the police myth has been that police have increased drug arrests to satisfy the public that they are solving crimes, when police have not improved at solving any serious crimes. Some evidence shows that police focus on increasing arrest numbers, no matter how minor, in an effort to demonstrate productivity. [285] While transparency is lacking in this area, there are high profile examples of departments where police can only be promoted if they are compliant in increasing arrests and in applying fines. [286] When police are encouraged to arrest in order to demonstrate productivity, the incentive becomes increasing minor crime arrests, including drug arrests. [287] The evidence is pretty clear that with drug arrests, police are neither reducing violent crime, [288] nor increasing public safety. [289] Drug enterprises operate much like ***120** legal businesses, and violent crime harms any business--legal or illegal. [290] Despite the low relative danger posed by drugs as compared to violent crime, drug arrests top the list of nationwide arrests in most years, potentially because drug arrests are easy to use to boost arrest numbers. [291] Thus, despite the fact that the public expects police to focus on reducing serious crime, [292] police have historically focused on drug arrests, possibly to appease the public demand for crime solving.

An even more important contributor to obfuscation of police duty is that while charged with crime control, police have always also acted as public servants. Indeed, the very definition of the constitutional "police power" encompasses so many civil functions--health, housing, transportation--that have nothing to do with solving crime. [293] Although police are only a small piece of how states exercise "police power," the broad exercise of "police power" by states has led to a broad delegation of

authority to police.[294] At the same time, there is a lack of transparency in what police typically do, how often they solve crimes, and little oversight on the lack of training they receive for the functions they perform. In this context, it makes sense that the police continue addressing traffic problems and noise and interpersonal complaints in people's homes.[295] People consider police the general number to call when anything is wrong. Some may even prefer to have police in a catchall position that responds to various concerns, often unrelated to crime. Police help guide traffic. They disperse crowds. They mediate family disputes, and serve the elderly, deal with noise complaints and common problems with animals. They are the front line response to those struggling with mental illness and drug addictions. They are also the major defense against crime--preventing it as well as solving crimes that occur. There is both confusion on what the function of police is and lack of clarity in their role; better yet, there is a lack of focus or vision on what the ***121** priorities of police should be since their role is ubiquitous as both the crime-solving hero and servant of the community. And maybe, in expecting the police to be the all-encompassing public servant wielding state "police powers," the public has unknowingly sacrificed the police crime control function.

Arguably, any fault of police failure to solve crime results from obfuscation and lack of clarity in the police role. Under the modern police function, police are the only government actor charged with solving serious crimes. However, they are spending most of their time with public order functions that are broader[296] --and arguably can be handled by other government or private actors. Police are trained to protect and deal with criminal defendants, when most of the time, their functions have little to do with crime.[297] This incongruity in dual function has not been reconciled by legal policing scholars or commentators. The lack of clarity in the police function also results in a lack of accountability of police performance and inappropriate training. If the job of police is to solve crimes and deal with dangerous, violent defendants, for instance, the public might expect that police are armed with military grade weapons and trained in self-defense. However, if their duty is to patrol the streets to randomly check in on community members, mediate family disputes, and assist people when requested, then it might make less sense that police are armed and ready to respond with violence. Community members might be less supportive of officers using violence to defend themselves and others more broadly if they understood that police are performing public service functions most of the time.[298] In addition, there might be a larger push for a whole different training protocol for officers if there was an understanding that these counseling, mental health, and conflict resolution functions are performed most often.[299] For detectives to solve major crimes, they need the public and patrol officers focused on providing information to help them solve crimes. If police are community mediators, they need training in counseling and deescalating violence.[300] Indeed, routine social services are not necessarily best provided by police.[301] Innovation throughout the country has ***122** demonstrated that first responders need not be police officers.[302] At the very least, understanding that police function is not what the public expects, or even police expect, helps us understand the impacts of the police myth. And assuredly, a deep dive into the actual and desired functions of police, perhaps led by the community,[303] is critical to any potential police reform.

B. Police Disaffection

The police myth creates police disaffection, particularly in communities with high crime rates. While public confidence in police generally remains high, members of communities of color are alienated from police because they have grown used to crime and police not solving it, and because they often receive poor levels of police protection.

Confidence in police is high among whites but much lower among people of color, particularly when it comes to confidence in crime solving. In general, public confidence in police has remained high, as police are one of the top-respected public institutions, though this confidence fell for the first time in 2020.[304] A 2016 poll found that seventy-six percent of Americans had "a great deal" of respect for their local law enforcement,[305] ***123** though there was wide disparity in how Americans of different racial backgrounds viewed police.[306] A 2016 survey noted that "[w]hile sixty-eight percent of white Americans have a favorable view of the police, only forty percent of African Americans and fifty-nine percent of Hispanics have a favorable view."[307] People of color view police as less legitimate and trustworthy than do more wealthy, white individuals.[308] Indeed, confidence in the police has remained substantially lower for people of color.[309] People of color are half as likely to believe that police can solve crimes as white people.[310] In addition to this perception of the police overall, racial disparities are also present in measurements of whether individuals think police are doing a good job.[311] Public perception surveys seem to indicate that people of color do not have a high level of confidence in police competency and are much more likely to realize that police are unlikely to solve crimes.

At the heart of these disparate views on police is that people in underserved communities--often communities of color--do not receive adequate protection from police. They often wait longer to have police ***124** respond to calls for help,[312] have the lowest number of crimes solved,[313] and have inadequate protection against crime.[314] And the more crime occurs and is not solved in a particular neighborhood, the more likely the neighborhood's residents are to distrust police.[315] This is not just because of the commonly thought reasons--police misconduct, gang violence, snitch culture--but because these citizens have seen repeatedly that police are not there to help them.[316] This is a neglected piece of the police puzzle. The fact that police are not solving major crimes with any regularity has an impact on those who are not served. The more unresolved crimes and victims, the more these communities suffer from police disaffection.[317] If community members believe police are listening to them, they are more likely to ***125** cooperate with police, which would improve crime solving,[318] as the public are the group most likely to solve crimes.[319]

The causes of the lack of confidence in police are likely varied. Many scholars have documented distrustful and tense relationships between Blacks and law enforcement over the last fifty years, and beyond.[320] One contributor to disaffection with police is procedural injustice--or being unfairly treated by police.[321] People also fail to report to police because of poor treatment by police in the reporting process.[322] It is difficult to disentangle the tension and disaffection of people of color and police to determine the causes and effects. However, a part of this equation is likely the police myth, which results in people of color suffering disproportionately as victims of unresolved serious crime. Certainly, communities of color are responding rationally to police failure to solve crimes. Police are less likely to solve serious crimes in communities of color; therefore, these communities have less confidence that the police will solve such crimes. The public perception surveys in this context mirror reality. One study demonstrates that public views of police are directly linked with how effectively officers solve crime and how well police interact with the public.[323] According to policing scholars Tom Tyler and ***126** Jeff Fagan, public perceptions of police are positive "when the public views the police as effective in controlling crime and maintaining social order."[324] Monica Bell also explains that structural exclusion has occurred in the Black community due to receiving lower quality policing.[325] Distrust and disaffection have gone hand in hand as a result of the police myth in communities of color.[326]

With the notable exceptions above, the legal academy has failed to appreciate that certain communities have been talking about the police myth for some time. Indeed, communities of color suffer most acutely since crime solving is lowest in those populations.[327] Public Enemy's, "911 is a Joke" rap from 1990 quite literally complains that the police "only come when they wanna" or "don't come at all."[328] Indeed, the lack of crime solving has led to profound disengagement with the police and any notion that the police have or ever will serve and protect Black people.[329] According to a DOJ ***127** study, those victimized by crime are significantly less likely to approve of police.[330] The result of disaffection with police is a self-perpetuating cycle of nonreporting--indeed, as police solve less crime, individuals are less likely to turn to police which creates a problematic cycle.[331] When individuals are not held accountable for crimes, this can lead to a lack of public security and can threaten law and order.[332]

Police disaffection has always been a problem among underserved communities. As discussed in Part I, the history of policing is rife with violence, racial inequity, and a persistent inability to solve even a quarter of major crimes. In fact, police suffered from low clearance rates from as far back as clearance rates have been recorded. And it may actually be that police have gotten worse at solving crimes.[333] Given this reality, there is no "reform" or "restoration" of police. In fact, America has never had an effective--crime solving--police force. And police have never enjoyed broadscale legitimacy with minorities or disfavored populations throughout their history. To this end, the police myth is more of a myth among advantaged groups who may never have realized that police were not solving serious crimes with regularity. Arguably, police have never had universal public legitimacy and unpacking the police myth might exacerbate the problem of police disaffection. The failure of police to solve crimes--or the police myth--likely plays a major role in police disaffection.

C. Punishment-Protection Paradox

Another impact of the police myth is what is termed here the "punishment-protection paradox." Individuals refuse to report crime because of the threat of "punishment" from different avenues. Individuals ***128** who report crimes face a threat from

community members, because of the potential that a member of the community will face incarceration, as well as a threat from police abuse. [334] The "punishment" is also a real deterrent in reporting because when crimes are solved, they are solved by arrest or incarceration that adds to disaffection and marginalization from the community. [335] But then there is the "protection paradox." People in communities of color understand the police myth all too well. They know from experience of years of ineffective policing that police are not typically solving crimes. [336] The lack of police intervention when a community member is a victim of serious crime is perceived as a problem of police refusing to keep the community safe or being unable to do so. Along with the lack of protection is the justified belief of underserved communities that police cannot and will not assist them; and reporting to the police is futile. Jay, a young person in a high crime New York neighborhood says it well, "Anything could happen to me, and the cops, they're not going to be there ***129** to save me." [337] Indeed, studies show that a lack of police responsiveness is related to increases in obtaining a firearm for protection and potentially gang activity. [338] Also, in the few cases where police do intervene, this may result in more negative interactions and fear of police, [339] which might make people even less likely to approach police to solve crimes, [340] and encourages more self-help. [341] Even when police do arrest and sometimes incarcerate members of a community, this can marginalize all who are involved, for instance by separating those who turn to the police from others in the community and perpetuating the collateral consequences of incarceration on the community. Thus, an arrest may encourage others neither to snitch nor turn in a member of the community to the police.

The major problem of the punishment-protection paradox--identified by investigation literature--but ignored by legal policing scholars--is that the vast majority of serious crimes are solved by the public. Without the public commitment in underserved communities to help police solve crimes, there is a perpetuating cycle of the punishment paradox: the less people confide in police, the fewer crimes are solved, the more disaffection from police which furthers the inability of police to solve crimes and gain trust through increased competency. [342] With this fear and lack of recognition about the harms of under-policing and structural marginalization of poor communities ***130** of color, the police myth is allowed to perpetuate--individuals continue mistrusting the police. The harms caused by not solving murders of loved ones, rapes of daughters and sons, and burglaries of the homes of innocents are unaccounted for. As a result, police not stopping violence in Black neighborhoods may actually increase crime. [343] And overwhelmingly, despite police abuse, Black communities want policing and protection, [344] as communities of color feel devastated by crime more acutely than other communities. [345] And because so many poor communities are devastated by crime, the effects are broad and echoing. [346]

The punishment-paradox that this Article grapples with results in the realization that solving the police myth by making a larger percentage of arrests may not be the answer. If we solve the police myth by increasing arrest rates, we are potentially lessening the rate of police crime solving due to the consequence of arrests further alienating communities. When police imprison large numbers of community members, there is a real marginalization of members of the community. If we ignore serious crime, however, this also leads to increased distrust in police. [347] The good news is that the vast majority of individuals in high-crime neighborhoods report they are willing to obey and report crime. [348] Indeed, communities of color ***131** want to improve public safety, yet they lack trust in law enforcement to improve it. [349] Legal policing scholarship needs to explore whether there is a middle ground where the community trusts police to resolve crimes, potentially without resorting to punitive methods like arrest and incarceration. Experimentation in this regard among cities would be helpful in paving a new path for policing.

While there have been negative impacts of the police myth--including obfuscation of police role, police disaffection and the punishment-protection paradox--the next section explores what societal gains have potentially resulted from the police myth.

D. In Defense of the Police Myth

This Article has explored three negative impacts of the police myth. However, it is important to consider whether the police myth serves any public purpose. Could it be providing a sense of security, albeit false? When an individual goes to bed at night, when he hears a suspicious noise outside, he is reassured by the fact that the police are only a phone call away. Would understanding how unlikely it is for police to intervene effectively create greater insecurity? Also, if it were widely acknowledged that police were not solving crimes, would crime increase? Simply for the deterrent effect, is it wise to keep the police myth in circulation as long as possible? [350]

While fear based on a recognition of the police myth is natural, ignoring it may not be the answer. Understanding the police myth can lead to a lack of public safety which threatens law and order and may reduce reporting rates. Informing people about the police myth may discourage more people from reporting crimes. [351] Currently, only half of serious crimes are reported to police, and one of the most common reasons cited is that people (correctly) believe police cannot or refuse to do anything about the problem. [352] Recognition of the police myth can also threaten law and order. Although an attack on the myth that police are regularly solving crime might ***132** be viewed by some as an invitation to tempt more criminality with the promise of going unnoticed, the reality is that these threats already exist, and continuing to neglect them is not good policy.

One argument in defense of the police myth is that police have never been great at solving crime, so there is no sense in disrupting the status quo. Without a focus on the police myth, crime trends over the last thirty years-- crime reporting, arrest and clearance rates--show that police have made no improvement; [353] moreover, no training or new theoretical framework has really helped improve this over the last thirty years. [354] Some research shows that crime levels may not even relate to policing but indelible factors such as income, levels of employment, education, and population heterogeneity. [355] It is possible that crime solving rates may always be disappointingly low.

Crime solving rates are also low because crime is very difficult to solve, though police priorities also matter. [356] One reality of the police myth is that crime is incredibly difficult to solve, and the most difficult crimes to solve are unfortunately the ones that create the most harm--murder and rape. [357] For instance, it is extremely difficult to solve a murder when the public refuses to assist police in determining the relationship between the victim and the perpetrator. [358] Property crimes are even more of an enigma, given challenges with both fingerprint [359] and DNA technology, [360] and due to the ***133** lack of coordination within police departments. [361] A contributing factor according to some scholars is the rights revolution in the 1960s that made police investigation for serious crimes more difficult, [362] although pre-1960s clearance rates may not support this argument since police clearance rates have historically always been low.

A key question before formulating any sort of path forward is whether it is possible for police to improve at solving crimes. If it is possible, it is worth addressing the police myth and attempting to improve police crime solving. From a police perspective, the explanation for failure to solve crimes includes "too many crimes, a lack of time, witness cooperation problems, and charge reluctance by prosecutors." [363] None of these arguments are determinative. The argument that there are too many crimes may be true, but crime rates have reduced substantially in the last thirty years and police have remained consistent in clearance of crime. It may be that there will always be more crime than police can solve. Crime rates have actually shrunk since the 1990s, [364] but police arrest rates have remained steady since 1995 (between twenty to twenty-five percent), showing that police have not changed in their ability to solve crimes. [365] Additionally, the percentage of officers per individual in the U.S. has remained steady with the population, so if there are too few officers, that has always been the case. [366] Reluctance by prosecutors to charge crimes also lacks much support, as prosecutors are charging at disproportionately higher rates than police are arresting in recent years. [367]

There is hope that police can improve in solving crime as the police investigation literature has acknowledged for some time that police spend ***134** minimal time solving crime. [368] A potential first step might include a renewed public and police focus on solving serious crimes, with a larger allocation of time and focus to this end. [369] Policing scholars also claim that police would be more effective at solving and preventing crimes if they better understood underlying crime patterns and worked closer with communities. [370] With greater focus on improving serious crime solving, police could better address the police myth.

A final argument in defense of the police myth is that solving more serious crime will increase crime and incarceration rates, but this does not have to be the case. While solving serious crimes is worthwhile, punishment is not required to obtain lawful behavior and the police myth actually reduces incarceration rates. Research shows that people do not need punishment to obey the law. Tom Tyler and others have shown that people do not obey the law due to threat or even the level of certainty of punishment but for other reasons. [371] Arrest, conviction, and incarceration are actually more likely to harm defendants and cause future crime. [372] Accordingly, even with the lack of police solving crimes, serious crime levels have gone down substantially each year in the last thirty years. [373] However, it can be argued that a potential benefit of police not solving the majority of serious crimes may actually be lower incarceration rates. Indeed, if police were actually solving more crimes, we would

presumably have much higher incarceration rates because police would be arresting a larger proportion of people committing the more than fourteen million felony and misdemeanor crimes each year.[374] It is important to also note that there are other ways to achieve ***135** accountability for crime than increasing arrest rates.[375] And refusing to arrest some individuals may not cause the anarchy critics might fear, given it is not very different from the reality of the current system.[376] Understanding the police myth may eventually force the public to accept criminal behavior and understand that policing and incarceration cannot stop it and other paths should be pursued. The next section provides a few insights on how to move forward with policing theory and function with an understanding of the police myth.

E. Path Toward Change

Change in policing begins with recognition of the police myth and with that recognition, refraining of the functions of police. Adopting a correct theoretical framework for policing is critical,[377] though equally important is formulating a baseline understanding of the function of police and the goals of policing. No policing theory historically has ever focused on or impacted the rate at which police solve crimes.[378] No overarching police theory will change community relationships with police if police credibility continues to be challenged by the police myth. And if goals for police are not determined--focus resources on stopping serious violent crimes rather than on minor incidents, for instance--police might continue to arrest large numbers of individuals for minor crimes.[379]

***136** Three steps toward better reframing the functions of police are below. This brief section certainly does not map out the steps towards resolving the police myth, reforming police theory, or even articulating what the function of police should be. It is intended as the start of a conversation that will be taken up by legal policing theory and policing investigation scholars.

First, a thoughtful consideration of the police myth is necessary, along with police function and structure. A wholesale consideration of the derivation of police authority from the constitutional "police power" is in order. While police have continued to exercise power over health, safety, and transportation issues, it may be that these duties would be best divided. There needs to be broad public understanding of the police role and a consideration of whether their focus should be on solving more crimes. Reimagining police may mean that police are no longer considered crime-fighting heroes. The public should recognize that most people are not held accountable for crimes and that police fail to solve most crimes. This examination may require a more realistic look at what police are able to do and what communities want their role to be. If public polls over the years are an accurate indication, communities want police to focus on preventing and solving serious violent crimes.[380] While prevention is related to crime solving, both are traditionally necessary police functions and worth examining. Though it could be the case that the public prefers police as broader catch-all government actors, and wants police to respond to health and public order concerns, as well as fight serious crime. Policing scholars are not currently focused on improving crime solving, particularly in addressing the resulting harm for communities of color. In fact, criminal investigation is one of the least researched areas in policing.[381] Reimagining policing function starts with recognition of the police myth; and second, a movement towards accepting or potentially exploring how police can increase effectiveness in solving serious crimes, which has proven in some contexts to be successful.[382] An increased focus on solving crimes is not so ***137** simple as moving a traffic cop to a detective position; it may require hiring specialists for resource-intensive investigative functions.[383]

Understanding the police myth eventually requires the public to grapple with the fact that they collectively demand police spend a lot of time on public order functions that can potentially be conducted in a more cost-effective manner by those trained in counseling, or medical provision. Improving police performance in crime solving may require dividing policing function to allow police to focus on preventing and solving crime.[384] It may be more effective for citizen volunteers to help with neighborhood distress calls or possibly minor crime mediation. Traffic control could deal with all traffic issues, including controlling flow of traffic. Emergency health and social services rather than police could deal with drug issues--the largest percentage of misdemeanor arrests--and mental health, which are perpetual problems for police.[385] Indeed, social workers could address community disruptions without the use of force and with police as backup if violence is possible.[386] Even domestic violence disputes, which are some of the trickiest calls for officers, may be resolved more successfully with the help of social workers.[387] This could free patrol officers to assist detectives in solving serious crimes. Reforming the police function does not have to increase arrest rates for less serious crimes, as ***138** many of these could be more appropriately resolved by

mediation or restitution or other means with cooperation of the victim.[388] A smaller, well-trained crime solving force could potentially emerge to focus on serious violent and property crimes.

Second, careful data collection with audits and meaningful incorporation of community perspectives could reduce police disaffection.[389] Democratizing police recognizes the initial insight of the constitutional founders that each locality suffers from different problems that should be addressed locally. To adequately consider local problems, data on victims crime reports, police crime reports, police arrest, searches or abusive practices, clearance, conviction, and crime resolution rates should be collected and available in local communities.[390] All of these are not discussed in detail this Article,[391] but given the discussion in Part III.B on disaffection with the community, it is important to consider police effectiveness in solving crime and treatment of community members.[392] Periodic community audits can check police by reviewing arrest and search data considering the potential of racial profiling and abusive practices. Community representatives should be able to review crime reporting data to provide feedback on how police can improve to gain public trust. Community members can review crimes solved to provide input on what the focus of police should be, and to hold police accountable for a failure to solve serious crimes in a community. In shifting power to communities, as Simonson has suggested, communities can be empowered to focus police on finding alternative ways to address minor crimes, for instance.[393] Community boards should also have the ability to hold police accountable for misconduct in a community, or for failing to respond to victims of crimes. In some communities, this might come as an independent community audit of police, but other options may include a community ***139** counsel, or even reparations for abusive policing practices.[394] To succeed in this more singular focus on serious crimes, police need to integrate in communities, increase informal contacts, and decrease minor crime interactions to gain trust among citizens.[395] And while it might be tempting to argue that low crime solving rates require a response of increased criminalization and punishment, this may not be the answer. Without removing the unnecessary "punishment" from policing, the alienation of communities of color will persist. Police, in collaboration with communities of color, can work towards repairing relationships.[396] Improving these relationships could help decrease the impacts of the punishment-protection paradox.

Finally, reworking pay, budgets, training, and police incentive structures could help respond to the issues of the police myth. The wage structure in some communities, where officers are paid less to work in urban high crime communities, should be evaluated.[397] Some communities should consider higher pay to recruit better officers or more officers in high-crime areas,[398] similar to what some localities do in education.[399] Some studies show that increasing police budgets and spending on increased research and development do not increase the proportion of crimes solved.[400] Thus, while ***140** hiring and retaining better officers may help improve abusive practices, it may not address disaffection or the police myth. The ratio of officers per population has largely remained unchanged in the last thirty years,[401] and while the public is generally against increasing police numbers, police overall feel they are unequipped to protect communities.[402] Though, investigation literature indicates that hiring more police does not necessarily result in less crime or increase the proportion of crimes solved.[403] However, in potentially reducing the numbers of police, there should be a ***141** consideration of the crime prevention function of police presence. Some targeted policing strategies have reduced violent crime rates.[404] And many scholars have shown that the mere existence of police in a neighborhood is effective in preventing crime,[405] especially property crime.[406] As far as training, police time spent and training often do not reflect the "priorities" of police departments to solve violent crimes.[407] With a focus on police function, policing may shift towards allocating more time and resources towards solving the most serious crimes and less resources on minor crimes. Indeed, to target police efforts towards crime solving, officers should be incentivized to solve serious crimes while disincentivized against inaccurate punishment through appropriate reprimands.[408] The incentives to increase ***142** arrest numbers could be replaced with incentives to solve serious violent crimes, and using alternative means to resolve less serious crimes.[409] With appropriate policing structure and incentives, police have greater incentives not to pursue minor or drug crimes, and instead, place their focus on preventing and solving serious crimes.[410]

CONCLUSION

The movement for Black lives has forced a societal reckoning about the fractured relationship between police and disaffected communities, and has given traction to removing[411] or reducing police funding nationwide.[412] American policing costs $115 billion per year.[413] It is worth reevaluating this number in terms of the public service received,[414] as this Article makes

***143** clear that solving serious crimes only constitutes a tiny fraction of the modern police function.[415] Despite the police myth--the strong public belief that a primary police function is crime control and that police solve crime with regularity--this Article demonstrates that police only solve serious crimes about twenty percent of the time. While the police defunding and abolition movements are both gaining support, critics exclaim that this is highly impractical. Scholars assert that reducing the role of police would lead to increased crime and officer safety concerns.[416] None of these discussions take into account the police myth. If police are neither allocating a large portion of their time to preventing or solving crime, nor otherwise solving major crimes, would defunding police actually impact crime?[417] If this is the moment to consider police reform, a meaningful consideration of police purpose and function is necessary. Legal policing scholars--both in theoretical and investigative areas--must consider the mismatch between public expectations of police function and the reality of the police myth.

Footnotes

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1 *See, e.g., FY2020-21 Adopted Budget Dashboard*, CITY OF PORTLAND: CITY BUDGET OFF., https://www.portlandoregon.gov/cbo/article/765251 [https://perma.cc/4MJF-L4V4] (defunding the police bureau budget by nine million dollars); *see also* CITY OF NORTHAMPTON, MASS. FY2021 EXPENDITURE SUMMARY (2021), https://www.northamptonma.gov/DocumentCenter/View/15588/FY2021-Budget-Approved-on-June-18-2021--updated-documents [https://perma.cc/KH5C-22ED] (defunding the police budget by ten *percent);* Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1635 (2019) (providing an example of a participatory city-budgeting project where "the public is empowered to defund the police and reinvest recourses by 'setting a living wage and by fully funding healthcare, social services, public schools, and sustainable economic development projects"'); James Rainey, Dakota Smith & Cindy Chang, *Growing the LAPD Was Gospel at City Hall. George Floyd Changed That*, L.A. TIMES (June 5, 2020, 5:00 AM), https://www.latimes.com/california/story/2020-06-05/eric-garcetti-lapd-budget-cuts-10000-officers-protests [https://perma.cc/47X5-RR96] (reducing the Los Angeles Police Department budget by up to $150 million).

2 *See, e.g.*, PITTSBURGH, PA., CODE art. I, § 103.06 (banning the purchase of surplus U.S. military equipment and weapons); *see also id*. at § 116.02A (requiring police officers to step in and stop other officers from using illegal or unnecessary force); KATE HAMAJI ET AL., FREEDOM TO THRIVE: REIMAGINING SAFETY & SECURITY IN OUR COMMUNITIES 4 (2017), https://www.populardemocracy.org/sites/default/files/Freedom%20To%CCC20Thrive%CCC2C%CCC20Higher%CCC20Res%20Version.pdf [https://perma.cc/YW95-5WJK] (examining budgets across twelve jurisdictions, highlighting "invest/divest campaigns, which advocate for investments in supportive services and divestment from punitive institutions"); S. 217, 72d Gen. Assemb., 2d Reg. Sess. (Colo. 2020) (requiring data collection on interactions with the public and use of force, requiring that body cameras be activated, allowing lawsuits against officers in their individual capacities, and increasing transparency of prosecutorial and grand jury decisions); Press Release, Governor Andrew M. Cuomo, Governor Cuomo Signs 'Say Their Name' Reform Agenda Package (June 12, 2020), https://www.governor.ny.gov/news/governor-cuomo-signs-say-their-name-reform-agenda-package [https://perma.cc/X5BH-BNFZ] (increasing transparency of disciplinary records); S 5024, 2020 Gen. Assemb.,

Spec. Sess. I (Va. 2020) (authorizing investigations of patterns of police misconduct); CITY OF SACRAMENTO, CREATION OF AN INSPECTOR GENERAL POSITION, City Council 2020-00793 at 1 (2020) (creating an inspector general to investigate police misconduct); Press Release, N.J. Off. of the Att'y Gen., AG Grewal Issues Statewide Order Requiring Law Enforcement Agencies to Identify Officers Who Commit Serious Disciplinary Violations - Col. Callahan to Release Identities of All State Troopers Subject to Major Discipline over Last Twenty Years (June 15, 2020), https://www.njoag.gov/ag-grewal-issues-statewide-order-requiring-law-enforcement-agencies-to-identify-officers-who-commit-serious-disciplinary-violations-col-callahan-to-release-identities-of-all-state-troopers-subject/ [https://perma.cc/3D2L-TFVE] (ordering police departments to identify officers disciplined for misconduct); Kabir Bhatia, *Akron Voters Approve New Policies for Police Body Camera Footage, City Hiring Practices*, WKSU (Nov. 4, 2020, 12:47 AM), https://www.wksu.org/government-politics/2020-11-04/akron-voters-approve-new-policies-for-police-body-camera-footage-city-hiring-practices [https://perma.cc/33T4- GSRV] (requiring release of body and dashboard camera footage of police use of force); Adhiti Bandlamudi, *San Jose Voted to Expand Police Oversight. What Happens Next?*, KQED (Nov. 20, 2020), https://www.kqed.org/news/11848103/san-jose-voted-to-expand-police-oversight-what-happens-next [https://perma.cc/3YMG-DAMR] (approving independent review of officer use of force); Press Release, Mayor's Off., Mayor Keisha Lance Bottoms Issues New Administrative Orders Related to Transforming the City of Atlanta Police Department: Mayor Changes Use of Force Policies and Calls for Comprehensive Look at How We Police in Atlanta (June 16, 2020), https://www.atlantaga.gov/Home/Components/News/News/13380/672 [https://perma.cc/Q385-DH5F] (requiring reporting of deadly force use to a citizen review board).

3 *See, e.g.*, Sam Levin, *California City Moves to Replace Police with Unarmed Civilians for Traffic Stops*, GUARDIAN (July 15, 2020, 9:48 PM), https://www.theguardian.com/us-news/2020/jul/15/berkeley-police-california-unarmed-civilians-traffic-stops [https://perma.cc/PX88-YHAF] (approving proposal that Berkeley City Police no longer issue traffic citations, instead giving those duties to unarmed city workers); *see also* Austin R. Ramsey & Meryl Kornfield, *Amid Calls to Defund Police, Albuquerque Creates an Alternative Department*, WASH. POST (June 15, 2020, 2:32 PM CDT), https://www.washingtonpost.com/nation/2020/06/15/wake-calls-defund-police-albuquerque-creates-an-alternative-department/ [https://perma.cc/3C94-3KZE] (announcing the creation of a civilian public safety branch which will dispatch trained professionals to nonviolent emergency calls rather than police officers).

4 *See, e.g.*, Joshua Hoyos & Christina Carrega, *Minneapolis City Council Votes to Replace the Police Department with a New Organization*, ABC NEWS (June 26, 2020, 12:11 PM), https://abcnews.go.com/US/minneapolis-city-council-votes-replace-police-department-organization/story?id=71472439 [https://perma.cc/Z3TK-H2M5] (voting unanimously, the city council voted in favor of a proposal that would replace the city's police department).

5 *See, e.g., Abolition for the People: The Movement for a Future Without Policing & Prisons*, LEVEL (Oct. 6, 2020), https://level.medium.com/abolition-for-the-people-397ef29e3ca5 [https://perma.cc/7Z7E-F298] (containing a collection of thirty pro-abolitionist articles from community organizers, political prisoners, scholars, and advocates); *see also* ALEX S. VITALE, THE END OF POLICING 47 (2017) (arguing that policing is a tool of social control that facilitates the exploitation of people of color); Alec Karakatsanis, *Why "Crime" Isn't the Question and Police Aren't the Answer*, CURRENT AFFS. (Aug. 10, 2020), https://www.currentaffairs.org/2020/08/why-crime-isnt-the-question-and-police-arent-the-answer [https://perma.cc/6SFZ-3KVH]; Derecka Purnell, *How I Became a Police Abolitionist*, ATLANTIC (July 6, 2020), https://www.theatlantic.com/ideas/archive/2020/07/how-i-became-police-abolitionist/613540/ [https://perma.cc/JR5D-L5HL] (discussing the roles that other people can do better than police).

6 *See, e.g.*, Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277, 277, 285, 318 (2020) (arguing that defunding the police could have "unintended consequences" such as increased crime rates, hampered efforts to control officer misconduct, reduced officer safety, and over-ticketing, among other things).

7 *See* Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 793 (2021) ("[Policing] goals are relatively consistent throughout the literature on law enforcement, even if particular scholars do not embrace all of them: that policing practices should reduce crime, make people feel safe, and promote trust between police officers and communities so that they can work together to coproduce safety - all while limiting the harms of policing, such as police violence, as much as possible."); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE

L.J. 2054, 2061 (2017) (noting the dual purposes of the criminal justice system: "crime response and reduction" and "the management and control of disfavored groups"); Tracey L. Meares & Tom R. Tyler, *The Battle for the Constitution: The First Step Is Figuring Out What Police Are For*, ATLANTIC (June 8, 2020), https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/ [https://perma.cc/3DED-UYPE] ("As a starting point, citizens of the United States need to come to a consensus about the meaning of public safety that includes the perspective of those most affected by both the problems that the state deploys police to solve and the way that the state responds to those problems.").

8 *See, e.g.*, Jeffery C. Mays, *Who Opposes Defunding the N.Y.P.D.? These Black Lawmakers*, N.Y. TIMES (Aug. 10, 2020), https://www.nytimes.com/2020/08/10/nyregion/defund-police-nyc-council.html [https://perma.cc/GR7T-77W4] (noting that council members in communities across New York are against defunding the police because various communities "are not safe yet"); *see also* W.G. SKOGAN, POLICE AND PUBLIC IN ENGLAND AND WALES: A BRITISH CRIME SURVEY REPORT (1990) (proffering that people have favorable views of police unless they need police to solve a crime). There is a "mythology" around criminal investigation that "can be understood not just in terms of the 'glamour' of 'catching criminals'" that created a "good living for thousands of authors, film-makers and television directors, but also in terms of both the real and the symbolic importance of successful criminal investigation in delivering one of the key promises of the modern centralised state, on which a significant portion of its legitimacy has rested: the promise of providing effective security to its citizens." TIM M. NEWBURN, HANDBOOK OF POLICING 433 (2d ed. 2008). Solving crime is related to crime control and prevention, as well as addressing disorder, though the concepts are not identical. *See, e.g.*, Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 901 (2015) [hereinafter Harmon, *Federal Programs*] ("Most local policing seeks to facilitate criminal justice and prevent crime and disorder in order to make a community safer ....").

9 *See* Simonson, *supra* note 7, at 783 (defining the instrumentalist approach as one in which "reformers focus on policies that they hope will lead to particular outcomes traditionally associated with policing success" such as "a reduction in reports of violent crime or a reduction in police use of unconstitutional excessive force").

10 I owe this categorization of policing scholarship to Jocelyn Simonson, *see* Simonson, *supra* note 7.

11 *See infra* Part I.C.

12 *See generally* George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1982), https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/ [https://perma.cc/XT24-PK38] (establishing the theory of "broken window policing" and arguing that police should focus on responding to minor crimes); Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 302 (1998) (recognizing the implementation of "order-maintenance policing," based on the broken windows theory and noting that the idea is "one of the principal policy recommendations emerging along the new path of deterrence").

13 Hot spots policing is a proactive policing method that focuses "patrol resources on places and times that have the most crime." Philip B. Heymann, *The New Policing*, 28 FORDHAM URB. L.J. 407, 417 (2000). Hot spots policing developed in the late 1980s out of empirical observations from Lawrence Sherman and David Weisburd. Lawrence W. Sherman & David Weisburd, *General Deterrent Effects of Police Patrol in Crime "Hot Spots": A Randomized, Controlled Trial*, 12 JUST. Q. 625, 630, 645 (1995) ("We defined hot spots operationally as small clusters of addresses," where "substantial increases in police" create deterrence effects). Hot spots are "cluster[s] of crime problems [in] geographically defined" areas. David Weisburd & Lorraine Green, *Policing Drug Hot Spots: The Jersey City Drug Market Analysis Experiment*, 12 JUST. Q. 711, 713 (1995). The logic underlying hot spots policing is that if crime is "highly concentrated on specific streets in the city, the police should focus their interventions at those places." David Weisburd, *Does Hot Spots Policing Inevitably Lead to Unfair and Abusive Police Practices, or Can We Maximize Both Fairness and Effectiveness in the New Proactive Policing?*, 2016 U. CHI. LEGAL F. 661, 665 (2016). *See also* David Weisburd & Lorraine Green Mazerolle, *Crime and Disorder in Drug Hot Spots: Implications for Theory and Practice in Policing*, 3 POLICE Q. 331, 331 (2000)

(examining hot spot policing response in Jersey City, New Jersey); Anthony A. Braga, Andrew V. Papachristos & David M. Hureau, *The Effects of Hot Spots Policing on Crime: An Updated Systematic Review and Meta-Analysis*, 31 JUST. Q. 633, 634 (2014) (presenting "findings of [a] ... systematic review of the effects of hot spots policing on crime"); Andrew Guthrie Ferguson, *Predictive Policing and Reasonable Suspicion*, 62 EMORY L.J. 259, 273 (2012) (showing that sometimes up to fifty percent of crime was concentrated in three percent of the city).

14 *See generally* ANDREW GUTHRIE FERGUSON, THE RISE OF BIG DATA POLICING (2017) (discussing the use of technology and artificial intelligence by police); Elizabeth E. Joh, *Automated Policing*, 15 OHIO ST. J. CRIM. L. 559 (2018) (discussing the challenges of artificial intelligence used by police); John E. Eck & D. Kim Rossmo, *The New Detective: Rethinking Criminal Investigations*, 18 CRIMINOLOGY & PUB. POL'Y 601, 603 (2019) ("Over time, as police have employed increasingly sophisticated technology--DNA analysis, automated fingerprint identification, multiple linked computer databases, closed-circuit television recordings, and more--we would expect to see greater success at solving crimes and a rise in solution rates.").

15 *See* WILLIAM H. WEBSTER & HUBERT WILLIAMS, THE CITY IN CRISIS: A REPORT BY THE SPECIAL ADVISOR TO THE BOARD OF POLICE COMMISSIONERS ON THE CIVIL DISORDER IN LOS ANGELES 4 (1992) (discussing the need for "a profound change in the relationship between the police department and the communities" and arguing for police to have a "working partnership" with the community).

16 *See* Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513 (2003); Tracey Meares, *Policing and Procedural Justice: Shaping Citizens' Identities to Increase Democratic Participation*, 111 NW. U. L. REV. 1525 (2017) [hereinafter Meares, *Democratic Participation*].

17 *See* Simonson, *supra* note 7, at 778 ("[T]he power lens opens up discussions of reform to first-order questions about how the state should go about providing safety and security in our time, with or without the police as we know it."); *see also* Anthony A. Braga, *Better Policing Can Improve Legitimacy and Reduce Mass Incarceration*, 129 HARV. L. REV. F. 233, 238-39 (2015-2016) ("Developing close relationships with community members would help the police gather information about crime and disorder problems, understand the nature of these problems, and solve specific crimes."); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1803 (2020) (discussing democratic reforms through an "increasing public participation in criminal law enforcement" approach).

18 Bell, *supra* note 7, at 2066-67 (introducing "legal estrangement" as a way to clarify the relationship between police and the public).

19 Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community-Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355, 1365 (2017) [hereinafter Meares, *The Path Forward*] (stating that trust and legitimacy were the most important areas in need of improvement); Tom R. Tyler, *From Harm Reduction to Community Engagement: Redefining the Goals of American Policing in the Twenty-First Century*, 111 NW. U. L. REV. 1537, 1555 (2017) [hereinafter Tyler, *Harm Reduction*] ("Training officers in procedural fairness is an important way to build legitimacy in the community because it changes the way officers think about how to police."); Meares, *Democratic Participation, supra* note 16, at 1525 ("Positive changes in procedural justice may encourage more democratic participation in government."); Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CALIF. L. REV. 1513, 1538-39 (2002) (discussing new community police initiatives to improve public and police relationships).

20 Bell, *supra* note 7, at 2139-43 (proffering that judges should avoid "giving too much leeway to the police," particularly when the issue is a question of reasonableness under the Fourth Amendment).

21 Simonson, *supra* note 7, at 787 (examining "the movement focus on power shifting in the governance of the police"); Akbar, *supra* note 17, at 1805 (arguing that more democracy is not sufficient to address systemic policing issues because

it "fails to account for the anti-democratic nature of the carceral state"); *see also* Tyler, *Harm Reduction, supra* note 19, at 1539-40) ("rethink[ing] the vision of what policing in our democratic society should be about"); Dorothy E. Roberts, *Democratizing Criminal Law as an Abolitionist Project*, 111 NW. U. L. REV. 1597, 1598-99 (2017) ("The problem is not [B]lack communities' alienation from law enforcement because criminal law is not democratic enough; the problem is that criminal law excludes [B]lack people from democratic participation in the political economy."); Bell, *supra* note 7, at 2143 (advocating for "a deep, meaningful approach to democratizing police governance"); Janet Moore, *Democracy Enhancement in Criminal Law and Procedure*, 2014 UTAH L. REV. 543, 610 (2014) (promoting "a democracy-enhancing theory of criminal law and procedure").

22 *See* Julian R. Murphy, *Is It Recording?--Racial Bias, Police Accountability, and the Body-Worn Camera Activation Policies of the Ten Largest Metropolitan Police Departments in the USA*, 9 COLUM. J. RACE & L. 141, 148-49 (2019) (discussing police materials that may increase racial profiling of minority defendants for drug crimes); Paul J. Larkin, Jr. & David L. Rosenthal, *Flight, Race, and Terry Stops:* Commonwealth v. Warren, 16 GEO. J.L. & PUB. POL'Y 163, 205-06 (2018) ("Discrimination ... exacerbates any police-citizen tensions that already exist within a community and dissuades the victims of crime in those neighborhoods from cooperating with the police."); Elias R. Feldman, *Strict Tort Liability for Police Misconduct*, 53 COLUM. J.L. & SOC. PROBS. 89, 100-01 (2019) ("It is also fair to assume policing's risk of wrongful harm falls disproportionately upon racial minorities given what is known about how unconscious racial biases affect police decision-making.").

23 Rachel A. Harmon, *When Is Police Violence Justified?*, 102 NW. U. L. REV. 1119, 1150, 1156 (2008) [hereinafter Harmon, *Violence Justified*] ("[P]olice officers continue to rely on justification defenses, including self-defense ... to justify their uses of force in state criminal and civil suits challenging their behavior."); Aaron Goldstein, *Race, Reasonableness, and the Rule of Law*, 76 S. CAL. L. REV. 1189, 1195-96 (2003) (asserting that the "most politically polarizing types of cases involves police who claim self-defense in shooting an African American victim").

24 *See, e.g., Chapter One: Policing and Profit*, 128 HARV. L. REV. 1723, 1735-36 (2015) (noting that "attempts to monetize law enforcement ... not only ... discriminate against the poor, [but] allowing these programs to generate revenue also tends to corrupt whatever value they might otherwise provide" by moving policing from a focus of "identifying culpability and gathering evidence" to a focus on "aggressively managing poor communities").

25 *See generally* Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUM. L. REV. 1333, 1337-38 (2020) (describing the role of police unions and their place in critiques of police misconduct); John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV. 1539, 1540-41 (2017) (asserting that "an understanding of how insurers manage police risk is essential to any persuasive theory of civil deterrence"); Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 400 (2016) (discussing how the "reasonableness" standard of the Fourth Amendment fails to hold police accountable for misconduct); Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. DAVIS L. REV. 897, 926 (2017) (noting how the use of body cameras may also protect police officers from allegations of misconduct); MICHAEL AVERY, DAVID RUDOVSKY & KAREN BLOOM, POLICE MISCONDUCT: LAW AND LITIGATION (3d ed. 2014).

26 Bell, *supra* note 7, at 2068 ("[I]n order to dismantle ... legal estrangement, multiple levels of government must engage in policy reform aimed not only at procedural injustice, but also at vicarious marginalization and structural exclusion.").

27 For broader research on police function and police abolition, *see, e.g.*, KRISTIAN WILLIAMS, OUR ENEMIES IN BLUE: POLICE AND POWER IN AMERICA (2004) (examining the history of policing); STUART SCHRADER, BADGES WITHOUT BORDERS (2019) (considering how the U.S. involvement in the Cold War shaped domestic policing function); VITALE, *supra* note 5.

28 *See, e.g.*, RACHEL HARMON, THE LAW OF THE POLICE (2021) [hereinafter HARMON, POLICE] (dedicating a section to "The Pathological Myth of Police as Crime Fighters" and a discussion of "Do Detectives Solve Crimes?"); Barry Friedman, *Disaggregating the Policing Function*, 169 U. PA. L. REV. 925, 929 (2021) ("critically [examining] the policing function itself"); Aya Gruber, Commentary, *Police and "Bluelining"*, 58 HOUS. L. REV. 867, 867 (2021)

("contradict[ing] the conventional narrative, which remains largely accepted, that the police exist to vindicate the community's interest in solving, reducing, and preventing crime").

29 *See* Nina J. Westera et al., *Towards a More Effective Detective*, POLICING & SOC'Y 1, 1 (2014) ("Despite the recognised importance of detective work, to date, few empirical studies examine the less tangible skills, abilities and other characteristics that differentiate between those detectives who perform the role effectively and those who do not."); JEAN-PAUL BRODEUR, THE POLICING WEB 185-86 (2010) ("According to a report written under the auspices of the U.S. National Research Council, the topics that were the least researched in the field of police studies ... [included] criminal investigation ...." and taking note of the lack of research focused on criminal investigation); Eck & Rossmo, *supra* note 14, at 605 ("Despite significant technological advances in forensics and information systems, there has been little experimentation or innovation in the investigation process itself. Detective work is typically reactive, initiated by the report of the commission of a crime. Most arrests are made by patrol officers on the basis of information from the community ...."). *But see* Friedman, *supra* note 28.

30 *But see* HARMON, POLICE, *supra* note 28.

31 *See* Harmon, *Federal Programs, supra* note 8.

32 *See infra* Part II and note 42. In defining 'police' I also include detectives who are a subset of police that can operate somewhat independently within a police department. PETER W. GREENWOOD, JAN M. CHAIKEN, JOAN PETERSILIA & LINDA PRUSOFF, THE CRIMINAL INVESTIGATION PROCESS, VOLUME III: OBSERVATIONS AND ANALYSIS 8 (1975) (noting the separation between police and detectives).

33 There are large portions of the U.S. population who know intimately that police are not solving serious crimes in their communities, and who suffer as a result. See *infra* Part III.C (discussing the problem of underpolicing and recognition of the police myth in marginalized communities).

34 *Id*.

35 *See infra* Part II.

36 MARIANA VALVERDE, THE FORCE OF LAW 56 (2010) ("In theory (i.e., according to the letter of the law), the one thing that police officers can do and others cannot is to use some force to arrest those charged with crimes."); *see* A.B.A., STANDARDS RELATING TO THE URBAN POLICE FUNCTION 1-2.2 (1997) (articulating the classic responsibilities of police).

37 *See* U.S. CONST. amend. X; *see also* Panhandle E. Pipe Line Co. v. State Highway Comm'n, 294 U.S. 613, 622 (1935) ("[The police power] springs from the obligation of the State to protect its citizens and provide for the safety and good order of society .... It is the governmental power of self-protection and permits reasonable regulation of rights and property in particulars essential to the preservation of the community from injury."); *see, e.g.*, Geurin v. City of Little Rock, 155 S.W.2d 719, 721 (Ark. 1941) ("[T]he right of the [L]egislature to exercise the police power is ... not referable to any single provision of the Constitution" because the power is inherent in states.). *See generally* MARKUS DIRK DUBBER, THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS OF AMERICAN GOVERNMENT xi, 216 (2005) (claiming that "[a]mong the powers of government none is greater than the power to police, and none less circumscribed" and "a critical analysis of American criminal law, ostensibly derived from the police power of the state, could draw on the work of [Thomas Jefferson]").

38 The police power is the state's general regulatory power. *See* Goodridge v. Dep't of Pub. Health, 798 N.E.2d 941, 954 (Mass. 2003). *See also* Frye v. Kansas City Missouri Police Dep't, 375 F.3d 785, 791 (8th Cir. 2004) (The state policing power includes taking actions "to protect the health and safety of their citizens.") (internal citations omitted); Queenside

Hills Realty Co. v. Saxl, 328 U.S. 80, 82 (1946) ("Protection of the safety of persons is one of the traditional uses of the police power of the States.").

39 The power to establish police derives from the state "police power" as it is a health and safety function. *See Frye*, 375 F.3d at 791.

40 HERMAN GOLDSTEIN, POLICING A FREE SOCIETY 24-25 (1977) (noting that studies of police time pre-1990 found a "large number of [police] hours [were] devoted to ... traffic accidents," and other "tasks unrelated to crime"); ROBERT M. FOGELSON, BIG-CITY POLICE 231 (1979) (stating that officers in the 1960s spent time responding to "domestic disputes, ... accidents, ... noisy parties, ... and respond[ing] to all sorts of calls that were generated by something other than a violation of the criminal law"); Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471 (2021) (noting that "[t]raffics stops are the most common interaction between police and civilians today" and "challeng[ing] the conventional wisdom that traffic enforcement is impossible without the police"); William E. Crozier & Brandon L. Garrett, *Driven to Failure: An Empirical Analysis of Driver's License Suspension in North Carolina*, 69 DUKE L.J. 1585, 1586 (2020) ("find[ing] that [B]lack and Latinx people are overrepresented relative to the population" when it comes to driver's license suspensions).

41 For a broader discussion of "crime control," see generally Herbert L. Packer, *Two Models of the Criminal Process*, 113 U. PA. L. REV. 1 (1964) (examining the Due Process and Crime Control Models).

42 The public assumes that police solve crimes. Rick Muir, *Great Expectations: What Do the Public Want from the Police*, POLICE FOUND. (Sept. 23, 2016), https://www.police-foundation.org.uk/2016/09/great-expectations-what-do-the-public-want-from-the-police/ [https://perma.cc/NE3B-JHCH] (noting that the public expects that police will "investigate offen[s]es" and "catch criminals"); GOLDSTEIN, *supra* note 40, at 57 (acknowledging "[t]he myth that detectives are capable of solving all crimes"); Peter Greenwood et al., *The Investigative Function, in* POLICING: KEY READINGS 247 (Tim Newburn ed., 2005) (citing the media image of the police investigator as "the resourceful, streetwise cop, who always gets his man"). Some policing literature recognizes and discusses the "police crime myth." Egon Bittner, *Florence Nightingale in the Pursuit of Willie Sutton: A Theory of the Police in* HERBERT JACOB, THE POTENTIAL FOR REFORM OF CRIMINAL JUSTICE 18 (1974) (arguing that fighting crime is not the basic function of police). Professor Bittner recognizes that police do not spend most of their time on fighting crime and rarely invoke criminal law in their work; but nonetheless, "the appropriateness of police action is primarily determined with regard to the particular and actual nature of the case at hand, and only secondarily by general norms." *See also* RICHARD ERICSON, REPRODUCING ORDER: A STUDY OF POLICE PATROL WORK; NATIONAL RESEARCH COUNCIL 197 (1982) (finding that "patrol police spend very little time on criminal-law enforcement"); *FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE*. WASHINGTON, DC: THE NATIONAL ACADEMIES PRESS; *see* HARMON, POLICE, *supra* note 28 (dedicating a section to "The Pathological Myth of Police as Crime Fighters").

43 *See* UNIFORM CRIME REPORTING, *infra* note 46. Murder also includes nonnegligent manslaughter.

44 I acknowledge here that some of the problem is that police are resolving crimes by alternative means, and this is not being accounted for in the data. For instance, when an officer chooses to mediate an aggravated assault case rather than turn it over to prosecutors, the case is considered resolved.

45 See, *e.g.*, Greenwood et al., *supra* note 42, at 247 (recognizing the popular image of policing as crime solving).

46 Clearance rates (or police making an arrest and turning over to prosecution) and arrest rates were below thirty percent in the 1940s and dropped until the 1970s to the present, when they have been reported at around twenty percent in 2019. *See* 12 U.S. DEP'T OF JUST. UNIF. CRIME REPS. FOR U.S. & ITS POSSESSIONS 20 (1941) (In 1940, 28.1% of offenses were cleared by arrest, however, the UCR makes several changes in its reporting over the course of the years sampled including the introduction or removal of metrics, making comparisons across time difficult. For example, in

1940, total offenses included: rape, robbery aggravated assault, burglary, larceny-theft, auto theft, and criminal homicide. Criminal homicide included "manslaughter by negligence" and "murder and non-negligent manslaughter."); 22 U.S. DEP'T OF JUST. UNIF. CRIME REPS. FOR U.S. & ITS POSSESSIONS 42 (1951) (in 1950, for total offenses, twenty-eight percent were cleared by arrest); 78 U.S. DEP'T OF JUST. UNIF. CRIME REPS. FOR U.S. & ITS POSSESSIONS 103 (1960) (26.1% of crimes were cleared in 1960); 99 U.S. DEP'T OF JUST. UNIF. CRIME REPS. FOR U.S. & ITS POSSESSIONS 118 (1970) (1970 saw only 20.1% cleared). However, beginning in 1965, the UCR began including a "Crime Index Total" in addition to a "Grand Total" for reporting the total number of offenses cleared by arrest. The "Crime Index Total" focuses only on those crimes deemed most serious--either by their nature or the disproportionate amount of time law enforcement must dedicate to them. The Crime Index Total includes murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny greater than fifty dollars, and auto-theft, and is the number cited here. *See* 91 U.S. DEP'T OF JUST. UNIF. CRIME REPS. FOR U.S. & ITS POSSESSIONS 106 (1965); 180 U.S. DEP'T OF JUST. UNIF. CRIME REPS. FOR U.S. & ITS POSSESSIONS 188 (1980) (by 1980, only 19.2% of crimes were cleared); Shima Baradaran Baughman, *How Effective Are Police? The Problem of Clearance Rates and Criminal Accountability*, 72 ALA. L. REV. 47, 113 tbl.1 (2020) [hereinafter Baughman, *How Effective Are Police?*] (in 1990 21.25% of crimes were cleared); 205 U.S. DEP'T OF JUST. UNIF. CRIME REPS. FOR U.S. & ITS POSSESSIONS 207 (2000) (20.5% of crimes were cleared in 2000). In 2003, the FBI began only calculating an overall clearance rate for violent or property crimes, rather than an overall clearance rate that included both types of crime. See FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: SUMMARY OF THE UNIFORM CRIME REPORTING (UCR) PROGRAM 5-6, https://ucr.fbi.gov/crime-in-the-u.s/2003/03sec1.pdf [https://perma.cc/8TJM-RUCW]; Baughman, *How Effective Are Police?*, at 116 tbl.3 (21.64% of crimes were cleared in 2018); FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, 2019 tbl.25, https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables [https://perma.cc/4AQ8-37U2] [hereinafter FBI, 2019] (21.52% of crimes were cleared in 2019). See Baughman, *How Effective Are Police?*, at 113 tbl.1 (articulating how to calculate percentages of cleared crimes).

47 A better way to measure police effectiveness actually requires measuring reporting to police and conviction rates (to determine whether arrests were based on good evidence in the first place). See Baughman, *supra* note 46, at 85. Although there is variability between clearance rates and some jurisdictions have improved in this area, this is outside the scope of this Article. For an examination of this issue in Alabama, *see generally id*.

48 *See supra* note 42 and accompanying text. A 2016 CATO Institute survey focused on policing in America found that respondents thought the top three priorities of law enforcement should include (1) "[i]nvestigating violent crime" (seventy-eight percent of respondents); (2) "protecting [Americans] from crime" (sixty-four percent of respondents); and (3) "[i]nvestigating property crime" (fifty-eight percent of respondents). EMILY EKINS, POLICING IN AMERICA: UNDERSTANDING PUBLIC ATTITUDES TOWARD THE POLICE. RESULTS FROM A NATIONAL SURVEY. 5 (2016), https://www.cato.org/sites/cato.org/files/survey-reports/pdf/policing-in-america-august-1-2017.pdf [https://perma.cc/UD5X-JR36].

49 There are various possible explanations for why the clearance rate has stagnated. It may be that offenders have become more sophisticated over time and that policing practices have not improved enough to make significant gains.

50 Baughman, *supra* note 46, at 88-89 (noting that in 1990 the overall percent cleared was 21.25%, in 1995 and 1998, the clearance rates were similar at 21.17%, and 21.32%. In 2004 and 2006, the overall percent cleared was 19.94%, and 19.26% respectively. In 2009 it was 22.04% and 2014 was 23.61%. The overall clearance rate, comparing total crimes reported to police with clearance rates in 2018 is 21.64%, meaning 78.36% of crimes are not cleared). In 2019, the percent cleared was 21.5%. *See* FBI, 2019, *supra* note 46 (*see* Baughman, *supra* note 46, at 113n.16 for how to calculate). Serious crimes include murder, rape, robbery, aggravated assault, theft, burglary, and motor vehicle theft.

51 My attempt to consider the proper response to the police myth will be addressed in a future article.

52 *See infra* Part I.E 1-2.

53 *See infra* Part III.A.

54 *See infra* Part III.A.

55 *See infra* Part I.E.

56 *See infra* Part III.

57 Bell calls this concept "marginalization" and blames this on police abuse, witnessing police abuse, and other causes. Bell, *supra* note 7, at 2113 (marginalization may be direct or vicarious; "[p]athways of vicarious marginalization" include "stories from family members, witnessing friends' interactions, and watching videos and media coverage of strangers' experiences of police-related violence and injustice").

58 Tracey Meares, *Broken Windows, Neighborhoods, and the Legitimacy of Law Enforcement or Why I Fell in and Out of Love with Zimbardo*, 52(4) J. RSCH. CRIME & DELINQ. 609, 621 (2015) [hereinafter Meares, *Broken Windows*] ("Poor, urban-dwelling people of color bear the brunt, not only of privacy and autonomy intrusions, but also of the constant stream of official messaging they could easily interpret--and appear to interpret--as insulting ...."); Bell, *supra* note 7, at 2100 (arguing "that experiences in which individuals feel treated unfairly by the police are one key provocateur of legal estrangement"); Tyler, *Harm Reduction, supra* note 19, at 1539, 1547 ("[W]idespread stops .... not only engender anger and resentment but also promote cynicism .... undermin[ing] police legitimacy and contribut[ing] to the issues of distrust that suggest the need to change policing policies and practices.").

59 Bell, *supra* note 7, at 2116 ("In response to police abandonment, marginalized people seeking protection or redress for grievances have generally turned to 'self-help' ...."); Meares, *The Path Forward, supra* note 19, at 1359 ("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."); Tom Tyler, *Police Discretion in the 21st Century Surveillance State*, 2016 U. CHI. LEGAL F. 579, 587 [hereinafter Tyler, *Police Discretion*] (suggesting "that the degree to which people feel that they receive fairness from the police shapes whether people respond to the police deferentially, as opposed to with hostility and defiance").

60 *See* Robert F. Kidd & Ellen F. Chayet, *Why Do Victims Fail to Report? The Psychology of Criminal Victimization*, 40 J. SOC. ISSUES 39, 39 (1984) ("[N]onreporting is the result of three factors acting singly or in concert: (a) victim fear, (b) feelings of helplessness and the perceived powerlessness of police, and (c) the threat of further victimization from authorities."); *see generally* Heike Goudriaan, James P. Lynch & Paul Nieuwbeerta, *Reporting to the Police in Western Nations: A Theoretical Analysis of the Effects of Social Context*, 21 JUST. Q. 933 (2004) (finding that the perceived competence of the police results in whether property crimes are reported); Heike Goudriaan, Karin Wittebrood & Paul Nieuwbeerta, *Neighbourhood Characteristics and Reporting Crime: Effects of Social Cohesion, Confidence in Police Effectiveness and Socio-Economic Disadvantage*, 46 BRIT. J. CRIMINOLOGY 719, 719 (2006) ("Approximately 25 per cent of the people in the Western world are crime victims every year and about one in five of them is victimized more than once .... Many of these crimes are never reported to the police ...."); MARTIN GREENBERG & BARRY RUBACK, AFTER THE CRIME: VICTIM DECISION MAKING (1992) (discussing findings of twenty studies involving more than five thousand people and exploring the decision to report and the immediate aftermath of a victimization); Stephen M. Schnebly, *The Influence of Community-Oriented Policing on Crime-Reporting Behavior*, 25 JUST. Q. 223, 224 (2008) (studying "empirically ... whether police involvement in community-oriented policing influences whether--or to whom--citizens report crime.").

61 *See infra* Part III.C.

62 *See* Bell, *supra* note 7, at 2104-14.

63 *See* W.T. SINGLETON, SOCIAL SKILLS 153 (1983) (identifying the public solving crimes as a "myth" of policing).

64 *See, e.g.*, Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 762 (2012) [hereinafter Harmon, *The Problem*] (noting the importance of striking the proper balance between regulating policing to protect communities and ensuring that police functions--"reduc[ing] fear, promot[ing] civil order, and pursu[ing] criminal justice"--are not diminished); Paul David Stern, *Tort Justice Reform*, 52 U. MICH. J.L. REFORM 649, 652 (2019) (arguing that public tort law reform, like the doctrine of qualified immunity, should not "be so burdensome that it creates a disincentive for officers to properly perform their difficult, and often dangerous, duties").

65 Paul G. Cassell, *Explaining the Recent Homicide Spikes in U.S. Cities: The "Minneapolis Effect" and the Decline in Proactive Policing*, 33 FED. SENT'G REP. 83, 84 (Dec. 2020), (positing that "a reduction in proactive policing" due to the protests following the death of George Floyd in Minneapolis caused "spikes in homicides").

66 *See, e.g.*, Jamelia Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. 1637 (2021) (examining the impact of policing disorderly conduct on communities); Tyler, *Harm Reduction, supra* note 19, at 1539 (arguing that police "could potentially play a role in building not only trust in themselves but also trust in government and among the people in the community"); Tracey L. Meares, Tom R. Tyler & Jacob Gardener, *Lawful or Fair? How Cops and Laypeople Perceive Good Policing*, 105 J. CRIM. L. & CRIMINOLOGY 297, 301-02 (2015) (examining the disconnect between community definitions of police misconduct and police definitions of misconduct); Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing--and Why it Matters*, 54 WM. & MARY L. REV. 1865, 1883 (2013) (noting the alienation of citizens that results from differing police and citizen understanding of law governing police).

67 *See, e.g.*, Morgan, *supra* note 66, at 38-45 (arguing that criminalization of disorderly conduct gives broad discretion to law enforcement that can marginalize public spaces); Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655, 658 (2020) (arguing "that policing is one of many mechanisms that reinforce segregation" and that "the police reform agenda should directly contend with racial residential segregation"); Meares, *The Path Forward, supra* note 19, at 1365 (recognizing the potential for police to play a role as "community builders," but recognizing the potential for "mission creep" inherent in reforms); *see also* Tyler, *Police Discretion, supra* note 59, at 579 (identifying potential reforms "that could help build popular legitimacy, i.e. public trust and confidence in the police").

68 *See, e.g.*, Simonson, *supra* note 7, at 793 (identifying crime reduction as a "relatively consistent" goal of police "throughout the literature on law enforcement"). Others focus on functions related to solving crime, such as crime prevention and response. *See* Bell, *supra* note 7, at 2061 (noting "crime response and reduction" as a primary purpose of policing); Harmon, *Federal Programs, supra* note 8, at 901 (stating the goal of "most local policing" involves "facilitat[ing] criminal justice and prevent[ing] crime and disorder"). The shift toward community policing was an extension of this focus on crime. JEROME H. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY 269 (4th ed. 2011); Rinat Kitai-Sangero, *Extending Miranda: Prohibition on Police Lies Regarding the Incriminating Evidence*, 54 SAN DIEGO L. REV. 611, 614 (2017) ("The main role of the police is to solve crimes."). This assumption is not unique to academia. *See supra* note 42.

69 Over twenty years ago, Paul Robinson noted the low rate of crime solving. This is one of the few discussions in the legal academic literature of the failure of police to solve crimes, though in passing. *See* Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 NW. U. L. REV. 453, 458-61 (1997) (considering the ways an offender can escape punishment for an offense by discussing deterrence and punishment).

70 *See supra* note 40.

71 WEBSTER & WILLIAMS, *supra* note 15.

72 *See* Bell, *supra* note 7, at 2147 ("Police ... have become the primary vehicle through which the state responds to social deprivation."); *see also* Ta-Nehisi Coates, *The Myth of Police Reform*, ATLANTIC (Apr. 15, 2015) ("Vexing social problems--homelessness, drug use, the inability to support one's children, mental illness--are presently solved by sending in men and women who specialize in inspiring fear and ensuring compliance.").

73 J. LEONARD PEIRCE & HARRY CLAYTON COOK, MANUAL TO THE CONSTITUTION OF THE UNITED STATES ANNOTATED 52 (1938); *see also* Santiago Legarre, *The Historical Background of the Police Power*, 9 U. PA. J. CONST. L. 745, 757-58 (2007).

74 DICTIONARY OF ETYMOLOGY 812-13 (Robert K. Barnhart ed., 1988); *see also* Legarre, *supra* note 73, at 758 (addressing the connection between police and the public domain stating that "police is synonymous with civil administration or ... *domestic* administration").

75 12 OXFORD ENGLISH DICTIONARY 22 (2d ed. 1989); Legarre, *supra* note 73, at 761-62 (articulating this concept and asserting that "[t]his meaning survives today in the vocabulary of American constitutional law--especially in the context of the 'police power'").

76 LORD HENRY H. KAMES, STATUTE LAW OF SCOTLAND ABRIDGED: WITH HISTORICAL NOTES 271 (1757). The term "police" was used in 1773 by Erskine who broadly categorized crimes in three classes: crimes against god, crimes against laws enacted for the police or good government of a country, and other minor crimes. JOHN ERSKINE, AN INSTITUTE OF THE LAW OF SCOTLAND ¶ 16, at 705, 714-15 (1773). The second class includes laws restraining idleness, punishing beggars, and preserving game. *See also* PATRICK COLQUHOUN, A TREATISE ON THE POLICE OF THE METROPOLIS (1797) (distinguishing peace kept in the streets from justice administered by the courts and indicating that police were responsible for the regulation and correction of behavior and "the prevention and detection of crimes").

77 ADAM SMITH, THE WEALTH OF NATIONS n.3 (1776).

78 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 127-28, 162 (11th ed. 1791).

79 Legarre, *supra* note 73; *see, e.g.*, BLACKSTONE, *supra* note 78, at 128 (dividing crimes into "offen[s]es against public justice, against the public peace, against public trade, against the public health, and against the public policy or economy").

80 *See, e.g.*, BLACKSTONE, *supra* note 78, at 128, 162 (discussing offenses against "police" as public order offenses).

81 *See* ADAM SMITH, LECTURES ON JURISPRUDENCE 5 at 486 (R. L. Meek, D. D. Raphael & Peter Stein eds., 1978) (1896) (The Greek root of "police" "properly signified the policey of civil government, but now it only means the regulation of the inferior parts of government" including "cleanliness, security, and cheapness or plenty").

82 U.S. CONST. amend. X (reserving for the states "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States," including the states' ability to create criminal laws and to delegate law enforcement responsibilities to police). *See supra* notes 37-39.

83 I appreciate Rachel Harmon helping me to clarify this point to avoid confusion.

84 *See infra* Part II.

85 BARRY FRIEDMAN, UNWARRANTED: POLICING WITHOUT PERMISSION 17-18,73-74, 86-87 (2017); DAVID ALAN SKLANSKY, DEMOCRACY AND THE POLICE 3-4 (2007); Olivia B. Waxman, *How the U.S. Got Its Police Force*, TIME (May 18, 2017, 9:00 AM), https://time.com/4779112/police-history-origins/ [https://perma.cc/F859-3WKD] (discussing the privately-funded police systems of Boston in 1636 and New York in 1658).

86 BRADLEY CHAPIN, CRIMINAL JUSTICE IN COLONIAL AMERICA, 1606-1660, at 96-97 (1983) (noting that American constables' duties in the 1650s included, among other things, "apprehend[ing] all minor offenders and suspicious persons"); DAVID R. JOHNSON, POLICING THE URBAN UNDERWORLD: THE IMPACT OF CRIME ON THE DEVELOPMENT OF THE AMERICAN POLICE, 1800-1887, at 8-9 (noting that public concern around crime spurred some citizens to urge for policing to address the issue and focus on crime prevention); David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165, 1207, 1207 n.231 (1999) (explaining that in the U.S, "the new police explicitly emphasized crime prevention as their principal objective; the manuals for most of the new departments contained language echoing Peel's instruction that the officers' 'every effort' should be directed toward 'this end'").

87 ERNST FREUND, THE POLICE POWER: PUBLIC POLICY AND CONSTITUTIONAL RIGHTS (1904); Randy E. Barnett, *The Proper Scope of the Police Power*, 79 NOTRE DAME L. REV. 429, 429-31 (2004) (evaluating the differing views on the proper scope of the constitutional police power; some argue it is broad, some argue it is narrow and limited, but all acknowledge that the power comes from the Constitution).

88 HARMON, POLICE, *supra* note 28.

89 FOGELSON, *supra* note 40, at 13 (noting that authorities "organize[d] the first police departments in the 1830s, 1840s, and 1850s"); JOHNSON, *supra* note 86, at 15 ("In the years from 1830 to the 1850s each American city evolved its own police department ....").

90 *See, e.g.*, Mugler v. Kansas, 123 U.S. 623, 661 (1887) ("It belongs to that department to exert what are known as the police powers of the State, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety."); *see also* Legarre, *supra* note 73, at 787 (stating that the promotion of "public health, public safety, and public morals" was "essential to the police power of the states"). The mid-1800s is generally accepted as the period when "police forces throughout the United States converged into a single type." WILLIAMS, *supra* note 27 at 29.

91 The first small detective department was formed by the London Metropolitan Police in 1842 after concerns of street crime. NEWBURN, *supra* note 8, at 423; *see also* T.A. CRITCHLEY, A HISTORY OF POLICE IN ENGLAND AND WALES 900-1966, at 160 (1967). Boston followed suit, establishing a detective unit in 1846. Matthew Pearl, *The Incredible Untold Story of America's First Police Detectives*, BOSTON GLOBE (Apr. 28, 2016, 11:33 AM), https://www.bostonglobe.com/magazine/2016/04/28/the-incredible-untold-story-america-first-police-detectives/jewdTrdVzkQZJuVZEEc9TJ/story.html [https://perma.cc/C9AS-U9K7] (examining the introduction of detectives in 1840s Boston); Gerald F. Uelmen, *Fighting Fire with Fire: A Reflection on the Ethics of Clarence Darrow*, 71 FORDHAM L. REV. 1543, 1547 (2003) ("Boston created the first municipal detective bureau in 1846, and New York followed suit in 1857 ...."); George Fisher, *Plea Bargaining's Triumph*, 109 YALE L.J. 857, 977 (2000) (noting that the "Boston Police Department appointed its first detectives in 1846").

92 JOHNSON, *supra* note 86, at 65 ("Boston ... organized the first detective force in 1846. New York followed suit in 1857, Philadelphia in 1859, and Chicago in 1861."). The first New York police manual contained the following exhortation: "The prevention of crime being the most important object in view, your exertions must be constantly used to accomplish that end." BRUCE CHADWICK, LAW & DISORDER: THE CHAOTIC BIRTH OF THE NYPD 194 (2017). *See also*

SIR ROBERT PEEL'S PRINCIPLES OF LAW ENFORCEMENT 1829, https://www.sjpd.org/home/showdocument?id=284 [https://perma.cc/4CUS-7KMP] [hereinafter SIR ROBERT PEEL].

93 CAROL A. ARCHBOLD, POLICING: A TEXT/READER 31 (2013) ("Inevitably police departments were involved in crime prevention and control, and order maintenance ...."); JOHNSON, *supra* note 86, at 16 (noting that Philadelphia in particular shifted police emphasis to "three distinct duties: collection of information regarding crime, investigation of all details necessary to prepare a legal case, and arrest of culprits" and that similar responses occurred in Boston and New York); Sklansky, *supra* note 86, at 1204 ("It was not until 1877, and the creation of the Criminal Investigations Division, that detection became a major part of the work of the Metropolitan Police, and even then it remained clearly secondary to patrol."); *cf.* FOGELSON, *supra* note 40, at 16-17 (stating that "[f]ew Americans were sure whether the police forces ... should be authorized to deal with crime").

94 For an overview of Peel's model of policing, see WILLIAMS, *supra* note 27, at 35-36.

95 *See* SIR ROBERT PEEL, *supra* note 92. The final principle of policing also emphasizes the importance of crime solving as the value of police is measured by the "absence of crime and disorder, not the visible evidence of police action in dealing with them." *Id*.

96 *See id*.

97 FOGELSON, *supra* note 40, at 16.

98 Sklansky, *supra* note 86, at 1205 (In England "the police acted not just as patrolmen but also as 'poor law relieving officers, inspectors of nuisances, market commissioners, impounders of stray cattle, and inspectors of weights and measures.' As the nineteenth century drew to a close, however, the police shed most of these functions and concentrated increasingly on crime control: patrol, detection, and arrest.").

99 KHALIL GIBRAN MUHAMMAD, THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA 53-54 (2010) (discussing the "writing" of crime into race over American history starting from the 1890s); Akbar, *supra* note 17, at 1812 (noting that policing in the twentieth century was shaped by "the longer arc of enslavement, Jim Crow, and settler colonialism"). For an examination of the role of policing in social control, see generally FRANK J. DONNER, PROTECTORS OF PRIVILEGE: RED SQUADS AND POLICE REPRESSION IN URBAN AMERICA (1990); MARIANA VALVERDE, THE FORCE OF LAW (2010).

100 Jill Lepore, *The Invention of the Police*, NEW YORKER (July 13, 2020) ("[I]n 1911, about eleven per cent of people arrested were African-American; under Robinson, that number rose to 14.6 per cent in 1917. By the nineteen-twenties, a quarter of those arrested were African-Americans, who, at the time, represented just 7.4 per cent of the population."). Progressive Era, Vollmer-style policing criminalized Blackness. MUHAMMAD, *supra* note 99, at 266-71 (noting that "Blackness ... stood as the singular mark of a criminal" as a result of the oversimplification of crime data in the 1930s). Police patrolled Black neighborhoods and arrested Black people disproportionately. The "frontline soldiers" in Johnson's war on crime ... spent a disproportionate amount of time patrolling Black neighborhoods and arresting Black people. ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 12-15 (2016).

101 GEORGE C. THOMAS III & RICHARD A. LEO, CONFESSIONS OF GUILT: FROM TORTURE TO MIRANDA AND BEYOND 112 (2012).

102 NAT'L COMM'N ON L. OBSERVANCE & ENF'T, REPORT ON THE ENFORCEMENT OF THE PROHIBITION LAWS OF THE UNITED STATES NO. 2, at iii, 155 (1931) (explaining President Hoover's formation of the Wickersham commission and to determine the nature and extent of police abuse and causes, and to "suggest definite and constructive

remedies"); Ronald F. Wright, *The Wickersham Commission and Local Control of Criminal Prosecution*, 96 MARQ. L. REV. 1199, 1202 (2013) ("The Wickersham Commission was skeptical of Prohibition, documenting many of the unanticipated costs that resulted from the sudden criminalization of a widespread activity.").

103 NAT'L COMM'N ON L. OBSERVANCE & ENF'T, REPORT ON POLICE NO. 14 1 (June 26, 1931) ("The general failure of the police to detect and arrest criminals guilty of the many murders, spectacular bank, pay-roll, and other hold-ups, and sensational robberies with guns, frequently resulting in the death of the robbed victim, has caused a loss of public confidence in the police of our country."); Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1858-59 (summarizing the general opinion of the nation's police as "ill-trained, ill-supervised, and badly outmatched," noting that "[c]orruption was rampant," and identifying the exhibition of "incivility, ignorance, brutality and graft"); Wesley MacNeil Oliver, *The Neglected History of Criminal Procedure, 1850-1940*, 62 RUTGERS L. REV. 447, 514 (2010) (noting that the Wickersham Commission was created "to look into the state of lawlessness that had accompanied Prohibition, including the abuses perpetrated by police").

104 *See* NAT'L COMM'N ON L. OBSERVANCE & ENF'T, *supra* note 102, at 1 (stating that the purpose of the Commission was to inquire into "the problem of the enforcement of prohibition ... together with the enforcement of other laws").

105 *See* Tracey Maclin, *Comprehensive Analysis of the History of Interrogation Law, with Some Shots Directed at* Miranda v. Arizona, 95 B.U. L. REV. 1387, 1391 (2015).

106 ARCHBOLD, *supra* note 93, at 10-11 (noting that police in the 1950s and 1960s placed "a heavy emphasis on crime control" and that police reforms in the 1960s "were based heavily on a traditional model of policing" that focused on responding to serious crime); JAMES J. CHRISS, BEYOND COMMUNITY POLICING: FROM EARLY AMERICAN BEGINNINGS TO THE 21ST CENTURY 35 (2016) (noting police emphasis on clearance rates and crime rates during the 1950s and into the 1960s); Richard E. Adams, William M. Rohe & Thomas A. Arcury, *Implementing Community-Oriented Policing: Organizational Change and Street Officer Attitudes*, 48 CRIME & DELINQ. 399, 401 (2002) ("Traditional policing tends to stress the role of police officers in controlling crime and views citizens' role in the apprehension of criminals as minor players at best and as part of the problem at worst."); Joseph Goldstein, *Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice*, 69 YALE L.J. 543, 557-58 (1960) (describing the role that police were believed to provide as stated in police manuals was to be responsible "so far as is in [their] power, for the prevention and detection of crime and the enforcement of all criminal laws and ordinances"); Sklansky, *supra* note 86, at 1225 ("In the mid-twentieth century, police departments changed their principal claim of expertise--if not their principal area of practice--from prevention to apprehension ....").

107 HINTON, *supra* note 100 (discussing the increased growth of criminalization from the Johnson administration forward); *see also* Akbar, *supra* note 17, at 1813-14 ("Amidst movements and rebellions, the federal wars on crime and poverty jointly contributed to the exponential growth of policing and incarceration.").

108 FOGELSON, *supra* note 40, at 230-31 (noting that, in the mid-1960s "perhaps as much as 80 percent" of officers' time was spent "dealing with ... noncriminal matters").

109 *Id*. at 231 (stating that officers "resolved domestic disputes, helped out at accidents, broke up noisy parties, headed off potential rumbles, looked for stray children, handed out traffic directions, and responded to all sorts of calls that were generated by something other than a violation of the criminal law"); Sklansky, *supra* note 86, at 1208-09 (noting that American police "were called upon to perform tasks that had less to do with crime control per se than with the general control of urban disorder ... [including providing] the homeless with temporary lodging, and sometimes with food").

110 GEORGE L. KELLING, TONY PATE, DUANE DIECKMAN, & CHARLES E. BROWN, THE KANSAS CITY PREVENTIVE PATROL EXPERIMENT 34 (1974) (finding "the overwhelming evidence is that decreasing or increasing routine preventive patrol within the range tested in this experiment had no effect on crime, citizen fear of crime, community attitudes toward the police on the delivery of police service, police response time or traffic accidents"

in a year-long experiment of policing effectiveness in Kansas City, Missouri); Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 569 (1997) (describing the Kansas City Preventive Patrol Experiment as "a landmark social scientific study conducted in 1972 and 1973, conclud[ing] that the study's experimental variations in the level of random, motorized police patrol in Kansas City, Missouri, had no significant effect on crime statistics, citizen fears, or the response time of police to calls for service."); ANTHONY L. GUENTHER, A STUDY OF THE DETECTIVE ROLE IN A METROPOLITAN POLICE SYSTEM 4-16 to -17 ("One of the pervasive beliefs in the Department is that if enough manpower, time and resources could be mobilized, virtually every reported crime could be solved. Since that state of affairs is unlikely, detectives systematically evaluate the closure prospects for each assignment and invest their energies and talents in the most promising. Knowing that this policy will eventuate in a perfunctory follow-up of many larcenies, burglaries, and robberies, detectives obtain residual satisfaction from those cases which do close.").

Professors Paul Cassell and Richard Fowles have argued that the Supreme Court's 1966 decision in *Miranda v. Arizona* caused a substantial drop in violent crime clearance rates in 1966-68. *See* Paul G. Cassell & Richard Fowles, *Handcuffing the Cops? A Thirty-Year Perspective on* Miranda's *Harmful Effects on Law Enforcement*, 50 STAN L. REV. 1055 (1998) [hereinafter Cassell & Fowles, *Handcuffing*]; Paul G. Cassell & Richard Fowles, *Still Handcuffing the Cops? A Review of Fifty Years of Empirical Evidence of* Miranda's *Harmful Effects on Law Enforcement*, 97 B.U. L. REV. 685 (2017) [hereinafter Cassell & Fowles, *Still Handcuffing*]; *see also* Amos N. Guiora, *Relearning Lessons of History:* Miranda *and Counterterrorism*, 71 LA. L. REV. 1147, 1148 (2011) (analyzing *Miranda* exceptions); Paul Cassell & Amos N. Guiora, *Point/Counterpoint on the* Miranda *Decision: Should It Be Replaced or Retained?*, 31 UTAH BAR J. 18 (2018) (arguing for and against the *Miranda* decision).

111 Meares & Tyler, *supra* note 7.

112 *Id*.

113 JAMES Q. WILSON, VARIETIES OF POLICE BEHAVIOR: THE MANAGEMENT OF LAW AND ORDER IN EIGHT COMMUNITIES 4-5, 284 (1978) (noting that such "service functions" are only ancillary to true "law enforcement functions," that they could easily be privatized, and arguing that "benevolent" disregard of "minor misdeeds" undermines justice and that such behavior increases discrimination because "what is benevolence to the beneficiary becomes malevolence to the neglected"). For a more critical view of this approach to policing, see James Baldwin, *A Report from Occupied Territory*, NATION (July 11, 1966) ("[P]olice are simply the hired enemies of this population .... This is why those pious calls to 'respect the law,' always to be heard from prominent citizens each time the ghetto explodes, are so obscene.").

114 WILSON, *supra* note 113, at x (noting that police were publicly stating in 1977 that they could do little about crime and focused more on service functions).

115 Meares & Tyler, *supra* note 7.

116 *See* Akbar, *supra* note 17, at 1804-05 ("Many accounts ... frame community policing as central to government attempts to re-legitimate police amidst the rebellions of the 1960s.").

117 HINTON, *supra* note 100, at a5.

118 SKOLNICK, *supra* note 68. Practical steps involve organizing community-based crime prevention activities, like Neighborhood Watch, informational newsletters, and groups that remove graffiti. *Id*

119 *Id*. at 270, 272-73 (community policing was widespread but did not change policing practices as some hoped it would).

120 HINTON, *supra* note 100, at 5 (There were fewer individuals incarcerated in the century from 1865 to Johnson's War on Crime than from that time to Reagan's War on Drugs); Lepore, *supra* note 100 ("More Americans went to prison between 1964 and 1982 than between 1865 and 1964 ....").

121 KELLING ET AL., *supra* note 110, at vii (finding that changes in levels of preventive patrol did not result in "significant differences in the level of crime, citizens' attitudes toward police services, citizens' fear of crime, police response time, or citizens' satisfaction with police response time"); Livingston, *supra* note 110, at 569. *But see* WILLIAM G. GAY, JANE P. WOODWARD, H. TALMADGE DAY, NAT'L SHERIFFS' ASS'N & NAT'L INST. OF L. ENF'T & CRIM. JUST., NEIGHBORHOOD TEAM POLICING: NATIONAL EVALUATION PROGRAM PHASE I SUMMARY REPORT 35-36 (1977) (citing improved community attitudes in Albany and Los Angeles, including "consistently more positive" attitudes towards "police fairness, dependability and trustworthiness" and improved "citizen perceptions of police fairness and impartiality," but "no impact" in Cincinnati, Holyoke, and New York); LAWRENCE W. SHERMAN, CATHERINE H. MILTON & THOMAS V. KELLY, TEAM POLICING: SEVEN CASE STUDIES 107 (1973) (noting some evidence "that team policing had certain consequences for ... community relations," but cautioning that "[t]he data are far too scant ... to make such conclusions final"); Aaron Chalfin & Justin McCrary, *Criminal Deterrence: A Review of the Literature*, 55 J. ECON. LITERATURE 5, 21-23 (2017) (examining the literature on the deterrent effect of patrols); Steven Mello, *More COPS, Less Crime*, 172 J. PUB. ECON. 174, 175 (April 2019) (finding that "violent crime is more responsive than property crime to increases in police force size"); Sarit Weisburd, *Police Presence, Rapid Response Rates, and Crime Prevention*, REV. ECON. & STAT. (forthcoming) (manuscript at 3) ("suggest[ing] that the number of officers patrolling a beat has a significant impact on the probability of crime"); Emily K. Weisburst, *Safety in Police Numbers: Evidence of Police Effectiveness from Federal COPS Grant Applications*, 21 AM. L. & ECON. REV. 81 (2018) (measuring the impact of police hiring on crime).

122 DAVID I. SHEPPARD & ANTONY M. PATE, OPERATION HOMESTEAD IN NEWARK FINAL REPORT (DRAFT) 1, 44-45 (Nov. 13, 1991) (finding no "substantial reductions in reported crimes" but "demonstrated measurable effects on citizen attitudes" and that "resident perceptions of the conditions in the target neighborhood improved significantly" in a study evaluating a team and community policing strategy in Newark, New Jersey). This study did not focus on police solving crimes, however; *see also* POLICE FOUNDATION, THE NEWARK FOOT PATROL EXPERIMENT 118 (1981) (noting that street patrols were effective at making citizens "feel safe," even when there was no clear impact on levels of crime).

123 HERMAN GOLDSTEIN, PROBLEM-ORIENTED POLICING 21-27, 35-36 (1990) (arguing that "a community must police itself" with police in a supporting role and raising concerns of police effectiveness); *see, e.g.*, Kelling & Wilson, *supra* note 12 (detailing community policing programs in Newark, New Jersey and Washington, D.C. and noting that community disorder leads to community fear of violent crime); *see also* Livingston, *supra* note 110, at 565 (portraying community policing "as a result of perceived inadequacies in the ideas associated with what they term the 'reform era' in American policing" starting around the turn of the century and proceeding into the 1970s); David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1771, 1779 (2005) (describing "community policing" as the new orthodoxy of law enforcement in the 1980s).

124 Between 1960 and 1995, violent crime and serious property crime rates went up dramatically. *See* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 49 tbl.2 (1975). The percentage change in the rate of violent crimes per 100,000 from 1960-1975 was υ99.3 and for property crimes was υ78.1. In 1960, there were an estimated 288,460 violent crimes in the U.S. (a rate of 160.9 per 100,000) and 3,095,700 property crimes (a rate of 1,726.3 per 100,000). By 1975 there were 1,026,280 violent crimes (481.5 per 100,000) and 10,280,300 property crimes (4,800.2 per 100,000). In 1985, there were 1,328,800 violent crimes (a rate of 556.6 per 100,000 inhabitants) and 11,102,600 property crimes (4,650.5 per 100,000), while in 1995, there were 1,798,790 violent crimes (a rate of 684.6 per 100,000) and 12,068, property crimes (a rate of 4,593 per 100,000). *See* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: SECTION II, CRIME INDEX OFFENSES REPORTED 58, tbl.1 (1995).

125 *See* sources cited *supra* note 120.

126 *See supra* note 46 (clearance rates have hovered around twenty percent since 1960 and were at 21.52% in 2019).

127 The first mention of this as a concept was by James Wilson in 1968. WILSON, *supra* note 113, at 7-8, 284 (examining the issues raised when police discretion is used to determine whether and how to intervene in response to minor crimes, noting that when an officer chooses to "ignore[] minor misdeeds" it implies some degree of unfairness); GEORGE L. KELLING & CATHERINE M. COLES, FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES 242 (1997) (supporting that "order-maintenance activities will have a major impact on index crime, as well as low-level disorder"); *see also* Kelling & Wilson, *supra* note 12; Harcourt, *supra* note 12, at 302.

128 PREETI CHAUHAN, ADAM G. FERA, MEGAN B. WALSH, ERVIN BALAZON, EVAN MISSHULA, & JEREMY TRAVIS, TRENDS IN MISDEMEANOR ARRESTS IN NEW YORK 8-11 (Oct. 28, 2014), http://johnjay.jjay.cuny.edu/files/web_images/10_28_14_TOCFINAL.pdf [https://perma.cc/3D7L-YXZ3].

129 RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA 7, 109-10 (Earl Lewis, George Lipsitz, Peggy Pascoe, George Sánchez & Dana Takagi eds., 2007) ("California state prisoner population grew nearly 500 percent between 1982 and 2000" and "Police forces throughout the state, from tiny rural sheriffs' offices to the highly capitalized LAPD, systemically fulfilled their mandates through enhanced surveillance of neighborhoods and individuals suspected of extralegal activity .... [N]ew laws widened and deepened the capacity of police, prosecutors, and judges to identify, arrest, charge, and convict people and remand them to [the California Department of Corrections] custody. Indeed, the legislature embarked on a criminal-law production frenzy ....").

130 *See supra* notes 120-123.

131 *See* Bell, *supra* note 7, at 2117 (noting the "overpolicing" problem that developed into the 1990s).

132 Gary Lafree, *Explaining the Crime Bust of the 1990s*, 91 J. CRIM. L. & CRIMINOLOGY 269, 270 (2000) ("[T]he *crime bust period*, from 1991 to 1999, is marked by steep declines in crime.").

133 Simultaneously, the police increased technology to fight crime. The police were early adopters of computer database technology. POLICE EXEC. RSCH. F., COMPSTAT: ITS ORIGINS, EVOLUTION, AND FUTURE IN LAW ENFORCEMENT AGENCIES, 2-3, 6 (2013) (describing how Bill Bratton and a command staff developed Compstat for the NYPD as it shifted to focus on crime prevention and data-driven performance in the 1990s; explaining Compstat's purpose as a performance management system that "emphasizes information-sharing, responsibility and accountability, and improving effectiveness;" and outlining the adoption of Compstat from the NYPD to other police agencies "large and small" and now to non-law enforcement agencies as well); *see also* Vincent E. Henry, *CompStat The Emerging Model of Police Management, in* CRITICAL ISSUES IN CRIME AND JUST. 117, 119 (Albert R. Roberts ed., 2d ed. 2003). The U.S. had been using technology to solve crime since at least 1967. *See National Crime Information Center Celebrates 40th Birthday*, GOV'T TECH. (Jan. 22, 2007) (stating that the National Crime Information Center (NCIC) "became operational on January 27, 1967"), https://www.govtech.com/em/disaster/national-crime-information-center.html [https://perma.cc/3CPS-BLXS].

134 Hot spots policing is a proactive policing method that focuses patrol resources on places and times that have the most crime. *See supra* note 13.

135 Henry, *supra* note 133, at 117, 119 (noting that Compstat technology helped finetune policing and target it toward critical areas); *see, e.g.*, Ferguson, *supra* note 14, at 265, 271-73 ("[R]esearchers in Minneapolis, Minnesota found that 3.3% of street addresses and intersections in Minneapolis generated 50.4% of all dispatched police calls for service.").

136 *But see* Renata M. O'Donnell, *Challenging Racist Predictive Policing Algorithms Under the Equal Protection Clause*, 94 N.Y.U. L. REV. 544 (2019) (arguing that predictive policing perpetuates racial bias); *see also* United States v. Curry, 965 F.3d 313, 344 (4th Cir. 2020) (Thacker, C.J., concurring) ("[P]reventive policing ... has revealed itself to be tarnished with racial bias. Predictive policing is merely a covert effort to attempt to justify racial profiling.").

137 FED. BUREAU OF INVESTIGATION, FULL-TIME LAW ENFORCEMENT OFFICERS, BY REGION AND GEOGRAPHIC DIVISION BY POPULATION GROUP, NUMBER AND RATE PER 1,000 INHABITANTS tbl.71 (2019); DUREN BANKS, MATTHEW HICKMAN & TRACEY KYCKELHAHN, DEP'T OF JUST., NATIONAL SOURCE OF LAW ENFORCEMENT EMPLOYMENT DATA (2016), https://www.bjs.gov/content/pub/pdf/nsleed.pdf [https://perma.cc/7DLB-R5K4] (approximating 18,000 total agencies).

138 *Compare supra* note 124, *with* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES tbl.1 (2009), https://ucr.fbi.gov/crime-m-the-u.s/2009 [https://perma.cc/8DSG-N54G] (in 1990 the FBI estimated that the violent crime rate was 729.6 per 100,000 and the property crime rate was 5,073.1 per 100,000); *see* FBI, 2019 *supra* note 46, at tbl.1 (in 2019 the violent crime rate was 366.7 per 100,000 and the property crime rate was 2,109.9 per 100,000).

139 The number of arrests have gone down fairly consistently since 1995 (with a slight blip in 2009). *See* Shima Baradaran Baughman & Megan S. Wright, *Prosecutors and Mass Incarceration*, 94 S. CAL. L. REV. 1123 (2021) (manuscript at 5 n.9) ("The number of arrests nationally have decreased since 2006."). Over the last thirty years, the number of people arrested has decreased. In 1995, there were 2.9 million arrests, by 2006, arrests reduced to 2.1 million, and in 2019, there were 1.6 million arrests for the selected serious crimes discussed here. Baughman, *supra* note 46, at 114 tbls.2&3 (for 2006); FBI, 2019, *supra* note 46, at tbl.29; *Id*. (selected crimes include murder and non-negligent manslaughter, rape/sexual assault, robbery, aggravated assault, larceny-theft, burglary, motor vehicle theft).

140 *See generally* Tracey Meares, *The Legitimacy of Police Among Young African-American Men*, 92 MARQ. L. REV. 651 (2009) (examining procedural justice and police legitimacy); Sunshine & Tyler, *supra* note 16 (considering the interplay between procedural justice and legitimacy).

141 *See* Richard A. Bierschbach, *Fragmentation and Democracy in the Constitutional Law of Punishment*, 111 NW. U. L. REV. 1437 (2017) (examining how fragmentation of power relates to democracy in punishment); Friedman & Ponomarenko, *supra* note 103, at 1830 (noting "a failure of democratic processes and accountability" underlying policing); Joshua Kleinfeld, *Three Principles of Democratic Criminal Justice*, 111 NW. U. L. REV. 1455, 1456 (2017) (advocating for linking together a reconstructivist theory of criminal justice and a democratic theory of government to "characterize a democratic society's approach to criminal justice"); Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1120-21 (2000) (identifying "democratic and trustworthy" policing as that which focuses on greater transparency); Sunita Patel, *Toward Democratic Police Reform: A Vision for "Community Engagement" Provisions in DOJ Consent Decrees*, 51 WAKE FOREST L. REV. 793, 797 (2016) (examining the role of communities in "influenc[ing] the DOJ's police-reform consent decrees"); Maria Ponomarenko, *Rethinking Police Rulemaking*, 114 NW. U. L. REV. 1, 6 (2019) (arguing for applying administrative rulemaking procedures to policing agencies as a way to enhance democratic engagement in police rules); Christopher Slobogin, *Policing as Administration*, 165 U. PA. L. REV. 91, 118 (2016) (taking a "new administrativist" viewpoint "that police [should be] accountable for their actions through the democratic process"); Sklansky, *supra* note 123, at 1700-02 (identifying democratic policing; arguing that democratic policing can mean a variety of things: "procedural regularity and the 'rule of law'"; "certain substantive rights"; "popular participation in policing" through civilian review or community policing or control; or "service-style" policing); SKLANSKY, *supra* note 85 (similar discussion); Samuel Walker, *Governing the American Police: Wrestling with Problems of Democracy*, U. CHI. LEGAL F. 615, 617 (2016) (recognizing calls for constitutional policing).

142 Akbar, *supra* note 17 (critiquing community policing); *see also* Bierschbach, *supra* note 140, at 1451 (advocating for "do[ing] more to ensure that multiple voices are heard" within the criminal legal system). *Cf*. Simonson, *supra* note 25 (proposing copwatching as an agonistic form of public participation in policing).

143 *See* Simonson, *supra* note 7, at 783 (noting a "growing emphasis within social movements [that is] reckoning with police violence by imagining new forms of governance and policymaking in which power is shifted to those who have been most harmed by mass criminalization and mass incarceration.").

144 *See* Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 N.Y.U. L. REV. 911, 952 (2006) (arguing that greater "information and participatory rights" should be extended to both victims and "other members of the public" in the criminal process); Kleinfeld, *supra* note 141, at 1483 (arguing for a "'We the People' principle of criminal procedure hold[ing] that the administration and enforcement of criminal law should be *by* and *of* the people" and noting that the current system has "profoundly ... drifted away from it"). Some have raised concerns about the limited impact of these solutions. Akbar, *supra* note 17, at 124-25 (arguing that democratization of policing is insufficient to address the systemic issues in modern policing); Sklansky, *supra* note 123, at 1802-03 (cautioning that "[v]ery little scholarly attention has been paid" to the effectiveness of many forms of civilian oversight).

145 *See* RONALD L. DAVIS, DEP'T OF JUST., PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING RECOMMENDATIONS: FROM PRINT TO ACTION (2015), https://www.justice.gov/archives/opa/blog/president-s-task-force-21st-century-policing-recommendations-print-action [https://perma.cc/6AG9-L76J].

146 *See* Rachel A. Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 2 (2009) [hereinafter Harmon, *Promoting Civil Rights*] (depicting police misconduct as "not accidental, incidental, or inevitable" but "systematic"); L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961, 2961 (2015) (discussing the phenomenon of police killing unarmed Black men as bringing national attention to "the persistent problem of policing and racial violence"); David Rudovsky, *Police Abuse: Can the Violence Be Contained?*, 27 HARV. C.R.-C.L. L. REV. 465, 467 (1992) (summarizing the circumstances within our society that have led to the abuse and brutality of police and on some level the acceptance of such behavior); Feldman, *supra* note 22, at 90 (noting that "[s]tudies have shown that police officers use force against racial minorities at disproportionately high rates, and there is reason to believe much of this force is unjustified").

147 Charles H. Ramsey, Ronald L. Davis, Roberto Villasenor & Sean Smoot, *There Is a Playbook for Police Reform: We Helped Write It.*, N.Y. TIMES (June 4, 2020), https://www.nytimes.com/2020/06/04/opinion/police-reform-obama-task-force.html [https://perma.cc/6A5J-KCVW] (discussing the lack of implementation of Obama Commission recommendations).

148 PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT 85-99 (2015) (failing to mention solving crimes or improving clearance rates as recommendations or action items in the report).

149 *See, e.g.*, DALL. POLICE DEP'T, MISSION STATEMENT, https://dallaspolice.net/abouts/missionstatement [https://perma.cc/58LX-R4NF] ("The Police Department, in serving the people of Dallas, strives to reduce crime and provide a safe city by ... [p]roviding preventive, investigative, and enforcement services ...."); METRO. POLICE DEP'T OF D.C., MPDC: MISSION AND VALUE STATEMENT, https://mpdc.dc.gov/page/mpdc-mission-and-value-statement [https://perma.cc/C9F8-8MVR] (It is the mission of the Metropolitan Police Department to "[r]educe crime and the fear of crime in the community."); N.Y. POLICE DEP'T, MISSION, https://www1.nyc.gov/site/nypd/about/about-nypd/mission.page [https://perma.cc/GPH4-BLKQ] ("In partnership with the community, we pledge to ... [f]ight crime, both by preventing it and aggressively pursuing violators of the law."); SEATTLE POLICE DEP'T, SEATTLE POLICE DEPARTMENT MANUAL, https://www.seattle.gov/police-manual/general-policy-information/mission-statement-and-priorities [https://perma.cc/N2KV-28WK] ("The mission of the Seattle Police Department is to prevent crime ....").

150 L.A. POLICE DEP'T, MANAGEMENT PRINCIPLES OF THE LAPD, https://www.lapdonline.org/inside_the_lapd/content_basic_view/846 [https://perma.cc/978B-V6LS].

151 Although this Article examines this as a systemic failure, some critical views have recognized that this may in part be an intended result. *See, e.g.*, Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 2019 FREEDOM CTR. J. 75, 132-34 (2019) (arguing for a "third reconstruction" to address a system that "is now working the way it is supposed to, and that makes [B]lack lives matter less"). *See also supra* note 99.

152 *See supra* note 46 and accompanying text.

153 A good start to answering these questions is the classic, GOLDSTEIN, *supra* note 40, at 21 ("Anyone attempting to construct a workable definition of the police role will typically come away with old images shattered and with a new-found appreciation for the intricacies of police work."); see *supra* note 20 for further discussion of the police role.

154 Friedman & Ponomarenko, *supra* note 103, at 1827 ("All police practices--such as use of drones or other surveillance equipment; SWAT, Tasers, and other means of force; checkpoint stops, administrative inspections, and other warrantless searches and seizures--should be legislatively authorized, subject to public rulemaking, or adopted and evaluated through some alternative process that permits democratic input."); William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 509 (2001) (noting that as the law continues to develop "both lawmaking and adjudication pass into the hands of police and prosecutors"). This self-driven role may not be unique to policing. It is also unclear whether and to what extent police define their function themselves. This is an area for further research.

155 Rich Morin, Kim Parker, Renee Stepler & Andrew Mercer, *Police Views, Public Views*, PEW RSCH. CTR. (Jan. 11, 2017), https://www.pewsocialtrends.org/2017/01/11/police-views-public-views/ [https://perma.cc/P56A-4WGZ].

156 *See supra* note 48.

157 *Id*.

158 In two expansive 2016 Pew Surveys of police and the public, sixty-two percent of officers said their primary role was to serve as both protectors and enforcers while fifty-three percent of the public agreed with this statement. Morin et al., *supra* note 155. The surveys "included a number of identically worded questions, which allowed for direct comparisons of how officers and the public see the role of the police in their communities." *Id*

159 WILSON, *supra* note 113, at ix ("Ten years ago [1967], the police were popularly portrayed as 'crime fighters' who 'solved crimes' by investigation and 'prevented crimes by patrol.' Police officers may privately have then known that this view was simplistic, if not false, but few pointed that out."); Friedman, *supra* note 28, at 18.

160 FRIEDMAN, *supra* note 85, at 74, 86-87; Kitai-Sangero, *supra* note 68, at 614 ("The main role of the police is to solve crimes. The public's expectation of the police is to fulfill this role successfully.").

161 *See* FRIEDMAN, *supra* note 85; A.B.A., *supra* note 36. *But see* Sarah E. Waldeck, *Cops, Community Policing, and the Social Norms Approach to Crime Control: Should One Make Us More Comfortable with the Others?*, 34 GA. L. REV. 1253, 1264 (noting that "[a]lthough law enforcement comprises only a small component of an officer's activities, reform-era officers considered fighting crime the 'real police work,' whereas the social service component of their function was 'shit work' and 'morally degrading to them as ... enforcers of the law"').

162 According to some studies, police may spend the largest number of hours dealing with public order matters--and around twenty percent of time or less on criminal matters. GOLDSTEIN, *supra* note 40, at 24-25 (noting that studies report up to half of calls to police involve requests to help with personal and interpersonal matters, another study describes it as 83%, and yet another found "that only sixteen percent of calls to police in Detroit were crime related .... [S]tudies report [a] large number of police hours devoted to handling accidents and illnesses, stray and injured animals, and intoxicated

persons; dealing with family disturbances, fights among teen-age gangs, and noisy gatherings; taking reports on damage to property, traffic accidents, missing persons, ... lost and found property" and controlling crowds and traffic). Some of these functions can bleed into the criminal arena. *See also* Woods, *supra* note 40, at 5 (describing "increasing momentum for rethinking police involvement in the traffic space").

While many scholars have articulated their vision for police reform, there is very little in terms of theoretical consensus (or even disagreement) on what the role of police should be. *See supra* notes 10-29.

163 *See* Baughman, *How Effective Are Police?, supra* note 46, at 52 (noting that the "principal functions" of police are "detecting crime and enforcing the law").

164 *Id*. at 55 (focusing "on the function of preventing and solving crime").

165 The definition of "solving crimes" used here will be further explored in Part I.E.4.

166 *See, e.g.*, Guenther, *supra* note 110, at Fig. 2-1 (providing an example of the Washington, DC police department); David J. Bordua & Albert J. Reiss, Jr., *Law Enforcement, in* USES OF SOCIOLOGY 275, 293 (Paul F. Lazarsfeld et al. eds., 1967) (noting the hierarchical separation of roles within police departments). It is not clear whether the general public recognizes this distinction in their view of police. How much of the police myth is attributable to a public perception of police in a monolithic role? Is the police myth based on a view that the beat cop and detective have the same goals and priorities? I appreciate Ben Levin for raising these important questions.

167 *See* David L. Carter & Jeremy G. Carter, *Effective Police Homicide Investigations: Evidence from Seven Cities with High Clearance Rates*, 20 HOMICIDE STUD. 150, 161 (2016).

168 BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., NCJ 249784, STATE AND LOCAL LAW ENFORCEMENT TRAINING ACADEMIES, 2013, 4 (2016) (noting that, by 2013, the average basic training had increased by approximately two weeks in comparison to the length of training observed in 2006). In Europe, police training is often two years. *See* RUTGER BREGMAN, HUMANKIND cp. 16 (2020).

169 Carter & Carter, *supra* note 167.

170 GREENWOOD ET AL., *supra* note 32, at 8-10.

171 Eck & Rossmo, *supra* note 14, at 605 ("Consequently, detectives invest more effort in collecting evidence for a prosecution than in trying to identify unknown criminals."); JAN M. CHAIKEN, PETER W. GREENWOOD & JOAN PETERSILIA, THE CRIMINAL INVESTIGATION PROCESS: A SUMMARY REPORT 3, 16 (1976) (an extensive study of 153 police departments showed that the majority of a detective's time is spent "reviewing reports, documenting files, and attempting to locate and interview victims"). *But see* Philip J. Cook, Anthony A. Braga, Brandon S. Turchan & Lisa M. Barao, *Why Do Gun Murders Have a Higher Clearance Rate Than Gunshot Assaults?*, 18 CRIMINOLOGY & PUB. POL'Y 525, 527 (2019) (finding that higher clearance rates for fatal gunshot assaults were higher than for nonfatal assaults was "entirely a result of arrests made after the first two days, which suggests that the more sustained effort in homicide cases is an important part of the difference"). *But see* THOMAS ABT, BLEEDING OUT: THE DEVASTATING CONSEQUENCES OF URBAN VIOLENCE--AND A BOLD NEW PLAN FOR PEACE IN THE STREETS (2019) (aiming to bridge the racial and socioeconomic divide by offering a plan to reduce homicides by over fifty percent in eight years).

172 Carter & Carter, *supra* note 167, at 151 (quoting Janice L. Puckett & Richard J. Lundman, *Factors Affecting Homicide Clearances: Multivariate Analysis of a More Complete Conceptual Framework*, 40 J. RSCH. CRIME & DELINQ. 171, 188 (2003)) ("[T]he present research remain[s] largely silent on the effects of the investigative actions ... Much therefore

remains to be learned about what detectives do and how what they do affects clearances."). We should be careful since police over focusing on their duty to solve crimes may cause a disconnect between police and the public that could result in them becoming less effective at preventing crime. Livingston, *supra* note 110, at 631-32.

173 Carter & Carter, *supra* note 167, at 164-68 (team approaches took advantage of information of several bodies and coordination between forensics and crime labs, corrections organizations, patrol and investigators all part of the same team, moving quickly within the first 48-72 hours were most effective); Floyd Feeney, *Police Clearances: A Poor Way to Measure the Impact of* Miranda *on the Police*, 32 RUTGERS L.J. 1, 51 n.137 (2000) (citing J.F. ELLIOTT & THOMAS J. SARDINO, CRIME CONTROL TEAM (1971)) (finding that combining patrol and investigative officers into a team increased clearance); Fiona Brookman, Edward R. Maguire & Mike Maguire, *What Factors Influence Whether Homicide Cases Are Solved? Insights from Qualitative Research with Detectives in Great Britain and the United States*, 23 HOMICIDE STUD. 145, 160 (2019) (another important factor was having a large enough team dedicated for enough time, but not too large of a team).

174 GREENWOOD ET AL., *supra* note 32 (the separation of police and detectives in both space and status prevents information exchanges that could help with crime solving); Carter & Carter, *supra* note 167, at 171 (also considering relevant data is important for effective detective work); Katelyn Rowe, *Examining the Value-Add on Non-Adversarial Processes in the Immediate Aftermath of Police Shootings*, 27 B.U. PUB. INT. L.J. 133, 141-42 (2018) (acknowledging community members are needed to solve crimes as well as to resolve public safety concerns).

175 Seth W. Fallik, Ross Deuchar, Vaughn J. Crichlow & Hannah Hodges, *Policing Through Social Media: A Qualitative Exploration*, 22(2) INT'L J. POLICE SCI. & MGMT. 208, 210 (2020) (noting that several incidental and retrospective case studies suggest that using social media can help discover criminal activity, identify people, and gather evidence); Cassell & Fowles, *Still Handcuffing?, supra* note 110, at 703 (interviews have also been identified as the most effective police investigative method).

176 VALVERDE, *supra* note 36, at 96 (noting that police are mainly "knowledge brokers" (according to police scholar Richard Ericson) as they spend "more time recording who they have stopped or what places they have visited than anything else" and that "they spend a great deal of time sharing aspects of that information").

177 Cook et al., *supra* note 171, at 543 ("Given that fatal and nonfatal cases occur in similar circumstances, the greater volume of evidence collected in fatal cases was likely the direct result of extra investigative resources .... It seems that persistence paid off but that staying with an investigation that may take months was a luxury that only the homicide detectives could afford.").

178 FRANK HORVATH, ROBERT T. MEESIG & YUNG HYEOCK LEE, NATIONAL SURVEY OF POLICE POLICIES AND PRACTICES REGARDING THE CRIMINAL INVESTIGATION PROCESS: TWENTY-FIVE YEARS AFTER RAND 108 (2001) ("[T]he police criminal investigation process has remained relatively unaffected by the significant changes that have occurred in policing, the crime problem and technology in the past thirty years."); Eck & Rossmo, *supra* note 14, at 605 ("Detectives seriously examine a minority of reported crimes, dealing with most in less than a day .... The potential of crime scene forensics for solving crimes is undermined if the police agency's evidence processing capabilities cannot effectively handle the demand .... [T]he full potential of forensic science in criminal investigations remains unrealized. Evidence is analyzed in only a small percentage of cases, and it occurs more commonly for case building after an arrest rather than as a means of identifying the offender. Long turnaround times are a problem, in particular, for less serious crimes.") (internal citations omitted).

179 *See infra* Part II.C. for empirical support for this assertion.

180 For instance, it would be difficult to argue that improvements in police investigations since 1990 caused violent crime to drop. Eck & Rossmo, *supra* note 14, at 603. It is also unlikely that increasing minor crime arrests or broken windows efforts have caused the drop in violent crime, though this is more controversial. *See* BREGMAN, *supra* note 168.

181 KELLING ET AL., *supra* note 110, at 14 (finding overwhelming evidence that patrolling had "no effect on crime, citizen fear of crime, community attitudes toward the police on the delivery of police service, police response time or traffic accidents").

182 *See supra* note 29.

183 *See* Eck & Rossmo, *supra* note 14, at 605 ("Despite the detective mystique, most crimes are solved by members of the public, then by patrol officers, and last by detectives."). One example of this is when members of the public respond to publicized information on criminal suspects. *See id*. at 619 n.4.

184 Friedman, *supra* note 28, at 22. Barry Friedman explains that some scholars have historically pushed back on the common wisdom that cops spent little of their time fighting crime. When looking at patrol officers, detectives, and community policing officers, they found that what some call "order maintenance" is really another method of dealing with crime. If you include this metric, some half of officer's duties are crime related. *Id.*; Waldeck, *supra* note 161.

185 Paul Robinson, *Why Police Should See the 'Defund' Movement as a Golden Opportunity*, NEWSWEEK (July 21, 2020, 8:00 AM), https://www.newsweek.com/why-police-should-see-defund-movement-golden-opportunity-opinion-1519099 [https://perma.cc/DRX9-RQ2N] (quoting a former police chief as saying, "[a]bout 90 percent of all the police department calls that I've looked at in my life have nothing to do with a major [u]niform [c]rime.") (alterations in original).

186 Jeff Asher & Ben Horwitz, *How Do the Police Actually Spend Their Time?*, N.Y. TIMES (June 19, 2020) (considering time spent by officers in New Orleans, Montgomery County, Maryland, and Sacramento); In Baltimore, in 1999, Mayor Martin O'Malley reported that regular patrol officers spent less than six percent of their time dealing with serious crime. Friedman, *supra* note 28, at 22 (noting time was split between serious and minor crime like disorderly conduct, drug possession, drunkenness, and loitering).

187 *See* Asher & Horwitz, *supra* note 186 (noting thirty-seven percent in Montgomery County, Maryland, thirty-seven percent in New Orleans, and thirty-two percent in Sacramento).

188 *See id*. (Nineteen percent in Sacramento, thirteen percent in Montgomery County, Maryland, and fifteen percent in New Orleans).

189 Friedman, *supra* note 28, at 23.

190 *Id*. at 43 ("When it came to actually responding to crimes in progress, Greene and Klockars found that 'the average officer spent one hour per week."'). The available data on how police spend their time is limited and could benefit from additional research.

191 *Id*. at 22; *see also* John Liederbach & James Frank, *Policing Mayberry: The Work Routines of Small-Town and Rural Officers*, 28 AM. J. CRIM. JUST. 53, 63 tbl.1 (2003).

192 Friedman, *supra* note 28, at 23.

193 *Id*. at 26.

194 Reaves, *supra* note 168, at 7, tbl. 8, 8, fig.9 (recruits average only forty hours on investigation; the Justice Department found that police officers typically receive about 111 hours on firearms skill and self-defense-- but just eleven on cultural diversity and human relations, eight on basic community policing strategies, and eight on mediation and conflict management); Friedman, *supra* note 28, at 10-21 (breaking down the categories of training for police officers illustrating the percentage of time spent on each respective topic); Myron W. Orfield, Jr., Comment, *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016, 1028, n.55 (1987) (providing a brief history of the development of training for the Chicago Police Training Academy and noting that "[i]n the early 1980s, the curriculum underwent further change. Training time was increased from [eight to nine] hours to approximately [fourteen] hours and was divided into three parts: (1) discussion of the present state of the law; (2) discussion of departmental policy; and (3) 'hands-on' experience").

195 Friedman, *supra* note 28, at 19 (noting "in-service" training requirements for detectives or tactical team members); Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 478-81, 514-16 (2004) (attributing significant misconduct of detectives to the on-the-job culture and field training where cops are often told to "forget everything [they] learned at the police academy" because that training was largely "irrelevant to the realities of policing, and that they will learn what they need to know on the street"); U.S. BUREAU LAB. STAT., OCCUPATIONAL OUTLOOK HANDBOOK: POLICE & DETECTIVES (Apr. 9, 2021), https://www.bls.gov/ooh/protective-service/police-and-detectives.html [https://perma.cc/T74E-S568] (outlining the requirements for police and detectives noting moderate on-the-job training is required).

196 MATTHEW DUROSE & LYNN LANGTON, BUREAU JUST. STAT., REQUESTS FOR POLICE ASSISTANCE, 2011 (2013) (identifying examples of non-crime emergencies).

197 Reaves, *supra* note 168, at 8 tbl.9, 7 tbl.8 (The largest amount of police training time is spent on firearms, self-defense and health and fitness and eight hours on mediation skills or conflict management); *Id*. at 7 tbls.8 & 9 (indicating that officers receive minimal training on mental health and social work topics such as cultural diversity/human relations, mediation/conflict management, problem solving approaches, and crimes against children).

198 Some would argue there are too many crimes. *See e.g.*, HARVEY A. SILVERLATE, THREE FELONIES A DAY 25 (2009) (arguing provocatively that law-abiding people are "in the eyes of federal prosecutors" committing "three federal felonies each day").

199 This legal definition of crime is used throughout this Article. *See* Ronald C. Kramer, *Defining the Concept of Crime: A Humanistic Perspective*, 12 J. SOCIO. & SOC. WELFARE 469, 470 (1985) (distinguishing between "social" and "legal" definitions of crime and noting the "'legal' conception of crime ... defines it as behavior in violation of the criminal law and liable for sanctioning by criminal justice agencies under the political authority of the state"); *see generally* Ronald C. Kramer, *The Debate Over the Definition of Crime: Paradigms, Value Judgments, and Criminological Work, in* ETHICS, PUBLIC POLICY, AND CRIMINAL JUSTICE 33-58 (Frederick Elliston & Norman E. Bowie eds., 1982) (addressing the various definitions of crime).

200 In 2019, the "average value of property taken during larceny-thefts was $1,162 per offense." FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: LARCENY-THEFT (2019), https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/larceny-theft [https://perma.cc/L8T4-NABZ] [hereinafter FBI, LARCENY-THEFT]; Baughman, *How Effective Are Police?, supra* note 46, at 55 n.22 (articulating considerations about the inclusion of larceny in analyzing major crimes). *Cf*. FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES, BURGLARY (2019), https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/burglary [https://perma.cc/U37V-XAEC] (indicating that the average dollar amount for larceny may be significantly less than for burglary).

201 *See supra* note 127 for further discussion.

202 For more details on measuring the "true" rate of serious crimes that includes all crimes that occur (some of which are not reported to police), see Baughman, *How Effective Are Police?, supra* note 46, at 83.

203 I acknowledge here that it is not clear to me that the key function of police is to solve crimes. It seems quite possible that the primary function of police is amorphous, varying by time and place. However, solving crimes is one key function, and one that the public values. *See* Eric J. Miller, *Role-Based Policing: Restraining Police Conduct "Outside the Legitimate Investigative Sphere"*, 94 CALIF. L. REV. 617, 650 (articulating the amorphous role of the police because "the parameters of the police officer's role have not been set exclusively by the legal rules, and perhaps not even principally") (internal citation omitted).

204 *See* Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 325-26.

205 SKOLNICK, *supra* note 68, at 149-50 (citing O. W. WILSON, POLICE PLANNING 103 (1952)) ("[John] Griffin stated that the clearance rate is the most important indication of the efficiency of the police force as a whole. The clearance rate is also strongly endorsed as a control measure by the leading authority on police management and professionalization, O.W Wilson.").

206 *See infra* notes 254-257.

207 *See* Baughman, *How Effective Are Police?, supra* note 46, at 83-99.

208 Considering arrest would give us nearly the same results, we settle on clearance as a more commonly used measure of police crime solving rates. *See id*.

209 *See* John L. Worrall, *Public Perceptions of Police Efficacy and Image: The "Fuzziness" of Support for the Police*, 24 AM. J. CRIM. JUST. 47, 48 (1999) (discussing perceptions that police are charged to protect the innocent and prevent crime).

210 In discussing "police" this Article also includes detectives who are a subset of police that can operate somewhat independently within a police department. *See supra* note 32.

211 *See supra* note 13. Police have "super powers" according to Paul Butler. Butler, *supra* note 151, at 107; *see also* Don Krause & Mark Smith, *Twitter as Mythmaker in Storytelling: The Emergence of Hero Status by the Boston Police Department in the Aftermath of the 2013 Marathon Bombing*, 3 J. SOC. MEDIA IN SOC'Y. 8, 10 (2014) (discussing how "storytelling tweets have the potential to generate the hero archetype through the guise of a law enforcement agency"); Mays, *supra* note 8; Worrall, *supra* note 209, at 47 (finding support for police due to perceptions of law enforcement's ability to protect people and solve crimes); *id*. (public support for police is in part due to perceptions of law enforcement's ability to "protect citizens and solve crimes").

212 NEWBURN, *supra* note 8 at 433 (There is a "mythology" around criminal investigation that can be understood not only in the "glamour" of "catching criminals" that created a "good living for thousands of authors, filmmakers and television directors, but also in terms of both the real and the symbolic importance of successful criminal investigation in delivering one of the key promises of the modern centralized state, on which a significant portion of its legitimacy has rested: the promise of providing effective security of the state."). When JFK praised police and dedicated May 15 as National Police Week in 1963, he assumed policing had been around since the beginning of the country, but it came a hundred years after the country's founding. Waxman, *supra* note 85. About a quarter of top television programing

involves shows about the police. MATTHEW HORACE & RON HARRIS, THE BLACK AND THE BLUE: A COP REVEALS THE CRIMES, RACISM, AND INJUSTICE IN AMERICA'S LAW ENFORCEMENT xv (2018); *see also* VICTOR E. KAPPELER & GARY W. POTTER, THE MYTHOLOGY OF CRIME & CRIMINAL JUSTICE 28-31 (5th ed. 2017) (discussing media role in exaggerating public focus on crime).

213 *See infra* note 331; *see also* Lepore, *supra* note 100 (detailing the valorization of policing from President Johnson's era through President Trump's).

214 *See* Shima Baradaran, *Rebalancing the Fourth Amendment*, 102 GEO. L.J. 1, 15-16 n.77 (2013) (conducting a review of twenty-two years of Supreme Court opinions and determining that the Court defers to the government eighty percent of the time and specifically to law enforcement fifty-five percent of the time); *see also* Dorman v. United States, 435 F.2d 385, 394 (D.C. Cir. 1970) ("The courts have respect for the intelligent law enforcement activities of the police, situated as they are in the front line of the campaign for law and order .... Responsible police are aware that a responsible procedure which accords to the police the latitude for intelligent law enforcement but withholds absolute discretion is the sound approach for securing the overall combination of law and justice that is the inspiration of a democratic society."); *see also* United States v. Cortez, 965 F.3d 827, 834 (10th Cir. 2020) ("[I]n assessing reasonable suspicion we defer to a police officer's training and ability to discern innocent conduct from suspicious behavior."); Couture v. Bd. of Educ. of the Albuquerque Pub. Sch., 535 F.3d 1243, 1255 (10th Cir. 2008); United States v. Tuggle, 284 F. App'x 218, 228 (5th Cir. 2008) (deferring to police officers' "seasoned judgments" to ensure safety).

215 NEWBURN, *supra* note 8, at 433 ("[T]he basic message about crime given by western democratic governments during the twentieth century was that it could be controlled by catching criminals and processing them through this system .... [T]he most prominent aim of criminal investigation has generally been that of 'bringing offenders to justice ....'"). *But see* David Garland, *The Limits of the Sovereign State: Strategies of Crime Control in Contemporary Society*, 36 BRIT. J. CRIMINOLOGY 445, 450 (examining "the myth that the sovereign state [through policing] is capable of providing security, law and order, and crime control"); DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY 110 (2001) (noting that after the 1980s, it became more common for government reports and police commissioners to admit that they were unable to control crime and that they could deal with the effect of it better than they could stop it; thus demonstrating that the "myth of the penal sovereign" and its "law and order powers" were dismantled).

216 *See supra* Part I.E.2.

217 The average number of training hours required of new officers increased by fifty-three hours between 2007 and 2016. *Compare* BRIAN A. REAVES, U.S. DEP'T OF JUST., LOCAL POLICE DEPARTMENTS, 2007 12 (Dec. 2010) (noting an average of 922 hours of total training hours for new recruits in 2007, including 613 academy and 309 field hours), *with* U.S. DEP'T OF JUST., LOCAL POLICE DEPARTMENTS: POLICIES AND PROCEDURES, 2016 8 (Aug. 2020) (noting an average 975 hours of total training hours for a new recruit in 2016, including 645 academy and 331 field hours).

218 *See generally* FERGUSON, *supra* note 14.

219 *See* Baughman, *supra* note 46, at 53 (considering data from 1990-2018. *See* Table 1 in Appendix for how to calculate overall serious crime clearance rates). *See* FBI, 2019, *supra* note 46 (data for 2019 was not available at time of publication of *How Effective* but became available in fall of 2020. Clearance numbers are very similar between 2018 and 2019. In 2018, the violent clearance rate was 45.5% and the property rate was 17.6%. The overall clearance rate for serious crime - violent and property - was 21.64%. In 2019, the violent clearance rate was 45.5% and the property rate was 17.2%. The overall serious crime clearance rate was 21.52%).

220 Tables and graphs describing these results are available by request of the author.

221 FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: ABOUT CIUS (2018), https://ucr.fci.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/about-cius [https://perma.cc/23QK-7JBS] [hereinafter FBI, ABOUT] (indicating that arrests are also tracked).

222 After reporting to individual police departments, these crime statistics are collected by the FBI each year in the Uniform Crime Reports. *Id*.

223 *Id*.

224 Reported crimes are used to calculate several crime metrics including arrest and clearance rates. FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: DATA DECLARATION (2018) tbl.25, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-25 [https://perma.cc/64AQ-VJ4X] [hereinafter FBI, DATA DECLARATION].

225 Baughman, *supra* note 46, at 84. Although these crimes affect many individuals, they can be difficult to solve both because they are hard to detect and because some of these crimes are primarily enforced at the federal level.

226 *Id*.

227 *Id*.

228 These offenses should be considered unaccounted costs to victims and communities who suffer from these crimes. *Id.*; Mary Anne Franks, ' *'Revenge Porn" Reform: A View from the Front Lines*, 69 FLA. L. REV. 1251, 1261-64 (2017) (harms resulting from revenge porn); Jennifer Lynch, *Identity Theft in Cyberspace: Crime Control Methods and Their Effectiveness in Combating Phishing Attacks*, 20 BERKELEY TECH. L.J. 259, 263-64 (2005) (identifying the substantial economic losses associated with identity theft and recognizing the significant non-monetary harm associated with the offense); Daniel J. Solove & Danielle Keats Citron, *Risk and Anxiety: A Theory of Data-Breach Harms*, 96 TEX. L. REV. 737, 756 (2018) (considering the various harms caused by data breaches); Chris Jay Hoofnagle, *Identity Theft: Making the Known Unknowns Known*, 21 HARV. J.L. & TECH. 97, 102-03 (2007) (identifying reputational harm and emotional distress because of identity theft).

229 Although conviction rates and crime resolution rates are also critical to determining police effectiveness, in order to stick with conventional measurements of police, we examine these two measures. *See* Baughman, *supra* note 46, at 74.

230 This is an estimate comparing NCVS and UCR numbers. *See id*. at 104 n.293.

231 *See id*. at 78.

232 As far as reports to police, around one million violent crimes and six million property crimes were reported to police in 2019. FBI, 2019, *supra* note 46 (by 2019 there were about 1.1 million violent crimes (murder, rape/sexual assault, robbery, aggravated assault), 6.2 million property crimes (larceny-theft, burglary, motor-vehicle theft, excludes arson) and total reported crime was 7,275,783). Historically, all of these numbers have been higher, as crime rates have dropped over the last thirty years. *See* Baughman, *supra* note 46, at 113 tbl.1 (approximately 1.8 million violent crimes and 12.6 million property crimes were reported in 1990. Total reported crimes were 14,475,630); *see id*. at 114 tbl.2 (in 2006 reported crimes included approximately 1.2 million violent crimes and 8.8 million property crimes; total number of crimes reported was 10,092,450).

233 Baughman, *supra* note 46, at 78.

234 This Article relies on the FBI definition of clearance rates that also includes cases cleared by exceptional means. *See* FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: CLEARANCES (2018) (The typical method of determining the number of crimes cleared by police uses the UCR numbers. Under the UCR, the FBI will only count an offense as cleared for statistical purposes if it is either cleared by arrest or exceptional means). The FBI finds the percentage of crimes cleared by arrest or exceptional means by dividing the number of offenses cleared by the number of offenses reported. FBI, DATA DECLARATION, *supra* note 224.

235 *See* Eck & Rossmo, *supra* note 14, at 604 ("[T]he high clearance rates early in this 58-year time series could have been exaggerated and more recent clearance statistics might be more accurate.").

236 *See supra* notes 204-207 and accompanying text discussing underreporting of crime and the difficulty of police incentives with clearance rates.

237 Baughman, *supra* note 46 at 88-89 (noting that in 1990, the overall percentage cleared was 21.25%, in 1995 and 1998, the clearance rates were similar at 21.17% and 21.32%). *Id*. In 2004 and 2006, the overall percentages cleared were 19.94%, and 19.26% respectively. *Id*. In 2009 the percentage was 22.04%, and in 2014 it was 23.61%. *Id*. The overall clearance rate, comparing total crimes reported to police with clearance rates in 2018 was 21.64%, meaning 78.36% of crimes were not cleared. *Id*. In 2019, the percentage cleared was 21.5%. *See* FBI, 2019, *supra* note 46 (*see* Baughman, *supra* note 46, at 113 tbl.1 for how to calculate clearance rates).

238 Overall, arrest rates in the last thirty years range from a low of sixteen percent in 1990 to about twenty to twenty-five percent in most years. Baughman, *supra* note 46, at 85-86 (noting that in 1990, police arrested individuals for 15.98% of all reported crimes). In 1995 and 1998, the total percentages arrested went up to 24.49% and 25.72%, respectively. *Id*. In 2004, the percentage was 21.98% and in 2006 it was 21.16%. *Id*. In 2009, the total percent arrested went up slightly to 24.52%, and in 2014 it was 23.76%. *Id*. In 2018, the total percent arrested was 21.55%. FBI, 2019, *supra* note 46, at tbl.29 (in 2019, the total percent arrest was 21.46%. *See* Baughman, *supra* note 46, at 113 tbl.1 for how to calculate arrest rates.

239 "This could be due to misreported clearance due to improper definitions, misrepresentation or faulty counting." Baughman, *supra* note 46, at 89 n.212.

240 *See id*. at 88-89. Total percent cleared is made up of the clearance rates of major crimes. Those crimes are murder and non-negligent manslaughter, rape/sexual assault, robbery, aggravated assault, larceny-theft, burglary, and motor vehicle theft. FBI, 2019, *supra* note 46 (21.52% for 2019). *See* Baughman, *supra* note 46, at 113 tbl.1 for how to calculate clearance rates.

241 The most serious crime, murder, has a higher clearance rate-- usually above sixty percent--and other far more common serious crimes, like motor vehicle theft and larceny, have extremely low rates, between ten and twenty percent. Baughman, *supra* note 46, at 88-89 n.204.

242 I appreciate Rachel Harmon for helping me finetune this consideration and for pointing out that homicides shifting from domestic to gang homicides have complicated solving crimes and police success.

243 Research is clear that police presence certainly has an effect on preventing crime, particularly property crime. *See* Jonathan Klick & Alexander Tabarrok, *Using Terror Alert Levels to Estimate the Effect of Police on Crime*, 48 J.L. & ECON. 267, 277 (2005) (finding "that an increase in police presence of about 50 percent leads to a statistically and economically significant decrease in the level of crime on the order of 15 percent"). *But see* John M. MacDonald, Jonathan Klick, & Ben Grunwald, *The Effect of Private Police on Crime: Evidence from a Geographic Regression*

Discontinuity Design, 179 J. ROYAL STAT. SOC'Y. 831, 844 (2016) (demonstrating that it is not clear whether private security guards who lack the authority to make arrests would have a similar deterrence effect). To what extent policing deters crime is another topic on which the research is not entirely clear.

244 In some areas of the law, advocacy in recent years has focused on this issue. For instance, there is growing public recognition of police failure to solve sexual assault and domestic violence cases. *See, e.g.*, Valeriya Safronova & Rebecca Halleck, *These Rape Victims Had to Sue to Get the Police to Investigate*, N.Y. TIMES (May 23, 2019), https://www.nytimes.com/2019/05/23/us/rape-victims-kits-police-departments.html [https://perma.cc//XU85-QVKU]. (recognizing a number of lawsuits filed in attempts to force police to investigate sexual assault cases).

245 *See* Baughman, *supra* note 46, at 88-89.

246 *See id*.

247 *See id*. at 88-89 n.204-10.

248 *See Id*.

249 *See* FBI, 2019, *supra* note 46. In 2019, Larceny-theft, Motor-Vehicle Theft, and Burglary were cleared 18.40%, 13.80%, and 14.10% of the time, respectively. About seven times as many individuals experience property crimes, such as burglary, larceny, and motor vehicle theft, as violent crimes. *See supra* notes 123-124.

250 Baughman, *supra* note 46, at 98. Percentage was calculated taking FBI Number of Offenses Reported / NCVS Number Known = "Individual Reports a Crime." *See* FBI, 2019, *supra* note 46; RACHEL E. MORGAN & JENNIFER L. TRUMAN, BUREAU OF JUST. STAT., CRIMINAL VICTIMIZATION, 2019 3-4 tbls.1 & 2 (2020).

251 *See* Baughman, *supra* note 46, at 88-89; *see also* FBI, 2019, *supra* note 46.

252 *See* Baughman, *supra* note 46, at 115 tbl.2. Percentage was calculated taking the Number Convicted / FBI Number of Offenses Reported = "Arrested Person is Convicted." *See* SEAN ROSENMERKEL, MATTHEW DUROSE, & DONALD FAROLE, JR., BUREAU OF JUST. STAT., FELONY SENTENCES IN STATE COURTS, 2006 - STATISTICAL TABLES 3 tbl.1.1 (2009) (used for state conviction data); BUREAU OF JUST. STAT., FEDERAL JUSTICE STATISTICS, 2006 22 tbl.4.2 (2009) (used for federal conviction data; number convicted is calculated by adding together state and federal conviction data).

253 *See supra* notes 250-251. Crime Reporting: Baughman, *supra* note 46, at 98. Percentage was calculated taking: FBI Number of Offenses Reported / NCVS Number Known = "Individual Reports a Crime." *See* FBI, 2019, *supra* note 46; MORGAN & TRUMAN, *supra* note 250. Clearance: Baughman, *supra* note 46, at 88-89; *see also* FBI, 2019, *supra* note 46. Conviction: Baughman, *supra* note 46, at 115 tbl.2. Percentage was calculated taking the Number Convicted / FBI Number of Offenses Reported = "Arrested Person is Convicted." *See* ROSENMERKEL ET AL., *supra* note 252; BUREAU OF JUST. STAT., *supra* note 252.

254 Baughman, *supra* note 46, at 89.

255 *Id*. at 81.

256 *Id*. at 115 tbl.2 (calculated taking the number convicted of violent crimes--murder/non-negligent manslaughter, rape/sexual assault, robbery, and aggravated assault--divided by the number reported for those same offenses. That gives

the percent convicted. Next, take the percent convicted and subtract from a hundred percent to get the percent not convicted. Repeat the same process for property crimes of larceny-theft, burglary, motor-vehicle theft.) Convicted of Violent Crimes = 186,630; Reported Violent Crimes = 1,240,985. 186,630 / 1,240,985 = 15.04%, Percent Convicted of Violent Crimes. 100% - 15.04% = 84.96% Percent NOT Convicted of Violent Crimes. Convicted of Property Crimes = 226,396; Reported Property Crimes = 8,851,465. 226,396 / 8,851,465 = 2.56%, Percent Convicted of Property Crimes. 100% - 2.56% = 97.44% Percent NOT Convicted of Property Crimes.

257 When considering the number of unreported crimes, the percentage reported to police is about half of all crimes, arrest and clearance rates are at ten percent, and there is an overall conviction rate for major crimes of two percent. Baughman, *supra* note 46, at 115 tbl.2 (identifying true clearance and conviction rates which take into account unreported crimes). Unreported crimes are also referred to as the "dark figure of crime" that considers the limitations of police reports. SKOLNICK, *supra* note 68, at 247; *see also* Joseph G. Weis, *Crime Statistics: Reporting Systems and Methods, in* ENCYCLOPEDIA OF CRIME AND JUSTICE, VOL. 1378-91 (Sanford H. Kadish ed., 1983).

258 *See supra* notes 16-18 and accompanying text.

259 *See infra* Part III.A (discussing the crime prevention role of police).

260 *See e.g.*, Stephen J. Schulhofer, Miranda *and Clearance Rates*, 91 NW. U. L. REV. 278, 294 (1996-1997) (discussing issues with previous clearance rate research); Cassell & Fowles, *Still Handcuffing?, supra* note 110, at 706-08; Cassell & Fowles, *Handcuffing, supra* note 110, at 1055 (using data to argue that "crime clearance rates fell precipitously in the two years immediately after Miranda and have remained at lower levels in the decades since"); Hyunseok Jang, Larry T. Hoover & Brian A. Lawton, *Effect of Broken Windows Enforcement on Clearance Rates*, 36 J. CRIM. JUST. 529, 536 (2008) (examining broken windows enforcement and clearance rates across different types of crime); Charles Wellford & James Cronin, *Clearing up Homicide Clearance Rates*, 243 NAT'L INST. JUST. J. 2, 6 (2000) (examining 215 different factors to determine their relationship with clearance rates in homicide cases); Graham C. Ousey & Matthew R. Lee, *To Know the Unknown: The Decline in Homicide Clearance Rates, 1980-2000*, 35 CRIM. JUST. REV. 141, 153 (2010) (finding that "measures of change in the broader socioeconomic and demographic structure of a city and changes in measures of drug market arrests are significantly related to changes in homicide clearance rates").

261 *See generally* JILL LEOVY, GHETTOSIDE: A TRUE STORY OF MURDER IN AMERICA (2015) (describing that a failure of police to solve Black homicide has led to increased endemic violence); Deborah Tuerkheimer, *Criminal Justice and the Mattering of Lives*, 116 MICH. L. REV. 1145, 1153-54 (2018) (explaining that "race-based underenforcement" has led to a lower clearance rate for homicides involving a Black victim than homicides involving a white victim).

262 *See supra* note 59 and accompanying text; *see also* Abraham S. Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 MISS. L.J. 515, 516 (1982) (arguing that underreporting is substantially based on victims' perceived or actual separation from the criminal justice process); Paul Marcus & Tara L. McMahon, *Limiting Disclosure of Rape Victims' Identities*, 64 S. CAL. L. REV. 1019, 1030 (1991) (arguing that underreporting of rape and sexual assault is often due to the additional invasion of privacy that victims experience after reporting the crime); Robinson & Darley, *supra* note 69, at 461 tbl.1.

263 While very few commentators have noticed low crime solving, German Lopez noted bleakly in 2017, "[i]f you murder someone in America, there's a nearly 40 percent chance you'll get away with it." German Lopez, *There's a Nearly 40 Percent Chance You'll Get Away with Murder in America*, VOX (Sept. 24, 2018, 1:20 PM), https://ww.vox.com/2018/9/24/17896034/murder-crime-clearance-fbi-report. *See also* Anthony Williams, *Police Aren't Getting Better at Solving Murders: Why is the Clearance Rate in U.S. Cities so Low?*, BLOOMBERG CITYLAB (June 26, 2017, 10:29 AM), https://www.bloomberg.com/news/articles/2017-06-26/how-to-improve-the-murder-clearance-rate-in-u-s-cities [https://perma.cc/LT5W-T99W] (Anthony Williams, the former mayor of Washington, DC laments that U.S. law enforcement is the worst in the Western world at solving crimes and cites clearance rate statistics such as one-eighth of burglaries leading to arrest, or only one third for rape, and two thirds for murder); Martin Kaste, *Open Cases: Why One-Third of Murders In America Go Unresolved*, NPR (Mar. 30, 2015, 5:04 AM),

https://www.npr.org/2015/03/30/395069137/open-cases-why-one-third-of-murders-in-america-go-unresolved [https://perma.cc/AS8T-N4NA] ("[i]f you're murdered in America, there's a 1 in 3 chance that the police won't identify your killer").

264 *See Recent History*, NAT'L POLICE FOUND., https://www.policefoundation.org/about-the-police-foundation/history/recent-history/ [https://perma.cc/R5Q5-H5XQ].

265 For an especially thorough example of a crime funnel, see ELISE HANSELL, CHARLOTTE BAILEY, NINA KAMATH & LANE CORRIGAN, THE CRIME FUNNEL, ROSE INSTITUTE OF STATE AND LOCAL GOV. (2016); Robinson & Darley, *supra* note 69, at 461 tbl.1.

266 LYNN A. ADDINGTON, U.S. DEP'T OF JUST., CURRENT ISSUES IN VICTIMIZATION RESEARCH AND THE NCVS'S ABILITY TO STUDY THEM 2 (2008) ("Most of us are familiar with elaborate diagrams of the criminal justice 'funnel' depicting the channeling of crimes through the criminal justice system. But when numbers are attached to the diagram, it becomes clear that this is more of a sieve than a funnel. About 8 to 10 million felonies are reported to the police each year, and the National Crime Victimization Survey (NCVS) tells us that about as many go unreported."). For discussion of criminal accountability and a full crime funnel that traces even more crimes from victim report to imprisonment, see Baughman, *supra* note 46, at 102.

267 *See, e.g.*, Paul G. Cassell & Margaret Garvin, *Protecting Crime Victims in State Constitutions: The Example of the New Marsy's Law for Florida*, 110 J. CRIM. L. & CRIMINOLOGY 99 (1999). *See generally* DOUGLAS E. BELOOF, PAUL G. CASSELL, MEG GARVIN & STEVEN J. TWIST, VICTIMS IN CRIMINAL PROCEDURE 3-43 (4th ed. 2018) (discussing the modern victims' rights movement).

268 The victims' rights movement is focused specifically on the rights of victims and the way in which they interact with the criminal justice system, rather than with the failure of police to solve crimes for victims. *See generally*, Douglas E. Beloof, *Constitutional Implications of Crime Victims as Participants*, 88 CORNELL L. REV. 282 (2003) (discussing constitutional complexities implicated when victims are granted rights during criminal trials); Jayne W. Barnard, *Allocution for Victims of Economic Crimes*, 77 NOTRE DAME L. REV. 39, 74 (2001) (addressing the challenges faced when involving victims of economic crimes in restitution decisions); Susan Bandes, *Victim Standing*, 1999 UTAH L. REV. 331 (analyzing the complex role of victims in adversarial criminal proceedings); Josephine Gittler, *Expanding the Role of the Victim in a Criminal Action: An Overview of Issues and Problems*, 11 PEPP. L. REV. 117 (1984) (advocating for a more active role for victims in criminal trials); Lynne N. Henderson, *The Wrongs of Victim's Rights*, 37 STAN. L. REV. 937 (1985) (examining the role of victim's rights procedures in the criminal process and their potential impact on crime prevention and other goals); Douglas E. Beloof, *Weighing Crime Victims' Interests in Judicially Crafted Criminal Procedure*, 56 CATH. U. L. REV. 1135 (2007) (detailing the incorporation of victim's rights into the judicial process); Paul G. Cassell, *Barbarians at the Gates? A Reply to the Critics of the Victims' Rights Amendment*, 1999 UTAH L. REV. 479.

269 *See* Baughman, *supra* note 46, at 116 tbl.3; FBI, 2019, *supra* note 46 (7,275,783 (# reported) - 1,566,017 (# cleared) = 5,709,766 (estimated # of victims who received no resolution OR # not cleared)); 5,709,766 (# not cleared) / 7,275,783(# reported) = 78.5% (estimated percent not cleared). For a more complete picture, note that by using the estimated number of known crimes (NCVS plus FBI number for murder/non-negligent manslaughter), there were 14,845,545 known crimes in 2019 (meaning reported and unreported), in the US. Using that number, the percentage of victims with a resolution would be: 1,566,017(# cleared) / 14,845,545 (# of known crimes) = 10.5% (victims WITH a resolution). Victims without a resolution: 100% - 10.5% = 89.5% (victims without a resolution, considering known crimes).

270 Often, the Victim's Rights literature is focused on rights relevant after charging, including trial rights and sentencing rights. *See* Margaret Garvin & Douglas E. Beloof, *Crime Victim Agency: Independent Lawyers for Sexual Assault Victims*, 13 OHIO ST. J. CRIM. L. 67 (2015) (presenting a case for victims' rights such as right to counsel, right to a

speedy trial, right to discovery, right to make a victim impact statement before trial, and right to be informed of release or probation).

271 Figures are based on an international search of all newspapers worldwide in Lexis-Nexis from Sept. 2010 to Sept. 2020, with the exact phrase search: "overcrowded jail" - Worldwide: 2758 U.S.: 1667; "overcrowded prison" - Worldwide: 5065 U.S.: 2502; "mass incarceration" - Worldwide: 56,107 U.S.: 47,167; "police clearance" - Worldwide: 7942 U.S.: 581; "crime clearance rate" -Worldwide: 316 U.S.: 155; "police clearance rate" - Worldwide: 60 U.S.: 29. Certainly, this search is not conclusive and likely missed articles, but the broader point likely stands. These results are available upon request.

272 *See* Alice Speri, *Police Make More Than 10 Million Arrests a Year, but That Doesn't Mean They're Solving Crimes*, INTERCEPT (Jan. 31, 2019, 10:32 AM), https://theintercept.com/2019/01/31/arrests-policing-vera-institute-of-justice/ [https://perma.cc/E86P-BVMZ] ("[A]ggressive enforcement [by police] doesn't seem to do much to improve public safety or solve crime.").

273 *See supra* note 46 (finding that clearance rates since the 1940s have been below thirty percent, and most recently, around twenty percent overall for serious crimes).

274 Baughman, *supra* note 46, at 103 n.292 and accompanying text (confirming "that crime has decreased in America in the last thirty years" and positing that "[t]his could mean that police are more effective at *preventing* crime than *solving* crime, but more study is necessary on this issue"); Baughman & Wright, *supra* note 139, at 24 (noting "the sharp decline in police arrests" in "the last ten to fifteen years"); William J. Bratton, *Crime is Down in New York City: Blame the Police, in* POLICING: KEY READINGS 480 (Tim Newburn ed., 2005) (crediting "better, smarter and more assertive policing" for a crime decrease in New York City); Weisburd, *supra* note 13, at 670 ("twenty of twenty-five tests of hot spot[] policing show positive statistically significant findings" of crime prevention).

275 *See* Baughman & Wright, *supra* note 139, at 15 ("in most states criminal statutes are numerous and there are often more than enough options for criminal charging in every area"); Shima Baradaran Baughman, *Subconstitutional Checks*, 92 NOTRE DAME L. REV. 1071, 1105 (2017) ("The legislature ... has continued to increase mandatory minimums in sentencing and provide an aggressive federal criminal code to give prosecutors more tools to use against criminal defendants.").

276 The public believes they understand what police do, but police overwhelmingly believe that the public does not actually understand what policing entails. Indeed, eighty-three percent of Americans say they understand the risks and challenges of police work. Morin et al., *supra* note 155. But eighty-six percent of the police say the public does not fully comprehend the trials that officers face. *Id*. For instance, eighty-three percent of Americans believe that typical police officers fire their service weapon while on duty at least once in their career; when only twenty-seven percent of police say they have *ever* fired their service weapon. *Id*.

277 *See supra* Part I.E.

278 "Because, again, most people who suffered harm aren't going to the state for a response." *The Crime Story Podcast with Kary Antholis, Interview: Paul Butler, on the Prison Abolition Movement*, CRIME STORY, at 21:18 (July 21, 2020), https://crimestory.com/2020/07/21/episode-195-interview-paul-butler-on-the-prison-abolition-movement/ [https://perma.cc/HS7N-PFP9]; *see also* George Ciccariello-Maher & Christopher F. Rufo, *Police Departments Are Broken. Is It Time to Abolish Them All Together? Pro/Con*, PHILA. INQUIRER (Jan. 2, 2020), https://www.inquirer.com/opinion/commentary/police-abolish-criminal-justice-reform-20200102.html [https://perma.cc/5PBZ-88KJ] (opposing defunding police and noting that "[o]nce we do the math, we see that the police only 'protect and serve' a small minority of the population, but this is nothing new").

279 Baughman, *supra* note 46, at 62-63 (citing "intense pressure in certain police departments to pad or even falsify clearance rate numbers," such as in New Orleans, Tulare, Biscayne Park, Los Angeles, and Chicago); A.B.A., *supra* note 36, at 279-80 (noting that measuring police success through arrest rates can lead officers to be "overly ... aggressive in using the arrest power").

280 *See* WILSON, *supra* note 113, at ix (identifying crime prevention through patrol as part of the popular portrayal of police).

281 *See* SIR ROBERT PEEL, *supra* note 92 (identifying crime prevention as a "basic mission for which police exist"); HARMON, POLICE *supra* note 28, at 235-80 (naming crime prevention as key to policing's original role).

282 *See supra* note 149 and accompanying text.

283 Baughman, *supra* note 46, at 103 n.292 (noting that one potential explanation for the decrease in crime could be "that police are more effective at *preventing* crime than *solving* crime").

284 *See id*. (identifying a need for more analysis of the efficacy of police at preventing crime); *infra* note 417.

285 HORACE & HARRIS, *supra* note 212, at 205 (former police chief arguing that police are focused on keeping arrests up "because arrests are a measure of productivity").

286 *Id*. at 224.

287 *See* Shima Baradaran Baughman, *Drugs and Violence*, 88 S. CAL. L. REV. 227, 276 (2015) (noting the increase in drug arrests from 1995-2012); *see also* ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL 2 (2018) (most arrests are misdemeanor arrests nationally); McLeod, *supra* note 1, at 1633 (hoping to eliminate low level criminal enforcement).

288 *See* Baughman, *supra* note 46, at 88-90 (showing that violent crime arrests have decreased while the percentage of drug arrests has stayed consistent over most years).

289 *See* Baughman, *supra* note 287, at 276-77 (finding that drug defendants--both possession and trafficking--are among the least violent defendants to release before trial).

290 Indeed, the violence associated with drugs is overwhelmingly connected to a crackdown by a department on drug crimes, and those in the drug trade rarely engage in violent crime. *Id*. at 234.

291 *See* OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STAT., ARREST DATA ANALYSIS TOOL, https://www.bjs.gov/index.cfm?ty=datool&surl=/arrests/index.cfm [https://perma.cc/K6ZD-43G2] (drug related offenses represent the largest individual category of offenses from 2000 to 2014). Drug crimes are consensual crimes. SKOLNICK, *supra* note 68, at 248.

292 *See* Malcom K. Sparrow, *Measuring Performance in a Modern Police Organization, in* NAT'L INST. OF JUST., NEW PERSPECTIVES IN POLICING BULLETIN 2 (Mar. 2015) (police are mostly measured by "[r]eductions in the number of serious crimes reported, most commonly presented as local comparisons against an immediately preceding time period"); Aaron Chalfin & Justin McCrary, *Are U.S. Cities Underpoliced? Theory and Evidence*, 100 REV. ECON. &

STAT. 167, 167, 184 (2018) ("Because of the extraordinary cost of most violent crimes and the comparatively minor cost of most property crimes, from a welfare perspective the central empirical issue ... is not whether police affect crime, but the extent to which police reduce violent crime, particularly murder" and arguing that we are potentially not spending enough on policing given the returns we are receiving).

293 *See supra note* 38.

294 *See supra* notes 37, 39.

295 *See supra* notes 161-162.

296 *Id*. (identifying how police spend their time).

297 *Id*.

298 *See supra* note 162.

299 *See infra* note 385 and accompanying text.

300 *See* Friedman, *supra* note 29, at 56.

301 Monica Bell points out that "routing rehabilitation and social services through the police could perversely widen the carceral net and reify the 'culture of control.'" Bell, *supra* note 7, at 2147. In addition, there are some functions related to investigating crime, such as crime labs, that require a different type of training than police receive and could benefit from being separated from policing. *See generally* BRANDON L. GARRETT, AUTOPSY OF A CRIME LAB: EXPOSING THE FLAWS IN FORENSICS (2021).

302 *See* Friedman, *supra* note 29, at 62-63. A solution might be a set of highly trained first responders, who have capacity to use force when necessary but have sufficient training to respond in a variety of ways, including intense mediation, social services, and solving problems without the force of law. *See id*. One North Carolina police department showed that repeat calls from "chronic problem homes" were eliminated when social workers intervened. *Id*. at 56.

303 *See* Simonson, *supra* note 7.

304 Megan Brenan, *Amid Pandemic, Confidence in Key U.S. Institutions Surges*, GALLUP (Aug. 12, 2020), https://news.gallup.eom/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx [https://perma.cc/8MNR-Z5UM] (overall confidence in police falling to forty-seven percent for the first time in twenty-seven years in 2020). A 2018 Gallup poll found that the majority of Americans have a large amount of confidence in the police. Police were among the top three public institutions that gained a majority level of public confidence. The average level of American confidence in institutions since 1993 is thirty-three percent. Lydia Saad, *Military, Small Business, Police Still Stir Most Confidence*, GALLUP (Jun. 28, 2018), https://news.gallup.com/poll/236243/military-small-business-police-stir-confidence.aspx [https://perma.cc/9ADF-QH3W] ("The military, small business and the police still receive high confidence ratings from a majority of Americans ...."). In 2018, Gallup conducted telephone interviews with a random sample of 1,520 adults living in the United States. *See id*. Survey Method: "[T]he margin of sampling error is ±3 percentage points at the 95% confidence level. All reported margins of sampling error include computed design effects for weighting. Each sample of national adults includes a minimum quota of 70% percent cellphone respondents and 30% landline respondents, with additional minimum quotas by time zone within region. Landline and cellular telephone numbers are selected using random-digit-dial methods." *Id*. The question asks Americans whether they have a "great

deal, quite a lot, some or very little" confidence in fifteen different institutions. *Id*. The fifteen different institutions (in order from highest confidence from the American people to least confidence): the military, small business, the police, the church or organized religion, the presidency, the U.S. Supreme Court, the medical system, banks, the public schools, organized labor, big business, newspapers, the criminal justice system, television news, and Congress. *Id*.

305 Justin McCarthy, *Americans' Respect for Police Surges*, GALLUP (Oct. 24, 2016), https://news.gallup.com/poll/196610/americans-respect-police-surges.aspx [https://perma.cc/3GQX-AHHS].

306 Emily Ekins, *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey*, CATO INST. (Dec. 7, 2016), https://www.cato.org/survey-reports/policing-america [https://perma.cc/7UYM-CZQM].

307 *See id*.

308 TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW 146-52 (2002) (demonstrating the gap between Black and white perceptions of procedural fairness). People with higher incomes (over thirty thousand dollars) "are more likely to believe the police can solve crime." Worrall, *supra* note 209, at 57 (emphasizing that income, race, and age are all significant factors in determining whether a person believes that police solve crimes).

309 While sixty-eight percent of white respondents held "some" or "a lot" of confidence in police, only eighteen percent of Black respondents agreed. Lawrence D. Bobo & Victor Thompson, *Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System*, 73 SOC. RES. 445, 456 (2006). Literature has also shown that African-American communities-- particularly poor ones--have less trust in police than other communities in the United States. *See* Bell, *supra* note 7, at 2072 ("Structural disadvantage yields a broader cultural structure of mistrust.").

310 Worrall, *supra* note 209, at 57-59 ("Race is the most pervasive predictor of confidence in the ability of the police to solve crime," and urban residence compounds the effect.); In a 2016 Pew Survey, seventy-nine percent of Black respondents who are not police officers overall say there are signs of serious problems between law enforcement and the Black community. Morin et al., *supra* note 155.

311 One study found that while six in ten white Americans considered their local police to be competent, only four in ten African Americans agreed. Ekins, *supra* note 306.

312 Bell, *supra* note 7, at 2116 (residents of disadvantaged communities tend to receive a slower law enforcement response); ELIJAH ANDERSON, CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY 34 (1999) ("When called, [police] may not respond [to inner-city communities], which is one reason many residents feel they must be prepared to take extraordinary measures to defend themselves and their loved ones ...."). *See also* Rod K. Brunson, *Protests Focus on Over-Policing. But Under-Policing is Also Deadly.*, WASH. POST (June 12, 2020 at 8:10 AM), https://www.washingtonpost.com/outlook/underpolicing-cities-violent-crime/2020/06/12/b5d1fd26-ac0c-11ea-9063-e69bd6520940_story.html [https://perma.cc/Z6RX-J86N] ("Residents of distressed urban neighborhoods have complained about ineffective policing for centuries, including officers' ... slow response times ....").

313 LEOVY, *supra* note 261; Wesley Lowery, Kimbriell Kelly & Steven Rich, *An Unequal Justice*, WASH. POST (July 25, 2018) https://www.washingtonpost.com/graphics/2018/investigations/black-homicides-arrests/?noredirect=on&utm_term=.689ba99c30ce (stating that "almost three-quarters" of unsolved murders in the decade prior to 2018 involved Black victims).

314 Note that in a 2016 Pew Survey, "Blacks are significantly more likely than whites to see their local police as mainly enforcers (thirty-nine percent versus twenty-six percent)" rather than protectors. Morinet al., *supra* note 155; *see also* LEOVY, *supra* note 261 (depicting the "oppressive and inadequate" criminal justice system); Bell, *supra* note 7, at 2117 ("[S]everal forces converged in the 1970s, 1980s, and 1990s that shifted the problem from one of utter neglect

to the current problem of overpolicing and underprotection."); Brunson, *supra* note 312 ("[U]nder-policing also leaves residents feeling perpetually underserved and unsafe. Residents of distressed urban neighborhoods have complained about ineffective policing for centuries ....").

315 *See* Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 263 (2008) (considering trust as one facet of police legitimacy and "demonstrating that people are more cooperative with the police when they believe that police performance in fighting crime is more effective"). *But see* Meares, *The Path Forward, supra* note 19, at 1363-64, 1366 n.58 (noting that trust of police is implicated by individuals' personal interactions with police and solving crime alone does not create trust; a strong focus on crime reduction can lead to "[o]verly aggressive law enforcement strategies [that] can ... do lasting damage to public trust"). Ineffective policing seems to breed further inefficiency. Sunshine & Tyler, *supra* note 16 (examining procedural justice and the role of community perception).

316 *See, e.g.*, WEBSTER & WILLIAMS, *supra* note 15 (discussing the need for "a profound change in the relationship between the police department and the communities" and arguing for reform wherein "[t]he police department must become involved in a working partnership with the people ...."); Coates, *supra* note 72; Akbar, *supra* note 17, at 1812 (noting that policing in the twentieth century was shaped by "the longer arc of enslavement, Jim Crow, and settler colonialism").

317 *See supra* notes 58-60, 63 and accompanying text; *infra* notes 321-325, 327-330 and accompanying text.

318 Frank Rudy Cooper, *Cop Fragility and Blue Lives Matter*, 2020 U. ILL. L. REV. 621, 622 (suggesting that police hold "mediated listening sessions" to build trust in police since "[r]acial minority communities will only give police the cooperation they need if they perceive the police to be listening to them"). As one community resident who lost a son to violence stated, the way forward needs to include building better relationships with police. "If they're right, we work with them."' Julie Wernau & Erin Ailworth, *Push to Defund the Police Faces Headwinds in Some Poor, Black Neighborhoods*, WALL ST. J. (Aug. 21, 2020 7:55 AM ET), https://www.wsj.com/articles/push-to-defund-the-police-faces-headwinds-in-some-poor-black-neighborhoods-11598010936 [https://perma.cc/4KNK-3PF6].

319 *See* Eck & Rossmo, *supra* note 14 for discussion.

320 *See, e.g.*, John Hagan & Celesta Albonetti, *Race, Class, and the Perception of Criminal Injustice in America*, 88 AM. J. SOC. 329, 343 (1982) (analyzing the impact of race on the perception of criminal justice through regression analysis and finding that race plays a "persistent and often striking influence" particularly with police and a higher perception of bias by courts); Bell, *supra* note 7, at 2126, 2128, 2139 (suggesting that tense relationships can be addressed by addressing concentrated poverty racial inequality partly through suing local police for patterns of violating constitutional rights).

321 *See* TOM TYLER, WHY PEOPLE OBEY THE LAW 3 (1990) (introducing the concept of procedural justice which is concerned with police legitimacy and authority); Bell, *supra* note 7, at 2104-2105 (watching others be treated poorly by police can lead to vicarious marginalization, partners of formerly incarcerated men are less likely to vote and change their world views).

322 "I live in a major, highly integrated urban area with a miserable police force. I'm a college educated, financially secure, middle-aged white male. I DO NOT REPORT CRIMES to the police. Trying to report a crime is a horrible experience where you're made to feel like you're a criminal yourself .... That's why crimes are not reported. There's no point. And as my Black friends say, calling the cops always makes things worse." Ed Brown, Comment posted to, *Police Solve Just 2% of All Major Crimes*, CONVERSATION (Aug. 20, 2020, 8:18 AM EDT), https://theconversation.com/police-solve-just-2-of-all-major-crimes-143878 [https://perma.cc/XJY8-JJ2W].

323 *See* Kristina Murphy & Julie Barkworth, *Victim Willingness to Report Crime to Police: Does Procedural Justice or Outcome Matter Most?*, 9 VICTIMS & OFFENDERS: AN INT'L J. EVIDENCE-BASED RSCH., POL'Y & PRAC. 178, 194, 198 (2014) (finding that for some victims, "whether the police are seen to be effective in dealing with crime plays a more dominant role" when deciding whether or not to report future crime).

324 Tyler & Fagan, *supra* note 315, at 267.

325 Bell, *supra* note 7, at 2114, 2116 (explaining that structural exclusion involves "policies that may appear facially race- and class-neutral distribute policing resources so that African Americans and residents of disadvantaged neighborhoods tend to receive lower-quality policing than whites" and a slower response); *see* ANDERSON, *supra* note 312 (noting the failure of police to respond and "the profound sense of alienation from mainstream society and its institutions felt by many poor inner-city [B]lack people"); *see also* Nirej S. Sekhon, *Redistributive Policing*, 101 J. CRIM. L. & CRIMINOLOGY 1171, 1173-1174 (2013) (discussing the unchecked discretion of police departments that results in the paradox of under-policing and under-protecting racially and socioeconomically marginalized communities while over-enforcing in those same communities).

326 For a discussion of how the police myth interacts with calls to defund police, see *supra* Part II.E.

327 LEOVY, *supra* note 261 (noting the disproportionate failure of the criminal justice system to solve Black homicide). However, broken windows policing created federal incentives to police urban high-crime neighborhoods. Bell, *supra* note 7, at 2117-18 ("Yet several forces converged in the 1970s, 1980s, and 1990s that shifted the problem from one of utter neglect to the current problem of overpolicing and underprotection."); *see also* Brunson, *supra* note 312 ("But a great deal of scholarship has demonstrated that under-policing also leaves residents feeling perpetually underserved and unsafe. Residents of distressed urban neighborhoods have complained about ineffective policing for centuries, including officers' rudeness, slow response times and lack of empathy for crime victims.").

328 "Going, going, gone / Now I dialed 911a long time ago / Don't you see how late they're reacting / They only come and they come when they wanna / So get the morgue truck and embalm the goner / They don't care cause they stay paid anyway / They treat you like an ace they can't be betrayed" PUBLIC ENEMY, 911 IS A JOKE (Def Jam Recordings 1990).

329 Cassell, *supra* note 65, at 52-53 (discussing delegitimization of police and noting "changes in public perceptions of police" that recognize a systemic problem of "police killings of African-American men" and decreasing confidence in police); *see* Brunson, *supra* note 312 ("Some residents of high-crime neighborhoods have long concluded that police are either incapable of keeping them safe or unwilling to do so ...."); McLeod, *supra* note 1, at 1644 ("The inability of the criminal legal process to deliver meaningful justice in the aftermath of severe interpersonal harm, and its overemphasis on the enforcement of laws against conduct that ought not to be criminalized, will not be corrected by police training or by making officers more respectful of those they police."); *See, e.g.*, Aamer Madhani, *Unsolved Murders: Chicago, Other Big Cities Struggle; Murder Rate a 'National Disaster'*, USA TODAY (Aug. 10, 2018, 3:19 PM), https://www.usatoday.com/story/news/2018/08/10/u-s-homicide-clearance-rate-crisis/951681002/ [https://perma.cc/32WSNCX6] (drawing attention to the "national disaster" of unsolved murders in large cities).

330 CHERYL MAXSON, KAREN HENNIGAN & DAVID C. SLOANE, NAT'L INST. OF JUST., FACTORS THAT INFLUENCE PUBLIC OPINION OF THE POLICE 6 (2003).

331 Sparrow, *supra* note 292, at 20-21 (arguing that not only does a focus on reducing crime rates "produce[] too narrow a focus," but it also "invites manipulation of statistics and other forms of corruption;" noting the focus on reported crime overlooks broader unreported crimes and urging police to conduct victimization surveys to better understand crime); *see* Braga, *supra* note 17 (arguing that stronger relationships between law enforcement and the communities they serve would result in greater access to information for police); Meares, *The Path Forward, supra* note 19, at 1365 (supporting President Obama's assertion that the most important developments in law enforcement are greater trust and legitimacy); Kahan, *supra* note 19 (examining community policing initiatives aimed at improving relationships between

law enforcement and communities); Rachel Abanonu, *De-Escalating Police-Citizen Encounters*, 27 S. CAL. REV. L. & SOC. JUST. 239, 241 (2018) (finding that "public awareness and education about constitutional rights during police encounters" can lessen confrontations between police and the public); Anthony V. Alfieri, *Race Prosecutors, Race Defenders*, 89 GEO. L.J. 2227, 2245 (2001) (recognizing the value of community outreach in building "monitoring, compliance, and enforcement structures with the active participation of citizens of color").

332 Sparrow, *supra* note 292.

333 *See supra* note 46 and accompanying text.

334 Abuse is the second most common type of police misconduct. MIKKI KENDALL, HOOD FEMINISM: NOTES FROM THE WOMEN THAT A MOVEMENT FORGOT 51-62 (2020) (examining police perpetration of sexual assault and rape); Kanya Bennett, *Say Her Name: Recognizing Police Brutality Against Black Women*, ACLU (June 14, 2018, 4:30 PM), https://www.aclu.org/blog/criminal-law-reform/reforming-police/say-her-name-recognizing-police-brutality-against-black [https://perma.cc/N4M4-8WN5] ("Sexual abuse is the second most reported form of police misconduct after use of excessive force."). Victims may fail to report "because they do not believe that it will be responded to appropriately or that anything will be done about it." Baughman, *supra* note 46, at 77; *see also* Matthew Desmond, Andrew V. Papachristos & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOC. REV. 857, 857 (2016) ("High-profile cases of police violence--disproportionately experienced by [B]lack men--may present a serious threat to public safety if they lower citizen crime reporting. Using an interrupted time series design, this study analyzes how one of Milwaukee's most publicized cases of police violence against an unarmed [B]lack man, the beating of Frank Jude, affected police-related 911 calls. Controlling for crime, prior call patterns, and several neighborhood characteristics, we find that residents of Milwaukee's neighborhoods, especially residents of [B]lack neighborhoods, were far less likely to report crime after Jude's beating was broadcast. The effect lasted for over a year and resulted in a total net loss of approximately 22,200 calls for service."). For discussion of another paradox of punishment, see also Jeffery Fagan & Tracey L. Meares, *Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities*, 6 OHIO ST. J. CRIM. L. 173, 173 (2008) ("The failure of crime rates to decline commensurately with increases in the rate and severity of punishment reveals a paradox of punishment: recent experiments have shown that among persons of color, especially those who are poor or reside in poor neighborhoods, harsher punishment has produced iatrogenic or counterdeterrent effects.").

335 *See* Michael Pinard, *Race Decriminalization and Criminal Legal System Reform*, 95 N.Y.U. L. REV. ONLINE 119, 120 (2020) ("It is common knowledge that Black communities have borne the brunt of mass incarceration, mass convictions, and every other aspect of the criminal legal system."). But also, in all unsolved murders in the decade prior to 2018, the vast majority ("almost three-quarters") of victims were Black. Lowery et al., *supra* note 313; Heather Mac Donald, *Breakdown: The Unwinding of Law and Order in Our Cities Has Happened with Stunning Speed*, CITY J. (July 1, 2020), https://www.city-journal.org/ferguson-effect-inner-cities [https://perma.cc/HF7Y-PJFJ] ("So far this year, [seventy-eight] percent of all homicide victims in Chicago are [B]lack, though [B]lack[] [people] are less than a third of the population.").

336 *See* Brunson, *supra* note 312 (raising concerns about the lack of effective policing that "leaves residents feeling perpetually underserved and unsafe").

337 *Id*. (Jay, a young person, had been shot twice and decided to carry a weapon everywhere he went); *see also* JAMES FORMAN, LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 35 (2017) (recognizing "the simultaneous over- *and* under-policing of crime" in African American communities); Brunson, *supra* note 312 (underpolicing leaves residents "perpetually underserved and unsafe"); Estate of Jones v. City of Martinsburg, 961 F.3d 661, 671 (4th Cir. 2020) (recognizing a "desperate need" for more and different policing).

338 "These data confirm that lower levels of police legitimacy are significantly related to a higher probability of acquiring a firearm for protection. I consider the ways that gang membership, legal changes in Chicago, and gun behaviors are related to protective gun ownership, as well as how community policing and procedural justice can improve perceptions

of police and enhance their legitimacy, potentially reducing the incentives to engage in violent, extralegal 'self-help' with a firearm." Michael Sierra-Arévalo, *Legal Cynicism and Protective Gun Ownership Among Active Offenders in Chicago*, COGENT SOC. SCIS. 1 (Sept. 9, 2016), https://isps.yale.edu/sites/default/files/publication/2016/09/cogentsocialsciences_2016_sierraarevalo_legal_cynicism_and_protective_gun_ownership_among_active_offenders_in_chicago.pdf

339 Many individuals in high crime communities do not feel safe around police officers, and only a small number feel that police were responsive to community concerns. *See, e.g.*, Nancy La Vigne, Jocelyn Fontaine & Anamika Dwivedi, *How Do People in High-Crime, Low-Income Communities View the Police?*, URB. INST. 10, 12 (Feb. 2017), http://www.urban.org/sites/default/files/publication/88476/how_do_people_in_high-crime_view_the_police.pdf [https://perma.cc/U6XK-C3J4] (only 37.8% of residents reported feeling safe around police officers, and just 28.3% believed that police are "responsive to community concerns").

340 There is a racial gap in reporting between white and Black people. *See* Baughman, *supra* note 46, at 51 n.13 (identifying prior literature addressing lack of crime reporting).

341 Indeed, due to police abandonment, marginalized communities have resorted to "self-help," by relying on family members or friends, which can lead to an increase in violence. Bell, *supra* note 7, at 2116.

342 *See supra* Part III.B; *supra* notes 48-58 and accompanying text.

343 *See* David Kennedy & Jon Ben-Menachem, *Moving Toward an American Police-Community Reconciliation Framework, in* THE CAMBRIDGE HANDBOOK OF POLICING IN THE UNITED STATES (Tamara Rice Lave & Eric J. Miller eds., Cambridge University Press, 2019).

344 *See* Bell, *supra* note 7, at 2119-23; YOUGOV, THE ECONOMIST/YOUGOV POLL: JUNE 14 -16, 2020 - 1500 US ADULT CITIZENS 44 (2020), https://docs.cdn.yougov.com/vgqowgynze/econTabReport.pdf (indicating that fifty-five percent of African Americans oppose abolishing the police, twenty-three percent are unsure on their stance, and twenty-two percent are in favor of abolishing the police); Jacob Gershman, *Some States are Pushing Laws to Restrict Police Behavior*, WALL ST. J. (Aug. 19, 2020, 5:30 AM), https://www.wsj.com/articles/some-states-are-pushing-laws-to-restrict-police-behavior-11597829401 [https://perma.cc/KC56-KGLV]; Wernau & Ailworth, *supra* note 318 (reporting that only twenty-two percent of Black respondents supported the idea of abolishing the police, compared with twenty percent of Latinos and twelve percent of white respondents, reporting they "don't see how defunding the police is going to help anything"); Heather Gillers & Andrea Fuller, *Cities Weigh Cutting Police Budgets and Discover How Hard That Is*, WALL ST. J. (Aug. 12, 2020, 3:38 PM), https://www.wsj.com/articles/cities-weigh-cutting-police-budgets-and-discover-how-hard-that-is-11597261079 [https://perma.cc/X5TU-YSPL] (noting that some Black and Hispanic leaders have urged leaders to hold off before slashing police budgets and defunding police).

345 *See* Richard R.W. Brooks, *Fear and Fairness in the City: Criminal Enforcement and Perceptions of Fairness in Minority Communities*, 73 S. CAL. L. REV. 1219, 1228-29 (2000) ("While [B]lack[] [people] are more likely than the general population to view police brutality and harassment as a problem, they are also much more likely to perceive crime as a serious problem. Thus, [B]lack [] [people] suffer from a 'dual frustration'--being fearful of both the police and criminals.").

346 *See supra* notes 339-341, 343-345 (identifying some of the snowballing effects of failures to solve crime in underserved communities).

347 *See* Tyler & Fagan, *supra* note 315.

348 The Urban Institute surveyed residents of high-crime neighborhoods in six American cities and found that 74.3% believed that all laws should be strictly obeyed, 70.8% reported willingness to report a crime, and 63.5% would provide information to the police about a suspect. Vigne et al., *supra* note 339, at 11-13.

349 *See* Kennedy & Ben-Menachem, *supra* note 343, at 556 ("The fundamental realization at play here is that it's possible for communities of color to simultaneously desire improved public safety while also not trusting law enforcement agencies to implement it. Instead, such communities are imbued with what scholars call 'legal cynicism' a lack of confidence in the law and its agents.").

350 Additional research on the deterrent effect of a public perception of police as solving crime could partially explain the existence of the police myth. This is an area that would benefit from greater study.

351 *See* Sparrow, *supra* note 292, at 2 (noting that police are most measured by "[r]eductions in the number of serious crimes reported, most commonly presented as local comparisons against an immediately preceding time period").

352 *See* Baughman, *supra* note 46, at 67; ADDINGTON, *supra* note 267, at 2 (arguing that "police are precisely in the middle of [an] extraordinarily leaky sieve" that includes "not just leaks" but has "lapses of justice" that cost police legitimacy "when they fail to bring the vast majority of serious offenders to justice").

353 *See* Baughman, *supra* note 46, at 53 (establishing that "police are much less effective than we might think at solving all major crimes and have not significantly improved in the last thirty years"). One additional argument is that clearance and "solving" crime in and of itself is not a worthy goal. For instance, some may argue that deterrence is more important than apprehension, and thus solving crime should not be the goal of policing.

354 *See* Friedman, *supra* note 29, at 50.

355 SKOLNICK, *supra* note 68, at 270. *But cf*. Paul G. Cassell & Richard Fowles, *What Caused the 2016 Chicago Homicide Spike? An Empirical Examination of the "ACLU Effect" and the Role of Stop and Frisks in Preventing Gun Violence*, 2018 U. ILL. L. REV. 1581 (arguing that changes in stop and frisks can affect homicide rates).

356 WILSON, *supra* note 113, at vii (explaining that in 1968, it was difficult for police to solve crimes and "impossible to prevent crimes," "police outputs are hard to measure", and police are more likely to be "judged not by crime statistics but by the frequency of scandals, charges of corruption or abuse and political controversies", which makes the practice "defensive rather than service-oriented" policing).

357 *See* WILSON, *supra* note 113, at 59 ("Many serious crimes--murder, forcible rape--are of [such a] character" as to make it "often difficult or impossible" for police to address); ANDY KOOPMANS, CRIME AND CRIMINALS (EXAMINING POP CULTURE)))) 35 (2003) ("It is not that real life police are incompetent, but these crimes are very difficult to solve.") (referring to gangland "hits" or murders between rival drug dealers).

358 *See* Baughman, *supra* note 46, at 61 (noting the impact of "variables such as police workload, firearm use, distant victim-offender relationship, and low visibility/exposure incident time" on clearance rates).

359 *See supra* notes 14, 218 and accompanying text.

360 *See supra* notes 14, 178 and accompanying text.

361 Many who appreciate privacy and civil liberties appreciate this lack of centralized police coordination and would not change it. *See* Baughman, *supra* note 275.

362 WILLIAM J. STUNTZ, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE 216 (2011) (discussing the Warren Court's rights revolution and arguing that the court's decisions "helped usher in the harsh politics of crime that characterized the twentieth century's last decades"); SKOLNICK, *supra* note 68, at 203, 215 (arguing that police see the exclusionary rule's purpose as making their job more difficult in apprehending and detecting criminal defendants); Schulhofer, *supra* note 260, at 289 (arguing that "national clearance-rate data ... offer no reason to think that *Miranda* hinders ... law enforcement effort[s]"). *But see* Cassell & Fowles, *Still Handcuffing the Cops?, supra* note 110, at 706-08 (disputing the claim that "*Miranda* had no noticeable effect on crime clearance rates" and finding that "in fact, crime clearance rates fell sharply all over the country immediately after *Miranda* and have remained at these lower levels ever since").

363 Eck & Rossmo, *supra* note 14, at 605-06.

364 *See supra* note 232.

365 *See* Baughman & Wright, *supra* note 139, at 5 (observing that "in the last ten years or more the number of crimes committed have decreased, the number of arrests per year have decreased consistently"). *See also supra* note 232.

366 DUREN BANKS ET AL., *supra* note 137, at 2, 10 (noting that "the annual national estimate of sworn officers per one thousand U.S. residents ranged from 2.23 in 1992 to 2.51 in 2008" and finding rates within that range in every year from 1992-2012).

367 Baughman & Wright, *supra* note 139, at 26 ("Prosecutors are charging more cases proportionately than police are, and ... are contributing more to mass incarceration than police.").

368 *See supra* notes 161-162 (identifying existing research on how police spend their time).

369 Investigation scholars claim that detectives might be passive in waiting for information to come to them or rely on technology as a crutch rather than actively solving crimes. *See* Eck & Rossmo, *supra* note 14, at 606, 610 ("Detectives sometimes fall victim to the current 'quick fix,' a trap that typically involves detectives waiting for something to happen--a witness to walk in, the Crime Stoppers phone to ring, the DNA results to come back;" indeed, "[m]ost recommendations for improving criminal investigations have involved efforts to increase evidence collection or forensic testing.").

370 *See* Eck & Rossmo, *supra* note 14, at 612; *see also supra* note 19 and accompanying text.

371 *See generally* TYLER, *supra* note 321 (positing that people obey the law because they believe it is legitimate); BREGMAN, *supra* note 168.

372 DAVID ROODMAN, THE IMPACT OF INCARCERATION ON CRIME 10 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3635864 [https://perma.cc/B4CQ-ST4X] (synthesizing studies on the effect of incarceration on subsequent offending).

373 Baughman, *supra* note 46, at 102; *see also* Baughman & Wright, *supra* note 139, at 5 ("[I]n the last ten years or more the number of crimes committed have decreased, the number of arrests per year have decreased consistently, and while people are still serving long sentences, some federal sentences have been reduced.").

374 MORGAN & TRUMAN, *supra* note 250; FBI, 2019, *supra* note 46. There were an estimated 14,845,545 crimes committed in 2019. *Id*. The number comes from the number of rape/sexual assaults, robberies, aggravated assaults, burglaries, thefts, and motor vehicle thefts estimated by the NCVS, as well as the number of murders and non-negligent manslaughters reported by the FBI. *Id*

375 *See* Baughman, *supra* note 46, at 95 (noting the lack of data on "crimes resolved without arrest").

376 As Mariame Kaba so poignantly stated "What is it, the numbers that I heard recently where that a thousand people getting raped, that out of that number, I think it's something like 200 people report. And from the 200 people that report, 20 are moved forward to a prosecutor. And out of those 20 convictions, less than five people. And out of those convictions, only maybe one ends up behind bars in a sexual assault. Out of a thousand cases. So when people tell me, 'What are we going to do with all the rapists?' I'm like, what are we doing with them now? They live everywhere. They're in your community, they're on TV being outed every single day." Why Is This Happening?, *Thinking About How to Abolish Prisons with Mariame Kaba*, NBC NEWS (Apr. 10, 2019, 10:58 AM), https://www.nbcnews.com/think/opinion/thinking-about-how-abolish-prisons-mariame-kaba-podcast-transcript-ncna992721 [https://perma.cc/2XXV-7NL6]. Paul Butler says that the state is failing to protect citizens: "So if there were approaches that helped better than the punishment approach, I think that more people would avail themselves of an official government response because they would know that would help them heal." *The Crime Story Podcast with Kary Antholis, supra* note 278. "So, when we listen to victims, we learn that many if not most, don't ask for the cops to come, the guy to be locked up, the guy to be put under the jail. What they often hope is that the response will be such that the person who caused the harm won't harm anybody else, and he'll understand the injury that he caused. And to the extent that he's able, he makes up the injury, to the extent that, that's possible." *Id*

377 *See* Bell, *supra* note 7, at 2065 ("In the world of police governance and practice, perhaps more than in other spheres, theory matters for determining what police departments and officers do on the ground.").

378 See *supra* Part I.A-C (historical periods of policing).

379 *See* Meares, *Broken Windows, supra* note 58, at 616 ("Policing of low-level offenses in poor, minority, and high-crime communities was potentially not as effective as we might have thought .... [and] such policing potentially is very costly to communities in need of a strong and responsive relationship to law enforcement.").

380 Communities of color have a complicated relationship with police, though in general want protection from crime. *See* Wernau & Ailworth, *supra* note 318 (quoting a member of an underserved community discussing the need for police to protect communities of color, saying "I'm the last person who would be a police cheerleader, because I've had my own run-ins with them," but adding, "[w]hat are you going to do when they're not there to protect you?"); police are viewed as an attractive amenity in a neighborhood or a nuisance depending on the view of a particular person and their experience with law enforcement. *See* Monica C. Bell, *Located Institutions: Neighborhood Frames, Residential Preferences, and the Case of Policing*, 125 AM. J. SOC. 917, 917 (2020).

381 *See* Westera et al., *supra* note 29.

382 *See* Cook et al., *supra* note 171, at 525 (2019) ("When additional investigative effort is expended, law enforcement improves its success in gaining the cooperation of key witnesses and increases the amount of forensic evidence collected and analyzed. In turn, the capacity of the police to hold violent gun offenders accountable, deliver justice to victims, and prevent future gun attacks is enhanced.").

383 See GARRETT, *supra* note 301. This shift could require an increase in police resources dedicated to solving crimes accompanied by a decrease or redistribution of resources dedicated to other existing police functions.

384 *See also* Bell, *supra* note 7, at 2147-48.

385 There is no easy solution for mental health problems. *See* Jonathan Foiles, *We Can't Just Replace Cops with Social Workers*, SLATE (July 1, 2020, 11:46 AM), https://slate.com/technology/2020/07/social-workers-cant-replace-cops.html [https://perma.cc/4XQ9-YHRZ] (discussing that people trained in self-defense do not need to respond to mental health problems, but sometimes, it is hard to determine whether a mental health emergency is the problem; there are other problems in policing that would not be solved with the use of social workers).

386 *See* Friedman, *supra* note 29, at 21, 37 (noting that despite being asked to respond to call and provide "social work solutions," "[w]here [police] get the least training by far is in the categories of mediation and social work, and in dealing with non-law enforcement emergent situations").

387 *See* POLICE FOUND. REPS., RICHMOND'S SECOND RESPONDERS: PARTNERING WITH POLICE AGAINST DOMESTIC VIOLENCE 2 (Mar. 2005), https://www.policefoundation.org/wp-content/uploads/2015/06/Greenspan-et-al.-2005-Richmond%E2%CCC80%99s-Second-Responders-.pdf [https://perma.cc/GY7X-B63G] (finding that domestic violence victims "experienced less abuse," "received more social services," and "received more services from police" when social workers as well as police responded, compared to those who only "received a conventional police response"). The CAHOOTS Oregon program integrates crisis intervention and has been effective at responding to large quantities of calls, providing medical services, and responding to "personal welfare safety checks," at a significant annual cost savings. Candice Bernd, *Community Groups Work to Provide Emergency Medical Alternatives, Separate from Police, in* WHO DO YOU SERVE, WHO DO YOU PROTECT? POLICE VIOLENCE AND RESISTANCE IN THE UNITED STATES 158 (Maya Schenwar, Joe Macare & Alan Yu-Lan Price, eds., 2016) (saving Eugene Police department $4.5 million annually and more than one million dollars in ER and EMS diversion savings).

388 Although this Article largely focuses on clearance rates as a measure of solving crimes, other methods of reducing crime without additional arrests may be preferable. For instance, the deterrent effect of police may be one way to reduce crime without arrests. *See* Mello, *supra* note 121.

389 *See* Bell, *supra* note 7, at 2143 (suggesting bringing police and Black communities together for "deliberative participation in policing"); *id*. at 2144-45 (suggesting data collection including police work videos and transparency through cop watching); PATRICK SHARKEY, UNEASY PEACE: THE GREAT CRIME DECLINE, THE RENEWAL OF CITY LIFE, AND THE NEXT WAR ON VIOLENCE 168-79 (2018) (discussing neighborhood organizations who fought with police to not arrest as many people and provide needed services instead).

390 A requisite amount of reconciliation will be necessary. *See* DAVID M. KENNEDY, DON'T SHOOT: ONE MAN, A STREET FELLOWSHIP, AND THE END OF VIOLENCE IN INNER-CITY AMERICA 83 (2011).

391 *See* Baughman, *supra* note 46, at 66 (discussing seven critical data points for judging policing including crime resolution rates and reporting of crime).

392 *See* Simonson, *supra* note 25, at 393 (employing the community to watch police to avoid misconduct).

393 *See* Simonson, *supra* note 7.

394 In some senses, the lawsuits in Ferguson have served as an example of this. *See* HORACE & HARRIS, *supra* note 212, at 126-27 (suggesting that greater "citizen involvement and community interaction" is one "needed change []" in policing). All of this would involve dealing with police union prevention of police reform.

395 Maxson et al., *supra* note 330, at ii (positing that police officers can "increase residents' approval of their job performance by participating in community meetings, increasing officers' visibility in neighborhoods, and talking with citizens" which also lessons the negative impact of arrests or questioning by police).

396 *See* Kennedy & Ben-Menachem, *supra* note 330, at 576 ("Today, law enforcement stands face- to- face with a historic opportunity: police leaders can take affirmative steps to repair relationships with members of communities who have been harmed and alienated by criminal justice institutions, and in doing so, move toward an inclusive, reimagined vision of public safety. Reconciliation work can be a tool to connect the police to a history and lived experience that they may neither understand nor sufficiently respect.").

397 *See* Bell, *supra* note 7, at 2131, 2133-34, 2155 (noting that state laws and police policies may place the least effective police in high-poverty communities and that secondary employment arrangements where police provide security for high income neighborhoods can also lead to inequities); Rushin & Michalski, *supra* note 6, at 298-99 (identifying unequal funding for communities of color and less officers where highest crime rates exist).

398 *See* Bell, *supra* note 7, at 2136; Kaste, *supra* note 263 (noting that solving crimes, especially homicides, "costs money" and "each case takes a lot of man-hours"); Williams, *supra* note 263 ("Cases are more likely to get cleared if more detectives are working.").

399 *See* Rushin & Michalski, *supra* note 6, at 320-27 (allowing police departments to have a similar amount of resources per capita, allocated based on underlying crime rates).

400 SKOLNICK, *supra* note 68, at 243, 270 ("Criminal investigators solve a very small percentage of crimes, smaller than clearance rates suggest, and increased time for criminal investigations seems to yield little in the way of increased productivity or felony convictions." In fact, more police, or asking police to be more aggressive has not increased public safety either, though if police were to disappear entirely, there would be more crime.); HAMAJI ET AL., *supra* note 2 (increased spending on police does not make communities safer if this is spent on policing and incarceration rather than more "effective safety initiatives"); Bruce L. Benson, David W. Rasmussen & Iljoong Kim, *Deterrence and Public Policy: Trade-Offs in the Allocation of Police Resources*, 18 INT'L REV. L. & ECON. 77, 78 (1998) (increasing police budgets does not necessarily increase deterrence of reported crimes because policy makers "do not necessarily allocate new resources to deter those crimes").

401 The ratio of police to the U.S population has not dramatically changed between 1992 and 2019, ranging between 2.2 and 2.51 sworn officers per one thousand residents. *See* BANKS ET AL., *supra* note 137, at 2 tbl.1; FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: POLICE EMPLOYEE DATA, 2013, https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/police-employee-data/police-employee-data [https://perma.cc/ZV3U-JLHR]; FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: POLICE EMPLOYEE DATA, 2014, https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/police-employee-data/main [https://perma.cc/KVZ7-PSSW]; FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: POLICE EMPLOYEE DATA, 2015, https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/police-employee-data/police-employee-data [https://perma.cc/4DHV-F6DY]; FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: POLICE EMPLOYEE DATA, 2016, https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/police-employees [https://perma.cc/L8QQ-BZ44]; FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: POLICE EMPLOYEE DATA, 2017, https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/police-employee-data [https://perma.cc/LF93-TNMD]; FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: POLICE EMPLOYEE DATA, 2018, https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/police-employee-data [https://perma.cc/AXP3-3ZL8]; FED. BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES: POLICE EMPLOYEE DATA, 2019, https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/police-employee-data [https://perma.cc/3NKK-UZMW]. Note, the FBI's Crime Data Explorer produces a graph on "Ratio of Police Officers to Population." FED. BUREAU OF INVESTIGATION, CRIME DATA EXPLORER, https://crime-data-explorer.fr.cloud.gov/officers/national/united-states/pe [https://perma.cc/FC3A-245F]. The graph also ranges between 2.0 and 2.5, however it is per

100,000 rather than per 1,000 as the FBI reports in the Uniform Crime Reports. At this point it is unclear why there is such a large discrepancy. This Article chose to use the rate per 1,000 reported by the FBI each year on its webpage about police employee data as it is the rate they have used for years.

402 The U.S. has thirty-five percent less police than other countries. PRESIDENT OBAMA'S COUNCIL OF ECONOMIC ADVISERS, ECONOMIC PERSPECTIVES ON INCARCERATION AND THE CRIMINAL JUSTICE SYSTEM 45 fig.32 (Apr. 23, 2016), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/CEA%2BCriminal%CCC2BJustice%2BReport.pdf [https://perma.cc/L43G-69DQ] (noting that the U.S. has more prison guards but less police than the average of the world). In a 2016 Pew survey, eighty-six percent of officers said their department did not have enough police to adequately patrol their community, though fifty-seven percent of the public wanted no change in the size of the local police force. Morin et al., *supra* note 155; Chalfin & McCrary, *supra* note 292, at 167 (claiming that the United States currently employs a suboptimal number of police officers).

403 Puckett & Lundman, *supra* note 172, at 183 (finding that "detective experience and detective workload have no effects on homicide clearances"); SKOLNICK, *supra* note 68, at 270 (noting that once a certain threshold of police department size has been reached, long ago met in most major cities, neither more police nor more money helps much).

404 *See* Rushin & Michalski, *supra* note 6, at 300-01 ("First, a handful of studies have found that police staffing rates likely have an impact on overall crime rates, particularly violent crime rates .... [and] subsequent studies have generally found that increases in police staffing likely do decrease crime rates. Second, a robust body of research suggests that specific policing strategies designed to disrupt situational incentives of would-be criminals can actually reduce, rather than merely displace, crime .... And third, some studies have found that regulation of police may inadvertently impair [police] ability to use crime-fighting strategies, thereby increasing crime."); *see also* Braga et al., *supra* note 13, at 634-35 (hot-spot policing strategies likely produce small but statistically significant reductions in certain crime rates, while the use of problem-oriented policing strategies contributes to even larger decreases in crime); Stephen Rushin & Griffin Edwards, *De-Policing*, 102 CORNELL L. REV. 721, 768 (2017) (arguing DOJ regulation of police departments may inadvertently result in an increase in certain crime rates, as police officers adjust to new oversight and training).

405 *See* Klick & Tabarrok, *supra* note 243, at 277.

406 *See id*. at 275 (using a series of "high-alert days" in Washington D.C. following terrorist threats, the study illustrated "very large effects" of police presence on "auto thefts and theft from autos" but no such response for "violent crimes"); Mirko Draca, Stephen Machin & Robert Witt, *Panic on the Streets of London: Police, Crime, and the July 2005 Terror Attacks*, 101 AM. ECON. REV. 2157, 2158 (2011) (showing that a thirty percent increase in police force following a bombing in London led to "crime [falling] significantly" and that "when police deployments returned to their pre-attack levels ... the crime rate rapidly returned to its pre-attack level"); William N. Evans & Emily G. Owens, *COPS and Crime*, 91 J. PUB. ECON. 181, 183 (2007) (using the federal Community Oriented Police Services (COPS) program that increased police force generally to determine that "additional officers granted through the COPS program produce[d] statistically significant drops in burglaries, auto thefts, robberies, and aggravated assaults"). The evidence that private security has the same effect is mixed. *Compare*, Paul Liu, *Measuring the Effectiveness of Private Security Patrols in Lower Rockridge and Temescal* (Nov. 11, 2014), https://docs.google.com/document/d/18ClYNh9sotEKS8blDqFlDJloW27AFPyx5skTJ10/edit [https://perma.cc/5VQC-4U73] (claiming a private security patrol lowered "burglary and robbery in Lower Rockridge" by an estimated 35.2%), *and* Leah Brooks, *Volunteering to be Taxed: Business Improvement Districts and the Extra-governmental Provision of Public Safety*, 92 J. PUB. ECON. 388, 402 (2008) (showing that business improvement districts that invest in private security show "sizable" drops in crime in surrounding areas, while "the evidence with respect to enforcement was substantially more mixed"), *with* MacDonald et al., *supra* note 243, at 842 (using the two-hundred percent "effective increase in police presence" by the Penn Police verses the Philadelphia Police to estimate a "60% ... reduction in crime").

407 *See supra* Part I.E.2. and accompanying text.

408 If there is too much pressure to improve clearance, police might not spend enough time making sure that the arrest is appropriate; however, when officers are punished for their mistakes, they might more carefully investigate to avoid errors. *See* Jordan Adamson & Lucas Rentschler, *How Policing Incentives Affect Crime, Measurement, and Justice* 11-13, 17 (Ctr. For Growth & Opportunity) (Aug. 10, 2020) (unpublished), https://ssrn.com/abstract=3628595 [https://perma.cc/Y58A-X6QJ].

409 *See* Bell, *supra* note 7, at 2125 (describing a Baltimore officer who would meet his arrest expectations by going to poor communities of color to avoid "trouble" for arresting the "wrong person" with influence); *see* PAUL BUTLER, CHOKEHOLD: POLICING BLACK MEN (2017) (discussing the importance of training in criminal investigation and prioritizing serious violent crime and community safety, rather than arrest and incarceration).

410 *Cf.* Baughman, *supra* note 46, at 88-90 (showing that the percentage of drug arrests has stayed consistent over most years while arrests for violent crimes has decreased); Baughman, *supra* note 287, at 295 (discussing the relation between drugs and violence and the high prison rates for drug offenses compared to the much lower rates for violent crimes). It is possible that plea bargaining affects this police data and analysis. Prosecutors often find it harder to charge and prove violent crimes than consensual drug crimes, where a witness might testify to such a crime or a wire-tap might prove the transaction.

411 *See* Akbar, *supra* note 17.

412 *See supra* note 5 (providing examples from the police abolition movement). *See also* Annie Lowrey, *Defund the Police*, ATLANTIC (June 5, 2020), https://www.theatlantic.com/ideas/archive/2020/06/defund-police/612682/ [https://perma.cc/C6SQ-4ESK] ("The country needs to shift financing away from surveillance and punishment, and toward fostering equitable, healthy, and safe communities."); Conor Friedersdorf, *Unbundling the Police in Venice Beach, California: You Shouldn't Have to Call 911 for Problems Related to Homelessness*, ATLANTIC (July 6, 2020), https://www.theatlantic.com/ideas/archive/2020/07/unbundling-police-venice/613822/ [https://perma.cc/G75F-6H2D] (arguing that people should not have to call police regarding people who are homeless); Giovanni Russonello, *Have Americans Warmed to Calls to 'Defund the Police'?*, N.Y. TIMES (July 3, 2020), https://www.nytimes.com/2020/07/03/us/politics/polling-defund-the-police.html [https://perma.cc/7X6R-AFX9] ("Recent polling suggests that many Americans have come to understand the phrase as a call not to simply eliminate the keepers of the peace, but to reinvest a portion of their funding in other programs and crime prevention techniques."); *What Policing Costs: A Look at Spending in America's Biggest Cities*, VERA INST., https://www.vera.org/publications/what-policing-costs-in-americas-biggest-cities [https://perma.cc/W5DJ-MBQL] (announcing that "now is the time to spend less on policing" in order to create safer communities for Black people).

413 *See Criminal Justice Expenditures: Police, Corrections, and Courts*, URB. INST., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/police-and-corrections-expenditures [https://perma.cc/PS32-8VTS].

414 *See* Harmon, *The Problem, supra* note 64, at 806 (noting that police receive "60 hours of firearms training, 36 hours of emergency vehicle operations, 44 hours of self-defense training, and 12 hours in using nonlethal weapons, but only 8 hours of ethics and integrity training and 8 hours of mediation or conflict management training"); Friedman, *supra* note 29, at 44 ("Crimefighting actually is a very small part of what police do every day, and their actual work requires an entirely different range of skills, among them: mediation skills ... [and] social work skills .... Yet, police are barely trained in any of this ....").

415 Overwhelmingly, even with crime functions, police use their power and resources to make arrests for disorderly conduct, drugs, and other misdemeanor offenses. *See* Morgan, *supra* note 66, at 21 (discussing police arrets for minor offenses like disorderly conduct in an attempt to improve public order); Shima Baradaran Baughman, *The History of Misdemeanor Bail*, 98 B.U. L. REV. 837, 839-41 (2018) (discussing the disproportionate number of misdemeanor cases in the United

States and issues of the current bail system for these cases); Baughman, *supra* note 287 (discussing the misconceptions of the war on drugs and the resulting increase of prison population in the United States).

416 *See* Rushin & Michalski, *supra* note 6, at 277, 285, 318 (arguing that defunding the police could have "unintended consequences" such as increased crime rates, hampered efforts to control officer misconduct, reduced officer safety, and over ticketing, among other things).

417 I acknowledge here that I do not appropriately discuss crime prevention by police. There is room for more research on how much time police spend on crime prevention and how effective they are at this duty, as it bears on the broader police myth. *See supra* Part III.A. There is an argument by scholars that more police mean less violent crime. *See, e.g.*, Matthew Yglesias, *The Case for Hiring More Police Officers*, VOX (Feb. 13, 2019, 9:00 AM), https://www.vox.com/policy-and-politics/2019/2/13/18193661/hire-police-officers-crime-criminal-justice-reform-booker-harris [https://perma.cc/F8KD-E8ZY]; *see also* Cassell, *supra* note 65 (positing that diversion of police resources from typical law enforcement activities caused an increase in homicides).

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